



Confederated Tribes and Bands
of the Yakama Nation

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Established by the
Treaty of June 9, 1855

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June 11, 2003

Mr. Keith Klein, Manager
Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

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Y/N Legal Counsel

Dear Mr. Klein:

RE: Comments on Hanford Solid Waste Environmental Impact Statement

Please find enclosed Yakama Nation (YN) comments on the revised draft Hanford Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement (SWEIS.)

YN comments involve two primary deficiencies by the United States Department of Energy (DOE) in development of the revised draft SWEIS.

First, there was a failure by DOE to implement its trust responsibilities involving consultation with the Yakama Nation on this matter. Without question, the actions considered within the scope of the SWEIS have potential impacts on the YN. According to DOE policy and guidance on implementation of trust obligations, consultation was required during the scoping and development of revised draft documentation on the proposed action.

Transmittal of a revised draft Environmental Impact Statement to the YN cannot be considered to fulfill consultation requirements. While the YN remains committed to working with DOE on a government-to-government basis to address mutual concerns, this process will be undermined by a failure to implement the most basic consultation requirements meant to fulfill the Federal trust responsibility. Hopefully, mechanisms to improve this situation can be instituted through the renewed DOE-YN intergovernmental agreement.

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Second, there are a number of procedural and technical deficiencies with the revised draft SWEIS in its current form. These deficiencies are addressed in our comments.

In summary, the Yakama Nation requests that DOE withdraw the draft SWEIS, rescope the proposed actions to be considered in the analysis, and correct the major problems cited in our comments. It is requested that formal consultation by DOE on these proposed actions be initiated immediately. The YN reserves the right to provide additional comments during the consultation process.

Sincerely,



Russell Jim, Manager
Environmental Restoration / Waste Management Program

cc: w/enclosures:

Mathew Tomaskin, YN RHW
Jessie Roberson, DOE EM
Carroll Palmer, YN DNR
Thomas Zeilman, YN OLC
Christine Gregoire, WA Attorney General
Tom Fitzsimmons, Director, WA Ecology
Michael Grainey, Director, OR Office of Energy
Kevin Clarke, Indian Programs Specialist



Yakama Nation Comments to the United States Department of Energy concerning the
*Revised Draft Hanford Site Solid (Radioactive and Hazardous) Waste Program
Environmental Impact Statement, DOE/EIS-0286D2*

Consultation with Federally Recognized Tribal Governments

“DOE’s trust responsibilities include:

Consulting, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments.”¹

Consultation includes, but is not limited to: prior to taking any action with potential impact upon American Indian and Alaska Native nations, providing for mutually agreed protocols for timely communication, coordination, cooperation, and collaboration to determine the impact on traditional and cultural lifeways, natural resources, treaty and other federally reserved rights involving appropriate tribal officials and representatives throughout the decision making process, including final decision-making and action implementation as allowed by law, consistent with a government-to-government relationship.²

Without question, actions contemplated by the U.S. Department of Energy (USDOE) within the scope of the initial draft Hanford Solid Waste EIS (SWEIS) and revised SWEIS have potential impact on the Yakama Nation (YN). Actions considered in the draft SWEIS are subject to **compliance with the Treaty of 1855 (12 Stat. 951), trust obligation requirements, and consultation provisions**, as well as compliance provisions in the **National Environmental Policy Act** and other applicable statutes.

In developing the SWEIS, USDOE failed to implement its trust responsibility to consult with the Yakama Nation (YN). Such consultation is mandatory, and is to be initiated by USDOE as partial fulfillment of the legally enforceable trust obligation. (See USDOE policy and guidance documents cited above – these USDOE documents are meant to assist with implementation of the legally enforceable trust .) Provision of draft EIS documents to a Tribal government does not constitute consultation. Consultation entails

¹ Working with Indian Tribal Nations, A Guide for DOE Employees, December, 2000, DOE/EM-0571

² U.S. Department of Energy American Indian & Alaska Native Tribal Government Policy, Office of Congressional & Intergovernmental Affairs, October, 2000.

government-to-government interactions in accordance with formal communication protocols. Furthermore, upon specific written request for an extension to allow the YN Tribal government adequate and reasonable time to review the extensive and detailed technical information contained in the draft SWEIS, the agency has been non-responsive.

On February 27, 2003, the Yakama Nation notified USDOE that it had declined an offer to be a cooperating agency in the development of the second draft of the subject EIS. One major reason for declining cooperating agency status was that DOE had expanded the scope to include actions involving the reclassification of high-level tank waste and on-site disposal of an 'immobilized low-activity waste' fraction. This is a specific proposed action which mandates consultation with the YN Tribal government. Consultation on this matter has yet to be initiated by USDOE.

