



# THE HANFORD SITE

## Tri-Party Agreement Training

Michael Turner,  
MSA Tri-Party Agreement Integration

*December 9, 2020*

- If you ever become trapped in your car, your headrest should be detachable, and thereby used as an emergency implement to break a window – very useful, especially in the event of your car becoming submerged in water.

## Objective of the briefing:

- Provide overview of the Hanford Federal Facility Agreement and Consent Order or “Tri-Party Agreement” (TPA), and the Consent Decree between the States of Washington and Oregon for the disposition of Hanford’s tank wastes

## What is being briefed?

- Requirements of the Tri-Party Agreement to include:
  - Enforcement authorities
  - Milestones and how they are managed
  - How TPA agencies conduct negotiations and resolve disputes
  - Explanation of the consent decree and how does it relates to the TPA?

## What do we want the HAB to do with this information?

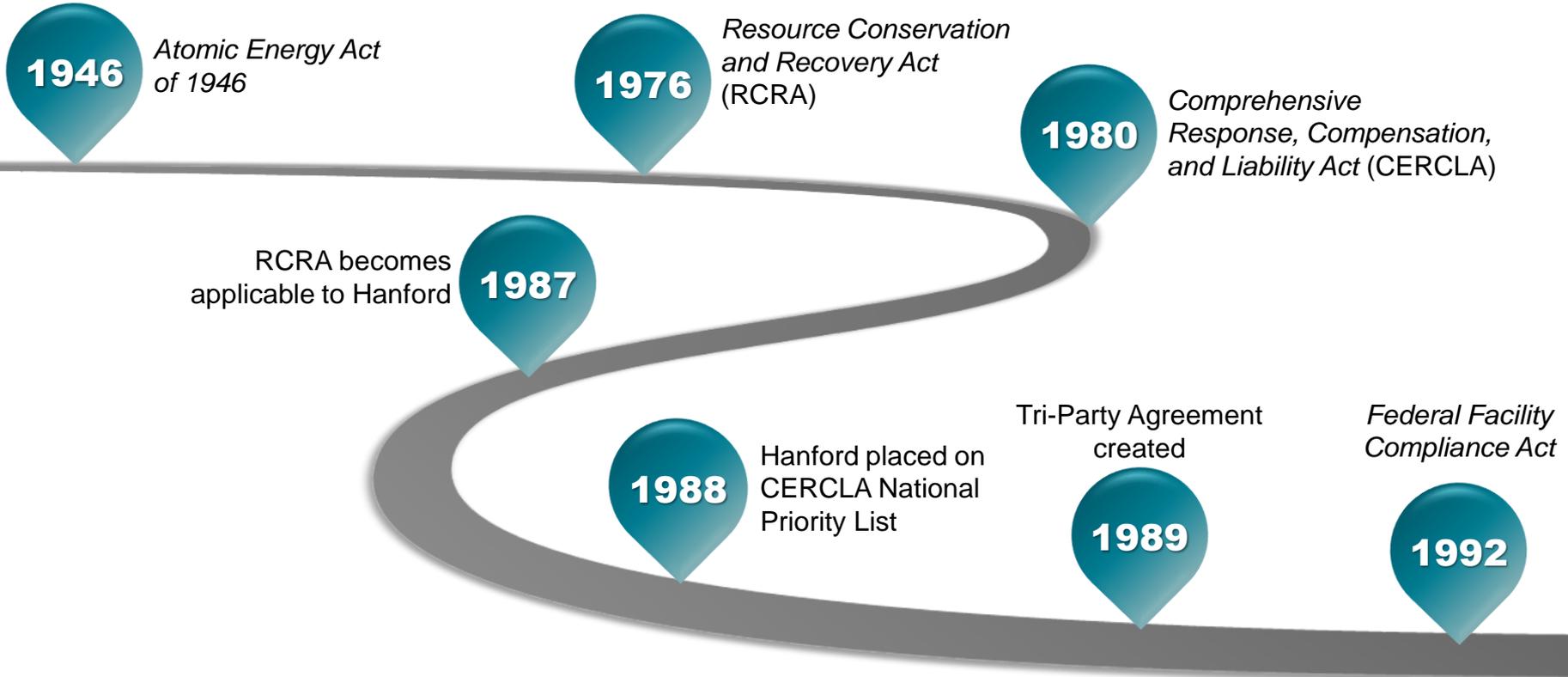
- Information is relevant in continued policy-level discussions regarding progress of the Hanford Site mission
- Understand the designated roles and responsibilities of each TPA member

