Periodic Review Due Date: 03/31/2019
Rev. 1, Chg. 0

Change Summary

Description of Change
1.0 PURPOSE

This Implementing Procedure (IP) provides the process and required actions to enter into the Dispute Resolution Process as provided in the *Hanford Federal Facility Agreement and Consent Order* (HFFACO), also known as the “Tri-Party Agreement” (Ecology et al. 1989). Dispute resolution is the process for resolving disputes under the HFFACO.

The Tri-Party Agreement is a legally binding agreement among the U.S. Department of Energy (DOE), U.S. Environmental Protection Agency (EPA), and the Washington State Department of Ecology (Ecology), which covers Hanford Site environmental compliance and cleanup activities. As such, the Tri-Party Agreement contains specified procedures in Article VIII as well as Section 12 of its associated Action Plan for any change/modification to the Tri-Party Agreement that are necessitated by schedule changes, technical issues, and administrative needs. When changes cannot be agreed upon by the negotiating parties, the dispute resolution process is initiated.

2.0 CANCELLATION OR RECORD OF CHANGE

<table>
<thead>
<tr>
<th>Revision</th>
<th>Revision Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>A new IP was created to replace Office of Environmental Safety and Quality (ESQ) Desk Instruction DI 2.5, “Dispute Resolution Process for the Tri-Party Agreement,” in its entirety.</td>
</tr>
<tr>
<td>1</td>
<td>ESQ-EM-IP-06 was renamed to TRS-EM-IP-03 and updated to reflect organizational and editorial changes. Minor edits to sections 5.3 and 5.4, Responsibilities, and section 6.0, Process.</td>
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</tbody>
</table>

3.0 APPLICABILITY

This IP applies to all dispute resolution actions taken by DOE, Office of River Protection (ORP) staff with management/coordination responsibility for negotiating disputes that may arise under the Tri-Party Agreement.

4.0 ACRONYMS AND DEFINITIONS

4.1 ACRONYMS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
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</thead>
<tbody>
<tr>
<td>CERCLA</td>
<td>Comprehensive Environmental Response, Compensation, and Liability Act</td>
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<tr>
<td>DOE</td>
<td>U.S. Department of Energy</td>
</tr>
<tr>
<td>ECD</td>
<td>Environmental Compliance Division</td>
</tr>
<tr>
<td>Ecology</td>
<td>Washington State Department of Ecology</td>
</tr>
<tr>
<td>Term</td>
<td>Description</td>
</tr>
<tr>
<td>--------------</td>
<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>EPA</td>
<td>U.S. Environmental Protection Agency</td>
</tr>
<tr>
<td>HFFACO</td>
<td>Hanford Federal Facility Agreement and Consent Order (see also TPA)</td>
</tr>
<tr>
<td>IAMIT</td>
<td>Interagency Management Integration Team</td>
</tr>
<tr>
<td>IP</td>
<td>Implementing Procedure</td>
</tr>
<tr>
<td>ORP</td>
<td>Office of River Protection</td>
</tr>
<tr>
<td>PCHB</td>
<td>Washington State Pollution Control Hearing Board</td>
</tr>
<tr>
<td>RCRA</td>
<td>Resource Conservation and Recovery Act</td>
</tr>
<tr>
<td>SEC</td>
<td>Senior Executive Committee</td>
</tr>
<tr>
<td>TPA</td>
<td>Tri-Party Agreement</td>
</tr>
<tr>
<td>TRS</td>
<td>Technical and Regulatory Support</td>
</tr>
</tbody>
</table>

### 4.2 DEFINITIONS

**Dispute** – DOE’s objection to any Ecology disapproval, proposed modification, decision, or determination for which Ecology is the lead regulatory agency.

**Interagency Management Integration Team (IAMIT)** – A committee of the Executive Managers from DOE, EPA, and Ecology. The Ecology-designated representative of the IAMIT is the Program Manager for Nuclear Waste. EPA’s member is the Program Manager, Hanford Project Office of EPA Region 10. The Assistant Managers for Tank Farms and the Waste Treatment and Immobilization Plant represent ORP. The IAMIT is the first level of formal dispute resolution for those issues that are not informally resolved by the project managers. IAMIT responsibilities also include approval for changes to the HFFACO and as an interface with the Hanford Advisory Board.

