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**EDMC**

8 **UNITED STATES DISTRICT COURT**  
 9 **EASTERN DISTRICT OF WASHINGTON**

10 STATE OF WASHINGTON,  
 11 DEPARTMENT OF ECOLOGY,

NO. CT-99-5076-EFS

Plaintiff,

FIRST AMENDMENT TO  
CONSENT DECREE

v.

13 UNITED STATES  
 14 DEPARTMENT OF ENERGY,

Defendant.

**I. INTRODUCTION**

16 WHEREAS, on September 29, 1999, the court entered a Consent Decree  
 17 in which Plaintiff State of Washington, Department of Ecology ("State") and  
 18 Defendant United States Department of Energy ("DOE") agreed to resolve  
 19 potential litigation between the State and DOE regarding certain missed  
 20 milestones as well as other remaining milestones in the Hanford Federal  
 21 Facility Agreement and Consent Order ("HFFACO") (entered May 15, 1989) in  
 22

1 the interim stabilization series (M-41) and to establish a judicially enforceable  
2 schedule for pumping liquid radioactive hazardous waste from single-shell  
3 tanks as identified in the schedule in Section IV-A of the Consent Decree;

4 WHEREAS, the HFFACO requires that DOE construct and operate  
5 facilities for the treatment of radioactive waste in the underground single-shell  
6 and double-shell storage tanks, and that by August 31, 2000, DOE authorizes,  
7 among other things, construction of facilities for the pre-treatment and  
8 vitrification of no less than 10 percent of Hanford's tank waste by mass and 25  
9 percent by activity (Phase I Processing);

10 WHEREAS, DOE acknowledges that it did not authorize the construction  
11 of Phase I Processing facilities by August 31, 2000;

12 WHEREAS, the State and DOE have agreed to the terms and conditions  
13 of this First Amendment to Consent Decree to resolve potential litigation  
14 between the parties regarding the schedule for awarding a contract for  
15 construction of the Phase I Hanford Tank Waste Treatment Complex, and to  
16 establish a judicially enforceable schedule for the same;

17 NOW THEREFORE, it is hereby ordered, adjudged, and decreed as  
18 follows:

1       **XIV. ADDITIONAL PROVISIONS PERTAINING TO AWARDING A**  
2       **CONTRACT FOR DESIGN AND CONSTRUCTION OF A WASTE**  
3       **TREATMENT AND VITRIFICATION COMPLEX.**

4       As part of DOE's efforts to remediate the Hanford Site, a facility is to be  
5       designed, constructed, and commissioned for the purpose of treating and  
6       vitrifying the single-shell and double-shell tank wastes.

7       A.     Work To Be Performed. The following work shall be performed:

8       By January 15, 2001, DOE shall award a contract authorizing the design,  
9       construction, and commissioning of a facility. This facility shall include all  
10      facilities necessary for the pretreatment and vitrification of no less than 10  
11      percent of Hanford's tank wastes by mass and 25 percent by activity by  
12      February 28, 2018. This facility is referred to hereafter as the "Phase I Hanford  
13      Tank Waste Treatment Complex."

14      B.     Excuse from Obligation to Perform Requirements of Section  
15      XIV-A. DOE's obligations to meet the requirements of Section XIV-A shall be  
16      excused only in the event of impossibility of performance, bid protest, if any of  
17      the conditions set forth in Section VI-E (Force Majeure) occur, or if the Court  
18      determines there is good cause, considering federal procurement law.

19      Any excuse from performance afforded pursuant to this subsection shall  
20      be only to the extent of the circumstances that gave rise to the excuse. Unless  
21      the parties agree that the basis for excuse is met and agree to its extent, DOE  
22      must seek a determination from the Court to be excused from performance. If  
23      DOE seeks relief under this subsection, it will submit a written request to the

1 State within ten (10) days of learning that such relief is necessary. If the parties  
 2 are unable to agree on a resolution within ten (10) days of DOE's submission or  
 3 its request, DOE will submit the matter to the Court no later than 20 days after  
 4 DOE's submission of its request. DOE's submission of a written request does  
 5 not automatically stay DOE's obligation to perform, but DOE may seek a stay  
 6 of its obligation from the Court at any time.

7 C. Application Of The Other Provisions Of The Consent Decree  
 8 To Section XIV. Except as otherwise indicated, the provisions of Sections I  
 9 through XIII of this Consent Decree apply to the provisions in Section XIV.

10 1. Sections I, IV-A, VI, and XII of this Consent Decree do not  
 11 apply to the provisions in Section XIV.

12 2. The reporting requirements of Section IV-B of this Consent  
 13 Decree shall apply to activities required to be taken pursuant to Section  
 14 XIV of this Consent Decree.

15 3. For purposes of construing Section XIV only, the references  
 16 in Section V to "interim stabilization" shall be deemed to refer to the  
 17 activities required to be taken pursuant to Section XIV-A of this Consent  
 18 Decree, except that nothing in the Consent Decree shall be deemed to  
 19 authorize access to procurement sensitive documents.

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1           4. For purposes of construing the provisions of Section XIV  
 2 only, the reference to Section IV-A in Section VIII-C shall be deemed to  
 3 refer to Section XIV-A.

4           5. For purposes of construing the provisions of Section XIV  
 5 only, the "matters covered" in the Covenant Not To Sue in Section IX  
 6 shall be deemed to include the work in Section XIV-A.

7           6. For purposes of construing the provisions of Section XIV,  
 8 only, DOE's waiver of appeal rights under the HFFACO shall be  
 9 construed as including the HFFACO M-62-05 milestone.

10          D. Upon entry of this Decree, the State covenants not to enforce the  
 11 M-62-05 milestone in the HFFACO. After entry of this Decree, the parties will  
 12 amend the HFFACO to delete the M-62-05 milestone. Nothing in Section XIV  
 13 of the Consent Decree shall give the Court jurisdiction over any of the  
 14 HFFACO milestones. In addition, except as expressly provided in the Consent  
 15 Decree, nothing in the Consent Decree shall modify DOE's obligation under the  
 16 HFFACO.

17          E. Limitations On The Applicability And Effect Of This Section  
 18 To Other Sections Of The Consent Decree. The provisions in Section XIV  
 19 pertain exclusively to matters set forth in Sections XIV-A and XIV-B. Nothing  
 20 in Section XIV alters, amends, or modifies in any way the operation of the  
 21 provisions in Sections I through XIII (including the attachments to this Consent  
 22

1 Decree referenced in those Sections) with respect to the work specified in  
2 Section IV of the Consent Decree.

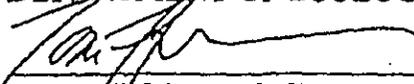
3 **XV. EFFECTIVE DATE OF AMENDMENT**

4 This First Amendment to Consent Decree shall be effective upon the date  
5 of its entry by the Court.

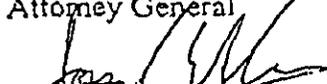
6  
7 DATED this 19 day of SEPTEMBER, 2000.

8  
9 United States District Judge

10 FOR THE STATE OF WASHINGTON  
11 DEPARTMENT OF ECOLOGY

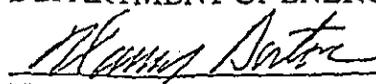
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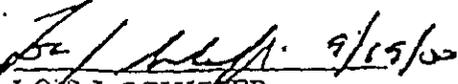
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