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Nez Perce

ENVIRONMENTAL RESTORATION & WASTE MANAGEMENT
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January 14, 1999

Mr. Bryan L. Foley
U.S. Department of Energy,
Richland Operations Office, MS HO-12
P.O. Box 550
Richland, Washington 99352

RECEIVED

**JAN 15 1999
DOE-RL/DIS**



**Re: 200 Areas Remedial Investigation/Feasibility Study Implementation Plan –
Environmental Restoration Program, DOE/RL-98-28, Draft B**

Dear Mr. Foley:

The Nez Perce Tribe's Environmental Restoration and Waste Management Program (ERWM) has reviewed a copy of **200 Areas Remedial Investigation/Feasibility Study Implementation Plan – Environmental Restoration Program, DOE/RL-98-28, Draft B**. Attached, for your consideration, are ERWM's specific comments and suggestions on this document.

Since 1855, reserved treaty rights of the Nez Perce Tribe in the Mid-Columbia have been recognized and affirmed through a series of Federal and State actions. These actions protect Nez Perce rights to utilize their usual and accustomed resources and resource areas in the Hanford Reach of the Columbia River and elsewhere. Accordingly, ERWM has support from the U.S. Department of Energy (DOE) to participate in and monitor relevant DOE activities.

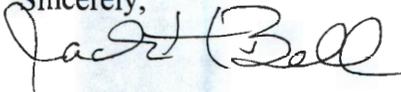
The Nez Perce Tribe considers the protection of the Columbia River and its ecosystem to be of the utmost priority. ERWM considers remediation of 200 Area waste sites a positive step in the protection of the Columbia River and fully supports the objectives of this plan. However, we have some concerns about this plan that may affect the health and safety of members of our Tribe, workers, public, biota, and cultural resources. Our general comments are as follows:

- 1) Why was the Nez Perce Tribe not given an opportunity to provide meaningful input prior to the modification Tri-Party Agreement (TPA) and the public comment period? Since the regulatory drivers are in-place, do Tribal governments or the public have the opportunity to institute significant changes to this approach?

- 2) The grouping of waste sites by historic process information and waste site type minimizes the importance of subsurface geology and ignores the potential for waste migration and mixing (i.e. waste sites located together in close proximity) in the vadose zone. Subsurface geology and geographic location should be factors in how waste sites are grouped together for characterization and remediation.
- 3) It appears that insufficient sampling is being proposed to characterize the 200 Area waste sites. Since the transport mechanisms within in the vadose zone are poorly understood, it may be prudent to investigate the soil column of each waste site before remediation begins. Further study, to define the waste sites, would aid the remediation workers in anticipating potential hazards. How can the excavated volume of soil and projected costs be calculated without prior characterization for each waste site?
- 4) The mechanism for fully integrating the data needs of the TWRS Project and Environmental Restoration (ER) Project in the 200 Area is not apparent. It appears that the Groundwater/Vadose Zone Integration Project is not involved in this plan which is driven by the TPA. Since vadose zone contamination is known to have migrated in the subsurface, the processes controlling waste migration needs to be fully understood to support the Tank Waste Remediation System (TWRS). Can a fully characterized crib area be used to estimate the migration of tank wastes due to sluicing? In the 200 Areas, was the origin of groundwater contamination tank leaks, discharges to cribs, or both?

We hope that DOE-RL will continue to work with the Indian Tribes and stakeholders in a cooperative manner and become more receptive to our concerns. Accordingly, we are willing to discuss these and other issues with DOE-RL. If you wish to discuss Nez Perce ERWM's comments further please contact Stan Sobczyk at (208) 843-7375, (208) 843-7378 (fax) or stans@nezperce.org (email).

Sincerely,



Jack H. Bell
Department of Natural Resources Manager

cc: Kevin Clarke, DOE-RL, Indian Programs Manager
Mike Wilson, Ecology, Nuclear Waste Program Manager
Douglas Sherwood, EPA, Hanford Project Manager
Russell Jim, YIN, ER/WM Manager
J.R. Wilkinson, CTUIR, SSRP Manager

Attachment

THE NEZ PERCE TRIBE **ENVIRONMENTAL RESTORATION & WASTE MANAGEMENT PROGRAM**

SPECIFIC COMMENTS **On The** **200 Areas Remedial Investigation/Feasibility Study Implementation Plan –** **Environmental Restoration Program** **DOE/RL-98-28, Draft B**

Since 1855 Nez Perce Tribe treaty rights in the Mid-Columbia have been recognized and affirmed through a series of federal and state actions. These actions protect Nez Perce interests to utilize their usual and accustomed resources and resources areas in the Hanford Reach of the Columbia River and elsewhere. Accordingly, the Nez Perce Tribe Department of Environmental Restoration and Waste Management (ERWM) has U.S. Department of Energy (DOE) support to participate in and monitor certain DOE activities. The document review is provided in a format that lists the page number, section number, and comment. Following are the specific comments on the **200 Areas Remedial Investigation/Feasibility Study Implementation Plan – Environmental Restoration Program, DOE/RL-98-28, Draft B.**

SPECIFIC COMMENTS:

Page 1-3, Section 1.1

Since a change package has already modified the Tri-Party Agreement accepting these waste groupings, what meaningful changes can Tribal Nations and the public cause to occur in this plan?