# Tri-Party Agreement

- Legal name is the *Hanford Federal Facility Agreement and Consent Order*
- Commonly known as the Tri-Party Agreement or TPA  
<https://www.hanford.gov/page.cfm/TriParty/TheAgreement>
- Parties:
  - U.S. Department of Energy
  - 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
- Provides a basis for budgeting
- 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

# Structure of the Tri-Party Agreement

---

- [Legal Agreement](#)
  - Describes the purpose of the agreement
  - Explains the 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 chapters 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. Prioritized Listing of Operable Units
- 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 Facilities

- 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 Ecology and EPA](#) explains roles/interactions between lead and non-lead regulatory agency
- “The designation of a lead regulatory agency shall not change the jurisdictional authorities of the Parties”

- As a legally binding agreement, each of the TPA agencies has the right to enforce the terms of the agreement
- Any person can bring suit against the TPA agencies if the agencies fail to follow the terms and conditions 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
- Ecology and EPA also have the right to bring enforcement action against DOE contractors, subcontractors and operators for activities outside of the scope of the agreement

- Statutory Administrative/Civil Penalties
  - CERCLA - \$25,000/\$75,000 per day per violation or subsequent violation
  - RCRA (federal) - \$25,000 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

Year	Milestone/Description	Amount
1992	M-14: Construct low-level mixed waste lab	\$ 100,000
2000	M-32: Complete tank integrity assessments	\$ 200,000
2003	M-34: Initiate K East Basin sludge removal	\$ 76,000
2005	M-34: Complete K East sludge containerization	\$ 75,000
2007	Environmental Restoration Disposal Facility fine for leachate and compaction – DOE and EPA agreed on environmental project	\$ 1.15M
2007	S-102 violation of TPA primary document	\$ 500,000
2008	M-34: Complete removal of K East Basin	\$ 75,000
2008	M-91: Treat 3,000 cubic meters of contact-handled transuranic mixed waste	\$ 25,000
2012	M-47: Secondary waste treatment	\$ 5,000
2015	M-16: Basin sludge removal from 105-KW Basin	\$ 125,000
2016	TPA Paragraph 148/149: Timely notification	\$ 2,500
2020	M-035-09K: TPA Action Plan Sections 9.6.2 and 9.6.5 data access requirements	\$ 1.065M

# The Work Schedule – TPA Milestones

- TPA 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 Nov. 17, 2020):
  - 1,710 total milestones, of which 1,365 have been completed and 173 remain
  - 345 target dates, of which 320 have been completed and 25 remain

Contractor	Enforceable Milestones	Target Dates	Total
BNI	17	5	22
CHPRC	80	14	94
MSA	13	0	13
PNNL	1	0	1
WRPS	62	6	68
Total	173	25	198

- A **major milestone** is an enforceable milestone that represents a long-term (generally longer 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 (shorter 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 (e.g., M-016-119-T01). 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.

