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STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

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January 8, 2002

Mr. James E. Rasmussen
U.S. Department of Energy
Office of River Protection
P.O. Box 450, MSIN H6-60
Richland, Washington 99352

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Dear Mr. Rasmussen:

This transmittal is in regard to the issue of national security sensitive materials and the submittal of Part A permit applications (U.S. Department of Energy letter 01-OMD-043). Washington Administrative Code (WAC) 173-303-803 states contents of a Part A permit application must include:

- (b) Name, mailing address, location, including latitude and longitude of the facility for which the application is submitted;
- (h)(i), a scale drawing of the facility showing the location of all past, present, and future treatment, storage, and disposal areas;
- (l) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge sources; each of its dangerous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within ¼ mile of the facility property boundary.

I understand that the U.S. Department of Energy (USDOE) believes that some or all of the above information may be national-security sensitive. While the regulations require that the information be submitted with all Part A permit applications, the Washington Department of Ecology (Ecology) is committed to working with USDOE to ensure that national-security sensitive information is appropriately protected, to the full extent authorized by law.

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Washington's Public Disclosure Act generally requires that public records be made available for inspection and copying by the public. The Washington State Legislature recently the Act to exempt from disclosure certain security-sensitive information. Specifically, RCW 42.17.310(1)(ww) exempts from public inspection and copying,

Those portions of records containing specific and unique vulnerability assessments or specific and unique response plans, either of which is intended to prevent or mitigate criminal terrorist acts as defined in RCW 70.74.285, the public disclosure of which would have a substantial likelihood of threatening public safety.

"Terrorist Acts" are defined in RCW 70.74.285 as acts intended to: (1) Intimidate or coerce a civilian population; (2) influence the policy of a branch or level of government by intimidation or coercion; (3) affect the conduct of a branch or level of government by intimidation or coercion; Or (4) retaliate against a branch or level of government for a policy or conduct of the government.

The Governor and the Attorney General recently announced their intent to request additional legislation to expand this exemption to cover other documents that might be used in support of a terrorist attack. Whether this legislation will ultimately be enacted, and if so, what will be the scope of any expanded exemption, are unknown at this time. The Public Disclosure Act currently authorizes superior courts to enjoin the disclosure of records if such disclosure "clearly would not be in the public interest and would substantially and irreparably damage any person or vital governmental function." (RCW 42.17.330). In the event a public record is requested, this statute authorizes agencies to notify the person or entity to which the record pertains, so the person or entity may seek court protection of the record.

Ecology cannot guarantee that records USDOE believes are national-security sensitive will be exempt from disclosure under Washington law. However, Ecology does commit to working with USDOE to implement reasonable measures to enhance accountability and to avoid unnecessary or inadvertent distribution of sensitive documents. Consistent with these objectives, Ecology requests that USDOE segregate in its transmittals any documents it considers national security sensitive, and that USDOE include with such documents a cover sheet that briefly explains why the documents are national security sensitive. Ecology further recommends that the following procedures be used by both Ecology and USDOE to safeguard national-security sensitive documents:

- (1) Use of the following heading in bold and 14 point font on all hardcopy documents:

Notice

This document may be exempt from public inspection and copying under RCW 42.17.310.

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- (2) Use of the following heading on all electronic records, including maps:

Notice

This information may be exempt from public inspection and copying under RCW 42.17.310.

- (3) Maintain all hard copy records in a separate file folder and marked as:

Maintain Confidential –Do Not Distribute or Disclose Without First Consulting with Public Disclosure Coordinator

- (4) Do not send confidential records over Internet e-mail. Maintain electronic records in a secure manner such as on disk.

- (5) Address and deliver all records containing national-security sensitive information to the Public Disclosure Coordinator for Ecology.

Ecology will treat portions of the Part A permit applications that are national security sensitive consistent with the above procedures. The Public Disclosure Coordinator for Ecology will be the custodian of any national security sensitive materials. These materials will be kept in a controlled storage area with limited access available to Ecology staff. In the event that a request is made to Ecology for a document with potential national security sensitivity, the Public Disclosure Coordinator of Ecology will notify the Washington Attorney General's Office and the U.S. Department of Energy Office of River Protection of the request. In the event that the Ecology, following consultation with the Attorney General's Office, preliminarily concludes that the Public Disclosure Act requires disclosure of a national-security sensitive record, Ecology will provide advance written notice to the USDOE, thereby enabling the USDOE a reasonable opportunity to seek an injunction pursuant to RCW 42.17.330, prior to disclosure of the record. Finally, I recommend that USDOE and Ecology staff confer in advance to identify the range of documents the USDOE believes may be national-security sensitive, to identify and resolve any disagreements, and to coordinate how such documents will be managed.

Please contact Valarie Peery at (509) 736-3097, for any public disclosure issues concerning Ecology's Nuclear Waste Program.

Sincerely,



Mike Wilson
Program Manager
Nuclear Waste Program

MW:VP:JS:lkd
cc: See next page

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