Page 1-3, Section 1.2.1

ERWM supports the primary objectives of this implementation plan.

Page 1-7, Section 1.2.5

The grouping of waste sites by historic process information and waste site type minimizes the importance of geographic location and ignores the potential for waste migration and mixing in the vadose zone. For example, waste sites in the both 200 East and West Areas are grouped together despite the differences in subsurface geology. Geographic location and subsurface should be factors in how waste sites are grouped together for characterization and remediation.

Since the transport mechanisms within in the vadose zone are poorly understood, it may be prudent to investigate the soil column before remediation begins on every waste site.

Further study, to define the waste sites, would aid remediation workers in anticipating potential hazards. How can the excavated volume of soil and projected costs be calculated without prior characterization?

Page 2-25, Section 2.5.1

The “analogous site concept” takes into account geologically similar sites, but the proposed waste site grouping in this plan lumps waste sites together from both 200 East and 200 West Areas despite the differences in subsurface geology between 200 East and West.

Page 2-27, Section 2.5.3

Since each waste site is subject to some form of characterization under this plan, why is it desirable to remediate and issue a ROD before confirmation sampling? “Presumptive” cleanup remedies should be partially based upon field data.

Page 3-10, Section 3.2.3

Why were Tribal representatives excluded from the subteam that developed the waste site categories and criteria? When is Tribal and stakeholder participation in the decision-making process not applicable?

Page 3-13, Section 3.2.3

Why does the 200-LW-02 waste site group contain waste sites in 200 East and West Areas?

Why aren't the 200-MW-1 waste sites grouped with nearby waste sites to eliminate this category?

Page 3-14, Section 3.2.3

Why does the 200-TW-2 waste site group contain waste sites in 200 East and West Areas?

Why aren't the 200-IS-1 waste sites grouped with nearby waste sites to eliminate this category?

Page 3-23, Section 3.3.1.3

References should be listed which support the assumption that “...the highest concentrations of contaminants such as plutonium, cesium, and strontium are expected within 2 to 3 m below the point of discharge...”

Page 4-1, Section 4.0

Treaties with the Tribal governments need to be treated as applicable or relevant and appropriate requirements (ARARs). Suggested text is as follows.

The most significant written law relating to environmental quality for the Yakama, Umatilla, and Nez Perce Nations are the Treaties of 1855. These treaties

between the federal government and the tribal governments ceded hundreds of square miles to the United States, while retaining the core reservation lands and reserving perpetual rights to be exercised on the "open and unclaimed" lands within and beyond the boundaries ("usual and accustomed places") of the ceded area "for as long as the grass shall grow." Hanford lies entirely within this ceded territory. The Treaties are still active, valid, and upheld by courts and the Constitution of the United States, and may not be amended. The Treaties also confirmed that the United States government has a fiduciary trust responsibility to assure that land uses in the ceded areas be maintained in a manner consistent with the treaties. The United States' trust obligations extend to all federal agencies, and all federal actions and the implementation of federal statutory schemes affecting Indian people, Indian land, or Indian resources must be judged by the most exacting fiduciary standard. Thus, the federal government and its implementing agencies are obligated to use their expertise and authority — in meaningful consultation with the tribes — to safe guard natural resources that are of crucial importance to tribal self-government and to prosperity.

These treaty-reserved rights were not granted by the U.S. government to the tribes, but were retained by the original owners of the land (the tribal nations) and recognized and affirmed by the U.S. government when recorded in the treaties. The treaties protect (or reserve) rights that support the continuity and well-being of the tribal people, and their age-old cultural traditions handed down by their ancestors and established through millennia of interaction with the environment. This traditional culture is resilient and robust, and ensures survival through drought and flood, feast and famine, health and sickness. It is being modified as modern aspects are incorporated into every day life, but the underlying core values and practices are carefully maintained. Specific treaty-reserved rights that may be exercised in the ceded areas include hunting, gathering, pasturing, fishing, erecting temporary structures, access to and care of sacred sites, and many other unlisted activities necessary to support the traditional way of life, including religious, social, cultural, and subsistence practices. Impacts to the ability to safely practice these activities on Hanford lands, to the continuity of access and safe use, and to the integrity of the environment form the focus of tribal risk assessment, cleanup, and restoration.