Richland Operations Office	
<b>M-015-00</b>	Complete RI/FS (or RFI/CMS) for all non-tank farm operable units
<b>M-016-00</b>	Complete remedial actions for all non-tank farm and non-canyon OUs
<b>M-024-000</b>	Complete installation of RCRA and CERCLA groundwater monitoring wells
<b>M-035-00</b>	Complete data management enhancements
<b>M-083-00A</b>	Complete PFP transition and selected disposition activities
<b>M-085-00</b>	Complete response actions for canyon facilities/associated past practice waste sites
<b>M-089-00</b>	Complete closure of 324 bldg non-permitted mixed waste units
<b>M-091-00</b>	Complete treatment to LDR standards for all RCRA MLLW and RCRA TRUM waste
<b>M-092-00</b>	Complete TSD facilities for cesium, strontium, and bulk sodium
<b>M-093-00</b>	Complete final disposition of all 100 Area surplus reactor buildings
Office of River Protection	
<b>M-042-00</b>	Complete closure of all Double Shell Tank Farms
<b>M-045-00</b>	Complete closure of all Single Shell Tank Farms
<b>M-047-00</b>	Complete work to provide facilities for management of WTP secondary waste
<b>M-062-00</b>	Complete pretreatment processing and vitrification of HLW and LAW Tank Wastes
<b>M-090-00</b>	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**

- DOE Office of Chief Counsel and Headquarters involvement is required
- Multiple TPA clauses drive creation of new milestones, including edicts for the following:
  - Tank waste remediation milestones
  - Liquid effluent discharge milestones
  - Disposition documentation
  - Project management plans
  - More
- Milestones themselves can require the development of additional milestones
- Public involvement activities may be required

The TPA agencies consider the following criteria to determine 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 other 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

- **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

# Milestone Status Code Definitions (cont.)

---

- **In abeyance** – Agencies 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 the Action Plan
- Changes are categorized as follows:
  - **Class I:** A change to a major milestone or a change to the Legal Agreement portion of the TPA
    - A Class I change requires the approval of the TPA signatories
    - Public review/comment may be required based on significance of change at the discretion of the agencies
  - **Class II:** A change to an interim milestone, the TPA Action Plan or TPA appendices
    - A Class II change requires the approval of DOE and the lead regulatory agency executive manager (Interagency Management Integration Team representative)
    - Public review/comment may be required

# TPA Change Control Process (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 the DOE and lead regulatory agency project managers

- Approved TPA change control forms are posted online at <https://www.hanford.gov/c.cfm/tpa/>
- Contact [Stephanie Brasher](#) at MSA for the latest change control form template

# TPA Change Authorities

	DOE	EPA	Ecology	Change Authority
Tri-Party Agreement Signatories	B. Vance	C. Hladick	L. Watson	Class I Legal Agreement
Executive Managers	B. Hamel B. Harkins	D. Einan	D. Bowen	Class II Action Plan
Project Managers	Responsible Project Managers			Class III Target Dates

- The TPA agencies collectively set or change milestones in a collaborative, sometimes lengthy process
- The DOE Office of Chief Counsel assigns an attorney for each negotiation. DOE project managers meet and discuss any potential negotiations with the assigned attorney and the TPA coordinator before initiating discussions with Ecology or EPA.
- Before negotiating, the agencies will often issue an agreement in principle, which defines the scope of the negotiations
- Upon the conclusion of negotiations, the agencies enter into a tentative agreement outlining proposed changes
- Public involvement prior to finalization is usually required
- Following public involvement activities, the TPA agencies document their agreed changes in signed TPA change control forms

