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STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

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November 12, 1996

Mr. John D. Wagoner, Manager
U. S. Department of Energy
Richland Operations Office
P. O. Box 550
Richland Washington 99352



Dear Mr. Wagoner:

RE: U. S. DEPARTMENT OF ENERGY, RICHLAND OPERATIONS OFFICE (RL)
REQUEST TO SUSPEND NEGOTIATIONS ON MILESTONE M-34 OF THE
HANFORD FEDERAL FACILITY AGREEMENT AND CONSENT ORDER (TRI-
PARTY AGREEMENT) THROUGH JANUARY 14, 1997

Please note that we have received your November 1, 1996 request to temporarily suspend negotiation of compliance schedules covering Hanford's K East and K West fuels storage basins. As you know, our staffs have made significant progress in addressing the wide variety of remediation issues presented by basin fuels, sludge and debris, and contaminated waters. Among the issues which remain are: (i) a determination of which regulatory driver will be most effective in moving the project forward and, (ii) the development of milestone initiation/completion dates, including schedules which assure timely remediation of environmental risk and releases to area groundwaters, and subsequent completion of basin transition activities.

While we recognize that DOE's new contractors must carefully evaluate project schedules, we trust that DOE, Fluor Daniels Hanford & Duke Engineering staff will not allow these initial assessments to negatively impact project work. From an environmental perspective our concerns that retrieval move forward rapidly have only increased as we have learned more about the poor condition of the basins and their contents (e.g., this past summer's full length visual examinations of basin fuels).

John D. Wagoner
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As to your request for suspension, we can not approve it at this time in that DOE has not met its commitment to agree to specific K basin cleanout schedules by November 1, 1996 (See our August 16, 1996 Agreement In Principle). We note that DOE is both: (i) asking for additional time on behalf of its new contractors, and (ii) assuming that should a ("CERCLA") removal action regulatory path be adopted, the resulting Action Memorandum (Summer, 1997) would not be constrained by our negotiated requirements. As you know, this matter is now in dispute pursuant to our AIP. We have asked our staffs to continue to work with DOE towards resolution.

Sincerely,

Mary Riveland

Mary Riveland, Director
 State of Washington
 Department of Ecology

11/12/96
 Date

Chuck Clarke

Chuck Clarke Regional Administrator
 U. S. Environmental Protection Agency
 Region X

11/14/96
 Date

cc Larry Arnold, FDH
 Mary Lou Blazek, ODOE
 Bill Burke, CTUIR
 Russell Jim, YIN
 Kevin Oates, EPA
 Donna Powaukee, Nez Perce
 Marilyn Reeves, HAB
 Randy Smith, EPA
 Nancy Williams, FDH
 Administrative Record



Department of Energy
 Richland Operations Office
 P.O. Box 550
 Richland, Washington 99352

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97-EAP-066

Ms. Mary Riveland, Director
 State of Washington
 Department of Ecology
 P.O. Box 47600
 Olympia, Washington 98504-7600

Mr. Chuck Clarke
 Regional Administrator
 U.S. Environmental Protection Agency
 Region 10
 1200 Sixth Avenue
 Seattle, Washington 98101

Dear Ms. Riveland and Mr. Clarke:

U.S. DEPARTMENT OF ENERGY, RICHLAND OPERATIONS OFFICE (RL) REQUEST TO SUSPEND NEGOTIATIONS ON MILESTONE M-34 OF THE HANFORD FEDERAL FACILITY AGREEMENT AND CONSENT ORDER (TRI-PARTY AGREEMENT) THROUGH JANUARY 14, 1997

I am requesting your agreement to suspend negotiations currently underway on Milestone M-34 of the Tri-Party Agreement. As you may recall, we approved an Agreement In Principle (AIP) on August 16, 1996, to renegotiate the existing M-34 Tri-Party Agreement milestone series. Our objective was to appropriately reflect the preferred technical path forward for resolution of critical public health and safety concerns and to reduce risks to the environment and to public health, through the removal of the spent nuclear fuel, sludge and debris, and contaminated water from the 100 K East and West spent nuclear fuel storage basins. The AIP deferred the initiation of K East basin water replacement in September 1996 (See Interim Milestone M-34-01), and established November 1, 1996, for completion of negotiations.

Notwithstanding the importance of this commitment, our respective agencies have been unable to reach full closure on this matter. However, I have been advised that our negotiation teams have made substantial progress towards agreement on specific project commitments for a path forward which will be established as Tri-Party Agreement milestones. This inability to reach agreement has been brought about because RL does not feel that at present we have been able to commit to mutually agreeable dates as we continue to be constrained by a critical need for a reassessment of the spent nuclear fuels project technical baseline by our new integrating contractor Fluor Daniel Hanford Inc. (FDH). Additionally, there are a number of project technical issues having safety implications, e.g., potential pressurization of Multi Canister Overpacks which require resolution.

