



## OFFICE OF RIVER PROTECTION

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19-ORP-0007

SEP 04 2019

Ms. Maia D. Bellon, Director  
Washington State  
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Ms. Bellon:

### DISCUSSION OF AMENDED CONSENT DECREE – STATE OF WASHINGTON V. PERRY (E.D. WASH. NO. 2:08-CV-5085)

Since October 2018, the U.S. Department of Energy (Department) and Washington State Department of Ecology (Ecology) have been conducting integrated workshops to identify safe, efficient, and effective approaches to achieve the high-level tank waste treatment mission. In April/May 2019, the Department initiated an Analysis of Alternatives (AoA)<sup>1</sup> to further assess the alternatives identified through these cooperative workshops.<sup>2</sup> Through this collaborative effort, the Department and Ecology identified five possible options for further analysis by the AoA. As you are also aware, in August 2019, the Department concurred on a request from the AoA team to conduct analysis of additional alternatives, which will likely extend the time required to complete the AoA. The Department currently anticipates the AoA process will be completed in July 2020.

In June 2019, Ecology communicated its willingness to work in good faith with the Department to collectively identify a holistic and realistic path forward for Hanford's tank waste mission. Through its preparation for those discussions, the Department has considered multiple factors and inputs, including: continued prioritization of the direct feed low-activity waste capability; the currently-defined path for treating high-level tank waste; resolution of the PT Facility technical issues and potential new technical issues that may be identified during remaining design activities; available funding to proceed with design and rebaseline activities; forecasted

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<sup>1</sup> AoAs are analytical comparisons of the operational effectiveness, suitability, risk, and life cycle cost of alternatives that satisfy validated capability needs. AoAs are conducted independent of the contractor organization responsible for the project and do not produce decisional documents. AoAs provide inputs that may be used by the Department to derive preferred alternatives for further analyses to support decisions on the approach that best meets the overall mission need at the best value to the taxpayer.

<sup>2</sup> The integrated workshops and AoA were initiated following the analysis by, and the Department's assessment of, the U.S. Army Corps of Engineers report, *Parametric Evaluation of the Waste Treatment and Immobilization Plant* (July 10, 2018), which suggested that the High Level Waste (HLW) Facility and Pretreatment (PT) Facility could be delayed beyond the milestones contained in the Amended Consent Decree.

funding levels that the Department projects will be necessary to support the tank waste treatment mission; and the significant increase in projected life cycle costs associated with the Waste Treatment and Immobilization Plant.

Milestones for the HLW and PT Facilities remain more than a decade away, and a number of significant variables will materially affect the schedule for completing those two facilities over the next eleven to seventeen years, including the results of the AoA for the treatment of Hanford's high-level waste, congressional appropriations, technological advances, contractor efficiency, and further practical experience with vitrification at Savannah River and at Hanford's Low Activity Waste Facility. Accordingly, the Department cannot project with certainty when the HLW and PT Facilities will be completed.

While these factors and inputs individually may not indicate a serious risk, the Department's examination of the potential interplay of these factors has led it to conclude that it is appropriate, out of an abundance of caution, to provide this notice of serious risk as described in the Amended Consent Decree in *State of Washington v. Perry* (E.D. Wash. Case No. 2:08-CV-5085-RMP). Specifically, the Department is providing notice of a "serious risk . . . that DOE may be unable to meet" Milestones A-1 and A-17 (Waste Treatment Plant), Milestones A-2 to A-4 (HLW Facility), and A-13 to A-16 and A-19 (PT Facility) of that Decree.<sup>3</sup> With respect to the "preliminary recovery plan" required by the Amended Consent Decree, completion of the AoA is the first and most critical aspect of that plan. The steps that follow the completion of the AoA will be determined based on the final report's conclusions and the Department's consultations with Ecology.<sup>4</sup>

The Department remains committed to continuing to assess, individually and collectively, the challenges that could impact its ability to meet Amended Consent Decree milestones, and will continue to closely coordinate with Ecology. The Department looks forward to the start of discussions regarding our shared objective of advancing this difficult cleanup in a manner that provides long-term benefits for local communities, the region, the State, and the nation. Ecology's willingness to continue to work collaboratively with the Department to develop safe,

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<sup>3</sup> Section IV-C-3 of the Amended Consent Decree states that "[i]n the event [the Department] determines that a serious risk has arisen that [the Department] may be unable to meet a schedule as required in Section IV," the Department shall notify Ecology of that risk. The Amended Decree also requires that the Department provide a detailed description of the factors constituting that risk. *See id.* § IV-C-3(a). The State is already well-informed of the multiple factors that constitute the risk here, not only from the Department's filings in the Consent Decree litigation, but also from the continued exchange and discussion between the Department and Ecology since the court amended the Decree. In addition, the Department has shared with Ecology reports and analyses that, taken collectively, suggest a risk that completion of the HLW Facility and the PT Facility may be delayed beyond the milestones in the Amended Decree. *See, e.g.,* note 2 *supra*. Of course, the Department remains willing to discuss those factors in more detail if that would be helpful to the State.

<sup>4</sup> Ecology will also continue to have the opportunity to be involved in the AoA process prior to any final report being issued by the contractor to the Department.

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achievable, affordable, and risk-informed paths to execute the cleanup mission at the Hanford Site remains critical to meaningful progress.

If you have any questions, please contact me at (509) 376-7395.

A handwritten signature in black ink, appearing to read "B.T. Vance". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brian T. Vance  
Manager

ORP:BTB

cc: A.K. Smith, Ecology  
K. Niles, ODOE