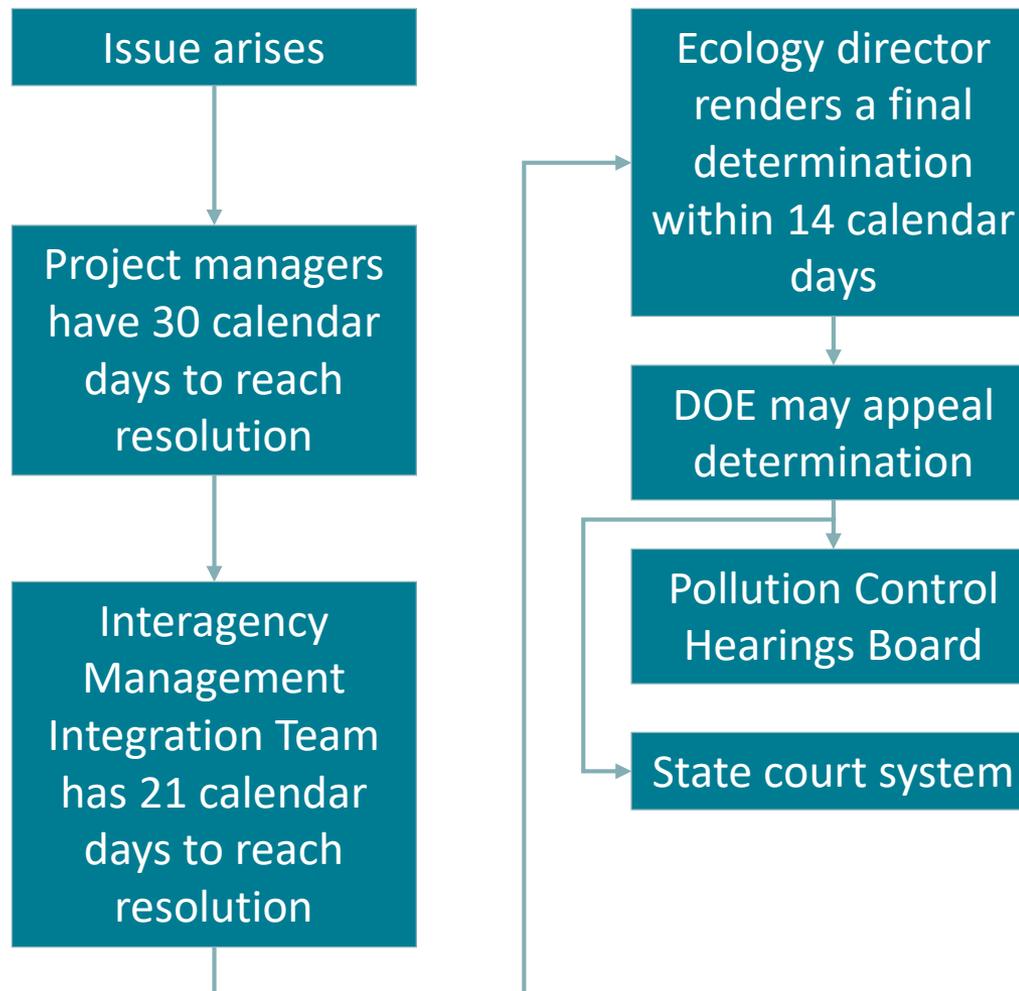
# Notification Requirements for Milestone Changes