In the February letter the tribe also requested a briefing on the scope and alternatives that would be addressed in the revised draft EIS. USDOE failed to respond to that request. On May 13, 2003, the YN requested a 60-day extension of the comment period to 26 July and a briefing on the alternatives and impacts to tribal resources. To date, USDOE has provided no response.

USDOE's non-responsiveness has denied Tribal policy makers from ensuring that Treaty rights and resources are protected as part of the action. USDOE's actions are inappropriate given the significance of impacts associated with the proposed action that include: tribal human health, cultural and ecological resources, direct and indirect cumulative impacts, and environmental justice.

Recent Studies: Need for Incorporation of Findings in SWEIS Analysis

Recent studies have proven the linkage between the health of the Columbia River and its resources, Tribal human health and restoration of Tribal trust resources. In 2000 and 2001, the United States Geological Survey (USGS) released results of fish studies investigating the potential of hexavalent chromium emanating from Hanford to adversely affect Chinook salmon. USGS scientists found physiological impacts and behavioral modifications

A study completed in September 2001 by the U.S. Centers for Disease Control concluded that Tribal members were exposed to more cancer-causing ionizing radiation from Hanford radiological discharges than other people living near Hanford. This study concluded that the Hanford Environmental Dose Reconstruction Project (HEDR) has underestimated risks from Hanford radiation by at least fifteen times, and estimated an approximate 1:50 fatal cancer risk from historic Hanford operations to Tribal people.

The U.S. Environmental Protection Agency (EPA) released the results of their "Columbia River Basin Fish Contaminant Survey" in August 2002, and found that the highest concentration of chemical contaminants in Columbia River fish were found in fish from the Hanford Reach. These organic toxins alone, without considering the contribution of radionuclides in the river, were found to pose a fatal cancer risk of up to 1 in 50 for tribal people.

The results of these studies indicate the need to reassess whether Hanford is an appropriate site to dispose of any long-lived nuclear waste, such as iodine-129, technetium-99, or any other long-lived fission products or transuranic elements. In addition, these studies indicate the need to remove chemically hazardous components subject to RCRA, such as MLLW, given the proximity of the 200 Area to the Columbia River, which is a drinking water source for several million people in the Northwest.

Significantly, the Hanford Site Environmental Report for Calendar Year 2001 (HSER 2001), which compiles information on risks from Hanford nuclear waste discharges, does not document the impacts found in the reports cited above. In fact, the HSER 2001 finds that Hanford's historical and current operations pose no significant impacts to humans or natural resources. This finding by USDOE is stark evidence that SWEIS analysis and planning should be conducted by an agency or contractor fully independent from Hanford, to reveal impacts of USDOE's proposed actions and to provide affected governments and affected people with transparent and credible information.

NEPA Analysis Issues

The EIS analysis has several major problems associated with it. First, it addresses high-level waste (immobilized low-activity waste/high-level waste melters), which does not fall under the purview of the Solid Waste Program, but is regulated by the Nuclear Waste Policy Act as defense waste. Analysis of impacts from this waste stream needs to be decoupled from the SWEIS analysis.

Second, it needs to address pre-1970 TRU waste that is buried in the low-level burial grounds (LLBG) which clearly is under the purview of the Solid Waste Program.

Third, the cumulative impacts analysis is fundamentally flawed because it does not account for past releases from single-shell tanks, pre-1970 TRU waste and other waste streams.

Fourth, characterization and inventory of waste streams is incomplete which contributes to a flawed assessment of cumulative impacts.

Fifth, the SWEIS fails to consider a reasonable range of alternatives for certain waste streams, such as MLLW, that explored off-site disposal.

Sixth, it fails to meet the letter or intent of existing environmental laws, including the Treaty of 1855, NEPA, RCRA, and CERCLA.

Seventh, it fails to consider the findings of recent studies cited earlier.

Eighth, USDOE failed to resolve the Yakama Nation's concerns regarding the Waste Programmatic EIS which USDOE is basing their actions here on.

Finally, USDOE failed to address environmental injustices associated with the proposed action, which disproportionately impacts the culture of the Yakama Nation's people and their subsistence life-way. No other population is as severely impacted as Native Americans by this proposed action.

In consideration of these facts, it is requested that USDOE withdraw this EIS, re-scope the proposed actions to be considered in the analysis, and correct the major problems cited here.

It is requested that formal consultation by USDOE with the Yakama Nation be initiated immediately. The Yakama Nation reserves the right to provide additional comments when consultation is initiated by the USDOE.