**Senior Executive Committee (SEC)** – Members consist of the Assistant Director for Waste Management for Ecology and the Director, Office of Environmental Cleanup for EPA Region 10. The ORP Deputy Manager meets with the SEC to assist in resolving disputes. The SEC is not a part of the Resource Conservation and Recovery Act dispute resolution process provided in HFFACO, Part Two, Article VIII, that typically affects ORP; however, there are certain types of disputes affecting ORP that may engage the SEC, e.g., where the Comprehensive Environmental Response Compensation and Liability Act dispute resolution process is used or where the dispute is between EPA and Ecology. *See* Articles XVI and XXVI. Because the processes established in these articles are somewhat different than the one provided in Article VIII, refer any questions concerning which dispute resolution process applies to the Tri-Party Agreement Coordinator.

**Statement of Dispute** – A written statement elevating the dispute to the IAMIT for resolution. The statement sets forth the nature of the dispute, DOE’s position on the dispute, supporting information, and the history of the attempted resolution.

**Washington State Pollution Control Hearings Board (PCHB)** – The administrative appeals board established under the Revised Code of Washington to hear and decide appeals filed by aggrieved parties resulting from certain decisions made by the Department of Ecology.

**Administrative Appeal Process** – The Tri-Party Agreement is a negotiated, legally enforceable document. Article VIII states that if the IAMIT is unable to unanimously agree on a resolution of a dispute within 21 days, the Director of Ecology shall make a final written decision or written
determination (Director’s Final Determination) within 14 days, i.e., no more than 35 days after submission of the written statement of the dispute to the IAMIT. The TPA states that if ORP disputes a final determination, it can take an administrative appeal to the PCHB or go directly to court; either action must be filed within a prescribed period of time.

5.0  RESPONSIBILITIES


5.1  ORP MANAGER

Per requirements under per Section 4.0 of the TPA Action Plan, Agreement Management, the ORP Manager designates the ORP representatives for the SEC (typically the ORP Deputy Manager) and IAMIT (typically the ORP Assistant Managers for AMTF and/or WTP) via formal correspondence to the TPA Regulatory Parties and other applicable stakeholders.

5.2  ORP DEPUTY MANAGER

Represents or delegates a representative for ORP at SEC meetings and assists in resolving disputes.

5.3  ORP ASSISTANT MANAGERS

Represents or delegates a representative for ORP at IAMIT meetings and assists in resolving disputes.

5.4  ENVIRONMENTAL COMPLIANCE DIVISION DIRECTOR

Reviews and recommends line management approval or disapproval of Tri-Party Agreement (TPA) change requests.

5.5  TRI-PARTY AGREEMENT COORDINATOR

a. Reviews and concurs on the written notification of ORP objections to modified or denied change requests and initiates dispute resolution.

b. Advises line management organizations of dispute requirement, schedules, and time constraints as identified in the TPA.

c. Assists ORP Project Managers in resolving disputes or submitting written Statements of Dispute to the IAMIT.

5.6  LINE MANAGEMENT

a. Prepares the written notification of ORP objections to modified or denied change request/dispute.

b. Prepares the Statement of Dispute.

c. Participates in the IAMIT to resolve disputes.
5.7 ORP LEGAL
   a. Provides legal support for resolving objections and/or disputes raised during the change request process.
   b. Concurs on transmittal of written notification, statement of dispute, and any change request arising from dispute resolution.
   c. Prepares the appeal to the Director’s Determination.
   d. Represents ORP on administrative appeals to the PCHB or assists the Department of Justice representing ORP in litigation.

5.8 TPA MILESTONE PROJECT MANAGER
   a. Interfaces with appropriate Ecology TPA project manager as assigned.
   b. Notifies appropriate line management and TPA Coordinator when disputes arise when ORP actions or failure to act, jeopardizes completion of an Agreement milestone, including disputes over the adequacy of primary documents.
   c. Continues reasonable efforts to informally resolve prior to elevation to the IAMIT or continues dispute resolution at the direction of the IAMIT.

6.0 PROCESS

The TPA Change Request processes are detailed in ORP Implementing Procedure TRS-EM-IP-06, Change Control Process for the Tri-Party Agreement. Upon any TPA Parties’ rejection of a TPA Change Request, the TPA Dispute Resolution may be initiated.