---

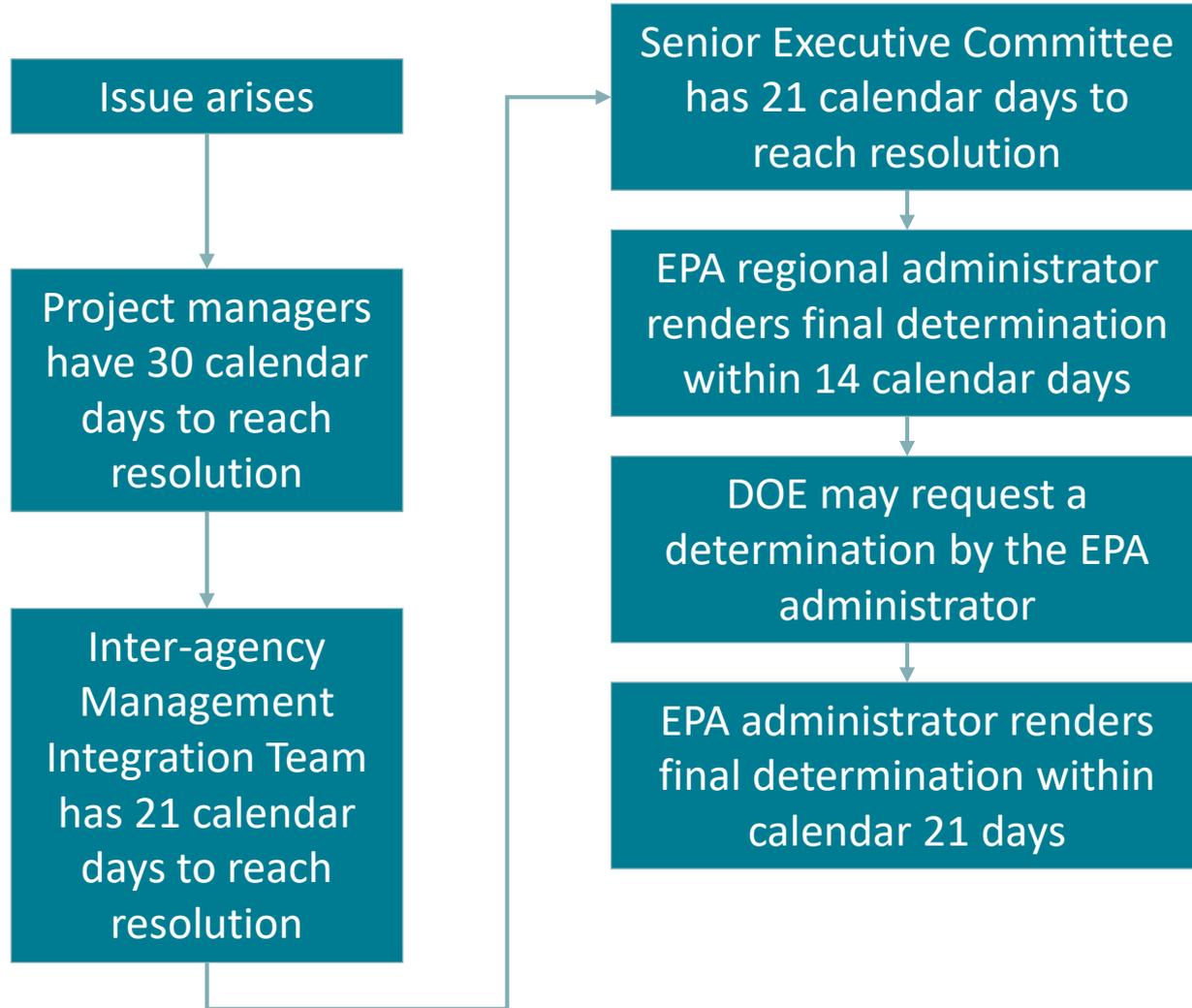
- DOE provides regulators with milestone statuses in accordance with the TPA. It's critical that DOE makes timely notification if a milestone is at risk of being missed.
- To preserve its negotiating rights, DOE must do the following:
  - Submit a signed change control form to EPA for CERCLA-related 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 calendar days to approve/disapprove the signed change control form (no action = disapproved)
- If the change is disapproved, DOE has 7 calendar days to initiate dispute

- DOE's budget formulation process is lengthy, beginning nearly 24 months prior to the start of a budgeted fiscal year
- DOE must request funding levels that would support full compliance with TPA milestones. This is referred to as the "full compliance funding" case.
- Article XLVII, "Cost, Schedule, Scope, Integration, Planning, and Reporting," paragraphs 148 and 149, contain specific requirements for briefing Ecology and EPA and considering their recommendations throughout the budget formulation process
- Once the field office budget requests are submitted to DOE Headquarters, all subsequent discussions, changes and additional deliberations become embargoed data, and must not be distributed further until the president's budget is released

# TPA Part Two: RCRA Dispute Resolution



# TPA Part Three: CERCLA Dispute Resolution



# Primary and Secondary Documents

---

- Primary documents provide final documentation of key data and reflect decisions on how to proceed
  - They are listed in Table 9-1 of the TPA
  - They are enforceable – subject to dispute resolution and stipulated penalties
  - They require 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
  - They are listed in Table 9-2 of the TPA
  - They are not enforceable – not subject to dispute resolution
- Removal action work plan and associated documentation are not primary documents