Recent environmental laws such as CERCLA and RCRA did not have treaties in mind when they were promulgated. This does not necessarily mean that they are inadequate, but rather that traditional lifestyles, with their higher environmental contact rates, were not recognized at the time. Additionally, the authors of CERCLA and RCRA did not envision that sites as complex as Hanford and with contamination so widespread and long-lived would need to be addressed. Thus, the holistic and long-term perspectives of treaties and trusteeship are not really reflected in RCRA and CERCLA closure guidance. Implementing RCRA and CERCLA with respect to treaty rights and trusteeship simply means that resources must be protected on behalf of tribes (and other people) and that cleanup must occur so that their rights can be safely exercised.

Page 5-5, Section 5.4 & Page 5-9, Section 5.5.3

In many cases, soil remediation to a depth of only 15 feet will not remove a sufficient portion of the contaminant inventory to prevent further degradation of groundwater.

How will the point of compliance be determined, and will DOE and EPA consult with the Tribes before establishing the point of compliance? Will clean-up standards be developed that account for the cumulative risk from all of the waste sites in the 200 Areas prior to remediation?

Page 6-1, Section 6.0

The emphasis of data collection efforts should be to understand the extent, concentration, mobility, and behavior of wastes in the subsurface as well as establishing a sound scientific understanding of waste migration in the subsurface.

Page 6-3, Section 6.2.1

Same comment as above.

Page 6-4, Section 6.2.1

Analytical models (computer codes) can not be substituted for field data and need to be verified with field data.

Additional data will reduce uncertainty, and it is difficult to envision the collection of enough data to eliminate uncertainty and become redundant.

Page 6-5, Section 6.2.1

Characterization efforts are needed to determine the lateral distribution as well as the vertical distribution of the contaminants.

Page 6-6, Section 6.2.2

The statement that "Contaminant transport is primarily vertical beneath liquid waste sites..." is not supported by references and may not be the case in some areas. Appendix G, *Groundwater/Vadose Zone Integration Project Specification, DOE/RL-98-48, Draft C*, displays few maps of the distribution of contaminants in the horizontal plane in the subsurface.

Page 6-6, Section 6.2.3

Same comment as for Page 6-1, Section 6.0.

Page 6-8, Section 6.2.5.1

The Hanford Site needs to abandon its antiquated cable tool rigs and embrace modern drilling techniques. The cost savings associated with the ability to drill a borehole in a few days versus a few months will pay for the modern equipment.

Page 7-3, Section 7.2.1.1

Provisions should be made that allow for Nez Perce Tribe and the other affected Tribal governments to provide meaningful input early in the decision making process. Federal agencies have a trust obligation to the affected Tribes and are obligated, in meaningful consultation with the tribes, to protect the interests of the Tribes.

Page 7-6, Section 7.3.1

It appears that this plan will be implemented in a manner that is independent of the Groundwater/Vadose Zone Integration Project. The mechanism for fully integrating the data needs of the TWRS program and ER in the 200 Area is not apparent.

Page 7-9, Section 7.3.4

Same comment as for Page 7-3, Section 7.2.1.1

Page 7-9, Section 7.4

Why aren't the affected Tribes invited to work on the schedule with the responsible regulatory agencies?

Page 7-10, Section 7.5

Why was the Nez Perce Tribe not given an opportunity to provide meaningful input prior to the public comment period? Why is a government-to-government relationship included in this section on public involvement?

Page A-22, Table A-2

The Treaties with the Indian Tribes and the federal trust responsibility to the Indian Tribes should be included in this table.

Page D-2, Section D2.0

Treaties with the Tribal governments need to be treated as ARARs, and the implementation of RCRA and CERCLA with respect to treaty rights and trusteeship means that resources must be protected on behalf of tribes and that cleanup must occur so that their rights can be safely exercised.

Page F-11, Section F4.7

The effects of lateral movement and preferential vertical pathways should be considered when considering contaminant travel times in the vadose zone.

Page F-35, Figure F-9

This cross-section does not agree with cross-section C-C' shown in K.A. Lindsey's *Miocene- to Pliocene-Aged Suprabasalt Sediment of the Hanford Site, South-Central Washington, BHI-00184, Rev. 00, 1995* at 299-W6-1.

Page F-36, Figure F-10

This cross-section does not agree with cross-section E-E' shown in K.A. Lindsey's *Miocene- to Pliocene-Aged Suprabasalt Sediment of the Hanford Site, South-Central Washington, BHI-00184, Rev. 00, 1995.*

Page G-16, Section G1.2.1

References should be listed that support the assumptions on radionuclide mobility in Hanford's soil column.