Riveland/Clarke
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Based on the recommendation of my negotiation team and RL senior management, I am requesting that we suspend these negotiations through January 14, 1997. At that time I propose that our (August 1996) AIP be reinstated with a new end date of no later than March 14, 1997, and that our negotiators be instructed to reinstate negotiations using RL's October 25, 1996, draft change request (M-34-96-03) as the basis for proceeding. I am also requesting your approval that:

1. This proposed modification of our August 1996 AIP also serves to continue deferral of noted M-34-01 requirements until completion of negotiations, and
2. In the interim (prior to receipt of the FDH baseline reassessment) our staffs continue to meet on two specific negotiation related issues: (1) potential Toxic Substances Control Act (TSCA) implications associated with Polychlorinated Biphenyl (PCB) contaminated sludge in the K East Basin, and (2) the feasibility of utilizing a Comprehensive Environmental Response Compensation and Liabilities Act (CERCLA) removal action as a regulatory Tri-Party Agreement pathway.

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. As a result of uncertainties in the existing spent nuclear fuels project baseline, FDH is to provide RL with an assessment of the achievability of the current project schedule. This assessment will be formally provided to RL by December 31, 1996. On February 1, 1997, RL will have completed its analysis of the FDH assessment and is committed to finalize with EPA and Ecology the necessary target and enforceable dates for the technical commitments which are being negotiated for Milestone M-34. I am confident that completion of this assessment and continued efforts to resolve outstanding project technical/safety issues will allow us to successfully complete negotiations on this project.

In response to a request by EPA and Ecology negotiation teams, I am providing via this letter an overview of other existing commitments which extend beyond the regulatory scope of the Tri-Party Agreement but which apply directly to the spent nuclear fuels project. Finally, per agreement between our negotiators, I am also providing a synopsis of RL's understanding of the regulatory strategy which has been used in constructing the Tri-Party Agreement change control form.

RL Commitments for Completion of the M-34 Negotiations

1. RL remains committed to the Secretary of Energy's Spent Nuclear Fuels Vulnerability Assessment issued in October 1994. This document issued by the National Spent Nuclear Fuels Program Office and signed by Secretary Hazel O'Leary places the highest priority for RL on removal of spent nuclear fuel stored in the 100 K East and West Basins away from the Columbia River and into safe interim storage pending final disposal in the National Geologic Repository.
2. RL is fully committed to meet the existing technical commitments and milestone dates made to the Defense Nuclear Facilities Safety Board (DNFSB) and documented in DNFSB Finding 94-1. The major commitments include a specified start and completion date for the removal of spent nuclear fuel from the K East and West Basins and the removal and disposal of sludge and debris which has accumulated in the K Basins as a result of the deterioration of the spent nuclear fuel. RL also remains committed to other technical and safety milestones which have been negotiated with the board.
3. RL is committed to minimize and where possible eliminate risks to the environment and the public health resulting from spent nuclear fuel, sludge and debris, and contaminated water contained within the 100 K East and West Basins. In recognition of these impacts, RL is committed to negotiate enforceable and target milestones in the Tri-Party Agreement: 1) covering each of these three phases (assuming the project is completed under CERCLA removal authority); and, 2) to complete Facility Transition in accordance with Section 8 of the Tri-Party Agreement.

Regulatory Strategy

It is RL's position that the most appropriate regulatory basis for revising Milestone M-34 of the Tri-Party Agreement is under the CERCLA. This conclusion is based upon the following:

RL has documented loss of water from the 105 K East Basin where spent nuclear fuel is being stored. Operational monitoring data has confirmed that the basin water was and is contaminated with concentrations of radionuclides which exceed public health and environmental protection standards established by the EPA for hazardous substances as defined by CERCLA. RL has acknowledged through its internal reporting requirements and to EPA's National Response Center that CERCLA hazardous substances (radionuclides) have been released to the environment at the 105 K East Basin.

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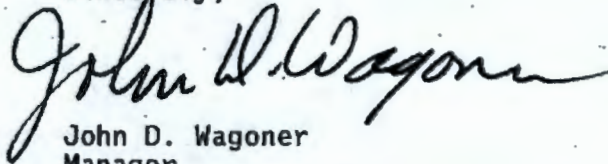
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RL, EPA, and Ecology are currently analyzing the feasibility of utilizing a CERCLA removal action as a regulatory vehicle under the Tri-Party Agreement for addressing spent nuclear fuel, sludge and debris, and water removal/remediation activities at Hanford K Basins. Should utilization of a removal action prove viable, RL agrees that the resulting Engineering Evaluation/Cost Analysis (EE/CA) will be reflective of and constrained by the parties' negotiated set of M-34 milestones.

I would appreciate your approval of the suspension and my specific request as documented at the top of page 2, items 1 and 2 by so indicating with your signature below. Should you have any questions on this matter, please contact me or your staff may contact Beth Sellers of the Spent Nuclear Fuels Project Division on (509) 376-7465.

Sincerely,



John D. Wagoner
Manager

EAP:FRM

Attachment

Approved:

Mary Riveland, Director
State of Washington
Department of Ecology

Date

Chuck Clarke, Regional Administrator
U.S. Environmental Protection Agency
Region X

Date

cc: Larry Arnold, FDH
Mary Lou Blazek, ODOE
Bill Burke, CTUIR
Russell Jim, YIN
Kevin Oates, EPA
Donna Powaukee, Nez Perce
Marilyn Reeves, HAB
Dan Silver, Ecology
Randy Smith, EPA
Nancy Williams, FDH
Mike Wilson, Ecology