- The TPA agencies are required to maintain administrative record files for each cleanup decision or permitting action, which may apply to one or more regulatory units (i.e., operable unit or treatment, storage and disposal unit)
- The collection of administrative record files is housed in the Administrative Record website
- Administrative record files:
  - Are publically available
  - Tell the story of a response action selection decision
  - Provide documentation of public involvement
  - Are the basis for any future judicial review of decisions
- All documents forming the basis for selection of a final action must be in the administrative record file at the time the decisional document is signed

- TPA Action Plan Table 9-3, “Administrative Record Documents,” lists document types that must be included in administrative record files
- The TPA project managers are ultimately responsible for ensuring the completeness of administrative record files
- DOE is responsible for maintaining administrative records for TPA and for CERCLA; the administrative record office at 2440 Stevens Center Place, room 1101; and the Administrative Record website at <https://pdw.hanford.gov/arpir/>
- Ecology is responsible for maintaining official RCRA administrative records
- The Administrative Record website currently holds 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 Public Involvement Plan (PIP) serves as the overall guidance document for public participation and outreach activities at Hanford
- The PIP guides public involvement 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
- Initially released in 1990 as the Community Relations Plan, it was last updated in 2017
- Available online at [https://www.hanford.gov/files.cfm/FacAgreementand-Consent-Order\\_FINAL.pdf](https://www.hanford.gov/files.cfm/FacAgreementand-Consent-Order_FINAL.pdf)

- The TPA and the PIP outline the TPA agencies' responsibilities for engaging tribal nations in Hanford activities
- The TPA agencies have the responsibility to consult with the tribal governments to assure 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
- Although not a TPA agency, Oregon maintains a special relationship with DOE that is documented in a Memorandum of Understanding
- The memorandum 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



- **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. Changes processes established in the TPA allow the agencies to make agreed-upon changes to the agreement themselves.
- MSA tracks consent decree milestones in the Tri-Party Agreement Milestone Search Utility (<http://msc.ms.rl.gov/tpamsa/>). Consent decree milestones are designated with an initial “D.”

- Initial TPA milestones for the Waste Treatment and Immobilization Plant required the plant to begin operations in 2011, single-shell tank retrieval to be complete by 2018, and tank waste treatment to be completed by 2028
- After multiple challenges, the TPA agencies recognized the milestones were in jeopardy and entered negotiations
- Unable to reach agreement, the state of 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 plant construction and single-shell tank retrieval (No. 08-5085-FVS). The settlement also included amendments to the TPA that defined new end dates for single-shell tank retrieval and waste treatment.
- The consent decree was amended twice in **2016**, extending tank waste treatment milestones further, and a third time in **2018** to account for schedule delays (No. 2:08-CV-5085-RMP)

- Retrieve at least five tanks by June 30, 2021, or the state may petition the court to order DOE to build new double-shell tanks
- Retrieve all affected single-shell tanks by Sept. 30, 2026
- Complete Low-Activity Waste Facility hot commissioning by Dec. 21, 2023
- Initiate hot start of Pretreatment Facility / Waste Treatment Plant by Dec. 31, 2033

# Consent Decree Reporting Requirements

---

- DOE must submit monthly and quarterly reports
  - The state can seek court hearing if DOE is not forthcoming in reporting or is failing to make sufficient progress
- DOE must notify Ecology, within 14 calendar days of DOE's determination, if a milestone is at risk
  - 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 potential appearance and explanation before a 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. Similar to the Tri-Party Agreement, parties have 40 calendar days to resolve disputes informally. If unsuccessful, either may petition the court for relief. Such a petition must be filed within 30 calendar days of the end of the 40-day informal dispute resolution period.

Tri-Party Agreement webpage (<http://www.hanford.gov/page.cfm/TriParty>)

- Current Tri-Party Agreement
- Announcements
- List of approved changes
- List of approved Interagency Management Integration Team decisions/determinations
- TPA project managers Lists
- Modifications for public comment
- Data management
- MP-14 Waste Information Data System information
- Hanford Site Waste Management Units report
- Hanford Public Involvement Plan
- Administrative record
- TPA amendment/revision history

- Key Takeaways
  - To provide a topical knowledge of the Tri-Party Agreement and Consent Decree, including origins, functions and provisions.