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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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September 30, 1992

Mr. Steven H. Wisness
Hanford Project Manager
U.S. Department of Energy
PO Box 550
Richland, WA 99352



Dear Mr. Wisness

Re: Request for Withdrawal of 303-M Oxide Facility Part A Permit Application (M-20-30)

The Washington State Department of Ecology (Ecology) has reviewed your request for withdrawal of the Part A Permit Application for the 303-M Oxide Facility. Ecology does not agree with the reasons presented in the withdrawal request and does not grant withdrawal of the Part A Permit Application. The reasons for the denial are outlined below.

The primary issue presented by the Department of Energy (DOE) in the withdrawal request is that the wastes handled at the 303-M Oxide Facility (303-M) were not regulated by the Resource Conservation and Recovery Act (RCRA) during the operating life of the facility. More specifically, you claim that Ecology did not receive authorization from the EPA to regulate mixed wastes (wastes containing both a radioactive component and a hazardous component) until after the 303-M ceased operations. Therefore, the wastes handled at the 303-M were not regulated under RCRA Subtitle C during its active life.

As you know, and as USDOE has conceded in the TPA (Article 1, Para 4), USDOE is subject to Ch. 70.105 RCW and its implementing regulations, Ch. 173-303 WAC. See 42 USC §6961. Thus, the key to determining the 303-M Oxide Facilities regulatory status does not lie with EPA's delegation of mixed waste authority to the state. Rather, the key to this determination is when and how this facility became subject to regulation under Ch. 70.105 RCW.

Ecology has had authority since January 1983 to regulate the dangerous waste managed at the 303-M Oxide facility. Because the facility continued to manage regulated dangerous waste after that time, the facility is required to obtain a permit to operate. See RCW 70.105.130(2)(a) and WAC 1737-303-800-890.

USDOE complied with the first part of this permit requirement by obtaining a Part A permit. Now USDOE must either close the 303-M Oxide facility or obtain

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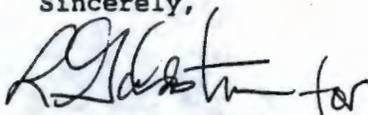
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a final status permit. USDOE's position that EPA's delegation of mixed waste authority has any bearing on this fact is simply incorrect, and I might add, counterproductive.

If DOE intends to cease dangerous waste activities at the 303-M, then it is appropriate to submit a Closure Plan for the facility. The DOE may make a formal request to change the M-20-30 milestone to reflect the submittal of a Dangerous Waste Facility Closure Plan for 303-M to Ecology and EPA for review and approval, pursuant to WAC 173-303-610.

If you have any questions regarding this denial of withdrawal, please contact Mr. Toby Michelena at (206) 438-7016.

Sincerely,



David B. Jansen, P.E.
Hanford Project Manager
Nuclear and Mixed Waste Management

DBJ:SEM:jr

cc: Becky Austin, WHC/AR
Paul Day, EPA
Dan Duncan, EPA
Tom Tebb, Ecology



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Author: D. B. Jansen, Ecology Addressee: S. H. Wisness, RL Correspondence No.: *Incoming: 9206494

Subject: REQUEST FOR WITHDRAWAL OF 303-M OXIDE FACILITY PART A PERMIT APPLICATION (M-20-30)

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*Letter #9257659D is being prepared as a response to this letter.

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