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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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February 9, 1998

Mr. Lloyd Piper, Deputy Manager
U. S. Department of Energy
P. O. Box 550
Richland, Washington 99352

Mr. Charles Hansen
Assistant Manager for Waste Management
U. S. Department of Energy
P. O. Box 550
Richland, Washington 99352



Dear Messers. Piper and Hansen:

RE: Hanford Federal Facility Agreement and Consent Order (Tri Party Agreement),
Milestone series M-34-00 negotiations.

Over the past three years, Washington Department of Ecology (Ecology) and U. S. Environmental Protection Agency (EPA) staff have worked with Department of Energy (DOE) representatives in an attempt to define an acceptable compliance and cleanup program covering needed activities at DOE's K East and K West basins. This has been an increasingly frustrating process characterized by repeated DOE and DOE contractor rebaselining of project schedules, and by DOE alternately assuring us of its pending ability to commit to definitive work schedules, and then refusing to do so. At the same time, it has become clear that K Basin spent nuclear fuels are in worse condition than was envisioned when then Secretary O'Leary identified them as the number one spent nuclear fuel safety issue in the DOE complex (October, 1994). Contamination of area groundwater also continues to raise questions regarding the integrity of the K East and K West Basins (both of which are well past design life, and one of which has leaked in the past).

Negotiation of a definitive set of Tri Party Agreement K-Basin cleanup commitments was initiated by the parties' August 16, 1996 Agreement In Principle (AIP) through which DOE, Ecology, and the EPA agreed in part to establish: "...commitments for the removal of K East and K West Basin fuel, sludge and debris, remediation and associated activities necessary for the management of K basin waters, and completion of stabilization of the K basins. As part of these negotiations the parties agree to establish a specific M-34-00 end date for completion of all stabilization activities."

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We were consequently disappointed when, two and a half months into these negotiations, DOE requested¹ that negotiations be suspended to allow its new contractor team (led by Fluor Daniel Hanford (FDH)) to reassess project schedules and associated technical issues. However, DOE noted that "Tri Party Agreement negotiations under Milestone M-34 can be concluded by March 14, 1997, based on contractual performance agreements which we have established within the scope of the FDH contract." This request, though initially disapproved², led to the parties agreeing to suspend negotiations until January 14, 1997, and to complete negotiations "no later than March 14, 1997"³.

Once again, this proved not to be the case, and on March 18, 1997⁴, DOE invoked dispute under the terms of the Tri Party Agreement. Pursuant to the terms of the parties' August 16, 1996 AIP, our Inter Agency Management Integration Team (IAMIT) took up this dispute on March 25, 1997. As a result, the period for dispute resolution, and completion of negotiations was extended to April 18, 1997.⁵ Subsequent to this added extension, the parties concluded negotiations on how to proceed, and reached tentative agreement.^{6, 7}

This agreement was then subjected to public comment (June 9, - July 23, 1997). Comments received were almost entirely supportive of finalization. Unfortunately, despite the parties tentative agreements⁸ and the lack of any substantive issues raised during public comment, DOE and its contractors advised Ecology and EPA that due to continuing schedule, cost, and technical difficulties, it was not willing to finalize this negotiated settlement.

Subsequent to this latest refusal, the parties' negotiators have met on a number of occasions in an effort to resolve this matter. Meeting results included a DOE commitment to provide Ecology and EPA with a revised settlement proposal containing definitive project schedules, no later than January 9, 1998. This commitment was also missed when DOE informed Ecology and EPA that on further consideration it could not comply.

As you each know, our staffs are continuing to meet with DOE representatives in this matter. It is our sincere hope that these efforts will result in an amicable and sound resolution under the Tri Party Agreement, one which effectively establishes project schedules and ensures that at long last efficient progress in mitigating K Basin environmental issues is achieved.

