

## STATEMENT OF NONCONCURRENCE

on a

## REQUEST FOR SCHEDULE EXTENSION

for the

## SOLAR EVAPORATION PONDS (OU-4)

## PHASE I RFI/RI REPORTS

at the

## ROCKY FLATS PLANT

dated

May 4, 1993

Paragraph 222 of the (IAG) specifies five "good cause" justifications for extension requests. DOE's letter of May 4, 1993 alludes to two of these items, as follows:

- B. A delay caused by another Party's failure to meet any requirement of this Agreement, and
- E. Any other event or series of events mutually agreed to by the Parties as constituting good cause.

## REGARDING ITEM B:

It is DOE's contention that the Division failed to approve the Phase I RFI/RI Workplan, as scheduled, on January 6, 1992 and, as a result, DOE "did not believe it would be cost effective for a subcontractor to propose on the implementation of the unapproved OU4 Work Plan" and that "the work plan approval process delayed the procurement of the OU4 implementation".

Following is the Division's assessment in support of our position on this issue:

- o DOE submitted a Draft Phase I RFI/RI Work Plan in June, 1990. As a result of realignment and re-prioritization of the operable units, comments were not scheduled until September 30, 1991. This commitment was met by the Division and EPA on the agreed date (Environmental Restoration IAG Schedule, August 14, 1990).
- o The Division's letter of September 30, 1991 noted DOE's previous acknowledgement (verbal) that the June, 1990 draft document was deficient in several key areas (resulting in DOE's decision to redraft the work plan). The Division stated, notwithstanding this acknowledgement, that it had proceeded to review the draft document "...to identify additional deficiencies and inadequacies that must be corrected in the final work plan".
- o The Division agreed to "...informally review and provide guidance as amended work plan sections (were) developed". This commitment was realized. As indicated in correspondence dated December 20, 1991, "...the current (final) work plan has been the subject of closer coordination between the respective ... staffs".
- o Despite the Division's attempts to assist in the creation of an approvable work plan, the submittal of November, 1991 still contained "... a number of specific issues..." that had to be addressed before the Division could grant approval. Per Paragraph I.B.4 of the IAG Statement of Work (SOW), DOE, within 60 days of receiving written comments on primary and secondary documents (SOW, Table 4) shall update the document and the Lead Regulatory Agency shall evaluate the updated

ADMIN RECORD

A-DU04-000510

document and notify DOE of its approval or disapproval. The Division exercised this option by withholding approval on December 20, 1991. Also per Paragraph I.B.4, and since this was a final, primary document, DOE could have chosen to invoke the dispute resolution process. Since the Division's action was not disputed, the Division assumed that DOE acknowledged deficiencies in the work plan. Moreover, DOE submitted amended pages to the work plan on February 5, 1992. EPA responded to the revisions on March 16, 1992 while the Division responded on May 8, 1992 and granted conditional approval of the work plan.

- o As noted in the December 20, 1991 letter, field activities (obtain permits and mobilize) were scheduled to begin on January 7th, 1992 the day following the Division's scheduled approval. However, the schedule in the work plan called for a February 5, 1991 start date (actual field activities). Per paragraph VI of the SOW, "The RFI/RI Workplans required by this agreement shall meet the requirements as outlined in Section VI.B of this Attachment and shall be implemented immediately (emphasis added) upon joint approval by EPA and the State". This indicates that DOE should have anticipated and completed all necessary preparations for field activities by February 5, 1992 whether the Division approved or disapproved the work plan by that date. Clearly, DOE's logistical efforts to implement a work plan were not to begin once the work plan was approved but were to have been conducted in parallel with the approval process.
- o The December 20, 1991 letter further states that "If the work plan cannot be submitted and approved (emphasis added) by February 5, 1992, the Division (would) consider granting DOE requests to begin specific field investigation activities. DOE did not request such approvals, nor was it prepared to implement any portion of the work plan.
- o It may also be noted that the Division's presumed "failure" to approve the final work plan by January 6, 1992, or any subsequent date, is a result of DOE submitting a deficient document in violation of the IAC Table 6 schedules. As reflected in Table 6, all deficiencies noted in the draft document should have been satisfactorily addressed in the final document such that approval could have been granted on schedule (January 6, 1992). The August 14, 1990 IAC Schedule, in addition, does not specify an agency review and approval time frame for revised, final work plans. Thus the Division's conditional approval on May 8, 1992 was not untimely.
- o Lastly, Attachment A of the May 4th letter, refutes DOE's and EGG's assertion that requesting proposals on an unapproved work plan would not be cost effective. According to Attachment A, DOE released Requests for Proposals on March 27, 1992 and received the proposals on May 8, 1992, the date on which the Division granted conditional approval of the work plan.

Consequently, DOE has not presented a good cause relationship between delays in work plan approval and procurement of an implementing subcontractor.

#### REGARDING ITEM E:

DOE contends that "Unanticipated and previously unscheduled tasks were required for mobilization of the OU4 Phase I RFI/RI Field Program."

#### VADOSE ZONE TECHNICAL MEMORANDUM

Among the items listed as unanticipated or unscheduled was the Vadose Zone Technical Memorandum.

- o The redrafted work plan submitted in November, 1991 weakly advocated vadose zone monitoring.