A graphical view of the required steps to dispute resolution is depicted in the process flowchart in Section 7.0.

Step 1: Written Notification to Lead Regulatory Agency

If ORP objects to any Ecology TPA Change Request disapproval, proposed modification, decision or determination, the appropriate line organization TPA Milestone Project Manager or TPA Coordinator must notify Ecology in writing of its objection within seven (7) days of receipt of such notice.

Step 2: Informal Dispute Resolution

Following written notification in accordance with step 1, ORP and Ecology will make reasonable efforts to resolve disputes at the project manager level. If resolution cannot be achieved at the project manager level within thirty (30) days of ORP’s written notification, the dispute may be elevated to the IAMIT. The TPA Milestone Project Manager coordinates this effort with the TPA Coordinator, the regulatory agency(ies), and ORP Legal.

Step 3: Statement of Dispute

If the project managers are unable to informally resolve the dispute, prior to expiration of the thirty (30) day informal dispute resolution period, ORP shall submit a written statement of dispute to the IAMIT. The statement sets forth the nature of the dispute, ORP’s position on the dispute, supporting documentation and the history of the attempted resolution.
Step 4: IAMIT Attempts to Resolve Dispute

The IAMIT serves as the forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The IAMIT has twenty-one (21) days to unanimously resolve the dispute. The TPA Coordinator coordinates this effort with the milestone project manager, the regulatory agency(ies), ORP Legal, and ORP Senior Management.

Step 5: Ecology Director Makes Final Determination

Within 14 days, the Ecology Director makes a Final Determination.

Step 6: Appeal of Director’s Determination

If ORP objects to the decision or determination, ORP may appeal within prescribed times to the Pollution Control Hearings Board (PCHB) or the courts. The TPA Coordinator coordinates this effort with the milestone project manager, the regulatory agency(ies), ORP Legal, and ORP Senior Management.

7.0 FLOWCHART

![Flowchart of TPA Dispute Resolution Process]

Figure 1. TPA Dispute Resolution Process

8.0 REFERENCES


9.0 RECORDS AND EXHIBITS

TPA Change Request records are detailed in ORP Implementing Procedure TRS-EM-IP-06, Change Control Process for the Tri-Party Agreement.

For the purposes of TPA Dispute Resolution, the following records shall be retained in a quality records management system:

<table>
<thead>
<tr>
<th>Record Description</th>
<th>QA Record Y/N</th>
<th>QA Record Retention L/NP</th>
<th>Site Form Number</th>
<th>Responsibility for Submittal</th>
</tr>
</thead>
<tbody>
<tr>
<td>ORP Manager’s formal correspondence to TPA Regulatory Parties and other applicable stakeholders designating SEC and IAMIT representatives.</td>
<td>Y</td>
<td>L</td>
<td>N/A</td>
<td>ORP Senior Management</td>
</tr>
<tr>
<td>TPA Dispute Resolution Correspondence Submitted to Environmental Regulators and other applicable stakeholders. (e.g. Written Notice of Dispute)</td>
<td>Y</td>
<td>L</td>
<td>N/A</td>
<td>Originating office. Concurrence process with several reviewing and signatory parties</td>
</tr>
<tr>
<td>Formal Written Statement of Dispute Correspondence Submitted to Environmental Regulators (IAMIT) and other applicable stakeholders</td>
<td>Y</td>
<td>L</td>
<td>N/A</td>
<td>Originating Office. Concurrence process with several reviewing and signatory parties</td>
</tr>
<tr>
<td>Correspondence of ORP Appeal of Ecology Director’s Determination to Pollution Control Board or Courts</td>
<td>Y</td>
<td>L</td>
<td>N/A</td>
<td>Originating Office. Concurrence process with several reviewing and signatory parties</td>
</tr>
</tbody>
</table>

L = Lifetime  
NP = Non permanent  
N/A = Not Applicable

In addition to the QA record system above, ORP is required to comply with Section 9.0 of the TPA Action Plan, Documentation and Records. All records generated above shall also be maintained in the TPA Administrative Record and Public Information Repository (physically located at ORP and also maintained and publicly available online at: http://www5.hanford.gov/arpir/).

Please consult with the TPA Coordinator and appropriate Mission Elements matrix for support. Records shall be processed and maintained in accordance with the ORP Program for Records Management, TRS-QSH-IP-08, Records Management.