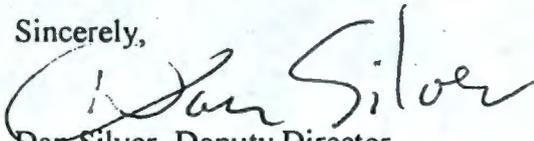
This correspondence is being forwarded to you in order to document verbal notice given to DOE at our December 16, 1997 and January 27, 1998 IAMIT meetings, i. e., that should the parties fail to secure a firm (revised) TPA agreement by February 24, 1998 (our next scheduled IAMIT meeting):

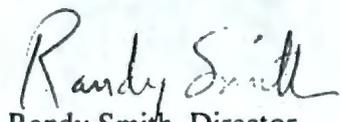
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- (1) Ecology and EPA believe that further negotiations are not likely to be productive, and consequently, we will not be scheduling additional negotiation sessions, and
- (2) Ecology and EPA will be left to consider unilateral action(s) as necessary to ensure that K Basin compliance and cleanup work is not unduly delayed.

We do hope that negotiations prior to February 24 result in agreement between our agencies. We commit ourselves and our staffs toward that effort.

Sincerely,


Dan Silver, Deputy Director
Washington Department of Ecology


Randy Smith, Director
Office of Environmental Cleanup
U. S. Environmental Protection Agency
Region 10

cc: Tanya Barnett, Office of the Attorney General
Mary Lou Blazek, ODOE
Russell Jim, YIN
Donna Powaukee, Nez Perce Tribe
Marilyn Reeves, HAB
John Wagoner, DOE-RL
J. R. Wilkinson, CTUIR
Administrative Record

Endnotes

- ¹ Letter: John D. Wagoner, Manager, DOE Richland Operations Office, to Mary Riveland, Director, Washington Department of Ecology, and Chuck Clarke, Regional Administrator, Environmental Protection Agency, Region 10, November 1, 1996.
- ² Letter: Mary Riveland, Director, Washington Department of Ecology and Chuck Clarke, Regional Administrator, Environmental Protection Agency, Region 10, to John D. Wagoner, Manager, DOE Richland Operations Office, November 12, 1996.
- ³ INTERAGENCY MANAGEMENT INTEGRATION TEAM - RESOLUTION OF DISPUTE -, Mike Wilson, Washington Department of Ecology, Douglas Sherwood, Environmental Protection Agency, Region 10, and C. A. Hansen, U. S. Department of Energy, November 18, 1996.
- ⁴ Letter: Lloyd Piper for John D. Wagoner, Manager, DOE Richland Operations Office, to Tom Fitzsimmons, Director, Washington Department of Ecology, and Chuck Clarke, Regional Administrator, Environmental Protection Agency, Region 10, March 18, 1997.

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- 5 Tri Party Agreement correspondence: 14 DAY EXTENSION TO HANFORD FEDERAL FACILITY AGREEMENT AND CONSENT ORDER MILESTONE M-34-00 DISPUTE RESOLUTION, James E. Rasmussen, Director, Environmental Assurance, Permits and Policy Division, U. S. Department of Energy, Richland Operations Office, and Michael A. Wilson, Manager, Nuclear Waste Program, Washington Department of Ecology, undated, (believed to be March 25, 1997).
- 6 Tri Party Agreement correspondence: RESOLUTION OF DISPUTE FOR MILESTONE M-34-00, Charles A. Hansen, Assistant Manager, Waste Management, U. S. Department of Energy, Richland Operations Office, and Michael A. Wilson, Manager, Nuclear Waste Program, Washington Department of Ecology, April 18, 1997.
- 7 Tri Party Agreement correspondence: TENTATIVE AGREEMENT ON HANFORD FEDERAL FACILITY AGREEMENT AND CONSENT ORDER, NEGOTIATION FOR THE COMPLETION OF TRANSITION AT K EAST AND K WEST BASINS, Tom Fitzsimmons, Director, Washington Department of Ecology, Chuck Clarke, Regional Administrator, U. S. Environmental Protection Agency, Region 10, and John D. Wagoner, Manager, U. S. Department of Energy, Richland Operations Office, April 30, 1997.
- 8 NOTE: Included within the parties' April 18, and April 30 agreements were the commitments that: (1) "Contingent upon final approval of the tentative agreement by the signatories, *(which subsequently took place on April 30)* and consideration and resolution of any resulting public comments, it is the parties' intent to approve these changes and incorporate them into the Agreement." (2) *(That)* "The parties further agree that to minimize additional delay in the event they fail to agree on any changes as the result of public comment, all unresolved matters shall be referred to the Agreement dispute resolution process beginning at the IAMIT level as described in the Agreement." No disagreements as a result of public comment occurred.