- o The Division commented as follows on December 20, 1991: "The Division believes that vadose monitoring techniques ... should be included in this work plan rather than deferred to a later date. However, the Division does not wish to delay unaffected activities. If the techniques can be identified before the work plan is amended they should be included (in the work plan). If this would result in a delay in resubmitting the work plan, then a technical memorandum should be submitted as soon as possible (emphasis added) to finalize the proposed activities."
- o On May 8, 1992 the Division stated that "A conditional (approval) status has been affixed ... to ensure that a technical memorandum delivery date is established for vadose zone investigations."
- o On September 29, 1992 the Division stated that "... DOE has yet to respond to our comment of May 8th regarding the need to establish a vadose zone technical memorandum delivery date." Also, "For this reason, the Division is unable to lift the conditional status from the approval granted on May 8, 1992. Nevertheless, unaffected field work may be implemented."
- o The Vadose Zone Investigation Technical Memorandum, TM-1, was not received until November 16, 1992, nearly eleven months after the issue was first raised by the Division.

#### HEALTH AND SAFETY PLAN

Another unanticipated and previously unscheduled item listed was the "Health and Safety Plan".

- o The Division rejects DOE's assertion that this plan was "unanticipated". The work plan submitted in November, 1991 states: "Health and Safety Concerns for the Phase I RFI/RI will be addressed in a project-specific Health and Safety Plan, developed at a later date in accordance with EG&G's site-wide Health and Safety Program."
- o On May 8, 1992, the Division stated in comments that "... the development of the project-specific Health and Safety Plan, at a later date, is of concern." This issue was specifically raised over concerns that implementation of the work plan was, or would be, delayed by DOE's failure to have a specific plan in place.
- o If preparation of the Health and Safety Plan was "unscheduled" this represents a breakdown in project planning with significant impact on DOE's ability to implement the work plan.

#### MOBILIZATION DELAYS (OTHER)

The Division does not concur that the following requirements would have been unanticipated:

- Radiation Worker Training
- Radiation Protection Training
- Respirator Fit Test and Training
- Standard Operating Procedures Training
- Core Logging Training
- Buffer Zone Passes
- Badges and Dosimeters
- Field Trucks
- Drilling Rigs
- Personal Protective Equipment
- Decontamination Supplies
- Radiation Detectors
- Core Logging Supplies
- Soil Sampling Equipment

#### Implementation Plan

- o Those remaining requirements, not listed above, may have been unanticipated given the Rocky Flats Plant's complex culture. Nevertheless, if DOE must maintain a complex culture, it is responsible for properly managing IAG projects within that culture.

It is the Division's conclusion that neither lack of anticipation or lack of scheduling are "good cause" for DOE's failure to meet IAG milestones.

#### RADIOLOGICAL CONTROLLED AREA (RCA) DESIGNATION

The Division does not concur that designation of the Solar Evaporation Ponds as an RCA in October, 1992 caused a delay warranting an extension.

- o DOE should have begun to conduct partial field activities on February 6, 1992 and extensive, if not full, field activities on May 9, 1992 as described under "Regarding Item B" above. Had activities been conducted in accordance with Table 6 of the IAG, the designation should have had little or no effect. Since the designation probably was under discussion for months before October, 1992, DOE could have planned and executed intrusive work within the pond areas first, followed by work in the Interceptor Trench System area.

#### FIELD TRAILER, STORAGE FACILITIES, COORDINATION MEETINGS, SECURITY

The Division cannot support a schedule extension based on these factors. These are project management issues under the ultimate control of DOE and require support from all levels of DOE management.

#### INCORRECT IAG ASSUMPTIONS

The letter of May 4th states that incorrect IAG assumptions were responsible for a delay of eleven months:

- o Per Attachment A of the May 4th letter, procurement for implementation of the work plan began on February 14, 1992. Since field activities were to be scheduled to begin on February 5th, procurement was not initiated in a timely manner. This does not constitute good cause for an extension of the schedule.
- o Since the Division specifically requested DOE to incorporate vadose investigations into the work plan, and the question exists as to whether this was essential to Phase I or deferrable to Phase II, the Division accepts this as a good cause for an incremental schedule extension (32 working days).
- o The Division accepts the incremental delays associated with Radiological Analysis (12 working days). The Division is aware of DOE's efforts to improve laboratory turn-around time. In the future, laboratory turn-around may not be considered good cause.
- o The Division does not accept delays resulting from a lengthened duration for Data Validation. The Division is unaware of efforts, in conjunction with lab turn around time, to shorten the duration. Furthermore, DOE has not presented a sufficient cause for the delay.
- o The Division accepts the incremental delay for preparation of the Baseline Risk Assessment (35 working days). The SOW, Paragraph VII.D.1.c, requires that a toxicity assessment (TM-7) "...be submitted prior to the required submittal of the Baseline Risk Assessment" and "All data utilized in the toxicity assessment must be validated....". Since the TM must proceed preparation of the Baseline Risk Assessment, and was not specifically scheduled under the IAG, the Division will allow 35 days for preparation of the TM.

The Division's acceptance of the delays delineated herein are specific to the OU-4 schedule, do not apply to other operable unit schedules, and do not constitute, nor support, renegotiation of the IAG.

Based on the foregoing analysis, the Division finds that an extension of 79 working days is allowable. Therefore, the new milestone dates for these submittals are September 14, 1993 and February 14, 1994, respectively.