

# START

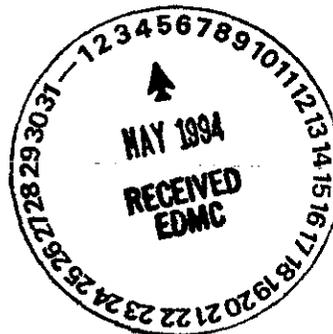


Confederated Tribes and Bands  
of the Yakima Indian Nation

Established by the  
Treaty of June 9, 1855

April 5, 1994

Mr. John Wagoner, Manager  
Richland Field Office  
Department of Energy  
P.O. Box 550  
Richland, WA 99352



RL COMMITMENT CONTROL PHONE 5-8537
CONTROL NO: 940928.58
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Dear Mr. Wagoner:

A violation of both the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the National Environmental Policy Act (NEPA) has occurred at the B-57 Crib within the 200-BP-1 Operable Unit. By putting a permanent, asphaltic concrete barrier over five acres at the cost of \$4,000,000, the Department of Energy (DOE) is taking the first permanent remedial action at Hanford, other than groundwater treatment, without the consultation and cooperation of the Yakama Nation.

DOE is required to involve the government of the Yakama Nation in any decision which affects this Nation's rights. The decision to put a permanent barrier over five acres, even if called a test, was made without our knowledge, let alone our input. As both a government and a natural resource trustee, the Yakama Nation must be involved in such determinations.

According to DOE Order 5400.4, integration between NEPA and CERCLA is to be accomplished by conducting environmental planning and review concurrently. Thus, although duplicative efforts involved in NEPA and CERCLA RI/FS consultation and coordination are avoided, they are at least assured of occurring. In this case, the order was not followed.

A major goal of NEPA is to provide governments and the public an opportunity to present their views and comments on a proposed federal action. NEPA §101 requires the Department of Energy to cooperate with state and local governments in using "all practicable means and measures" to keep from harming the environment. Section 104 specifically identifies the statutory obligation of a federal agency to coordinate or consult with other governments.

CERCLA's remedial action program is defined by the National Contingency Plan (NCP), 40 CFR 300, Subpart F. The NCP requires a remedial investigation which specifies opportunities for the community to learn about the action and become involved in selection of a remedy. Draft reports of both the remedial

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RL Commitment Control

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DOE - RL/CCC

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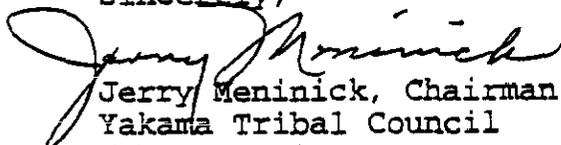
investigation and the feasibility study must be produced for review and comment by other agencies. On April 5, 1994, the Yakama Nation learned that a remedial investigation report was done in 1992 and a feasibility study report in 1993. We never received these reports and thus never had the opportunity to review or comment on this action under the authority of either NEPA or CERCLA.

Further, under CERCLA, the Yakama Nation is a trustee for natural resources falling under its auspices that have been injured by hazardous waste releases. We are required by law to determine the extent of the injury and make a claim for damages from the party responsible for the injury. If we fail to so act, we are liable under the law to our constituencies. Thus, we must seek damages from DOE for restoration of this permanent commitment of natural resources to which the Yakama Nation has reserved rights.

Finally, DOE has failed to follow its own American Indian Policy. Its purpose is stated as being "to ensure that Tribal rights and interests are identified and considered in pertinent decision-making." This Policy assures us that Tribal rights and concerns will be considered prior to DOE taking actions or making decisions, and that DOE will take a proactive approach to solicit input from Tribal governments. Even if some mailing mistake caused a communication failure, did DOE think we would have no comment on the first permanent remedial action at Hanford? There was certainly no proactive approach as required by both the Policy, the above laws, and the trust responsibility all federal agencies have for all Indian Nations.

We now feel compelled to seek legal means to enforce our rights. If you do not cease work on this site within 10 days of the date of this letter, the Yakama Nation will be forced to protect its rights by petitioning the U.S. District Court for an injunction to stop DOE's actions.

Sincerely,

  
Jerry Meninick, Chairman  
Yakama Tribal Council  
Yakama Nation

cc: Augustine Howard, YN  
Hazel O'Leary, Sec. DOE-HQ  
Thomas Grumbly, DOE-HQ  
Kevin Clarke, DOE-RL