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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

1315 W. 4th Avenue • Kennewick, Washington 99336-6018 • (509) 735-7581

January 12, 2000

Mr. Keith Klein
United States Department of Energy
P.O. Box 550, MSIN: A7-50
Richland, Washington 99352

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EDMC

Mr. Michael Hughes
Bechtel Hanford Incorporated
3350 George Washington Way
Richland, Washington 99352

Dear Messrs. Klein and Hughes:

Re: Notice of Denial of Application from Relief
from Penalty #99NWPKW-21 and #99NWPKW-22.

On November 17, 1999, the Washington State Department of Ecology (Ecology) issued a penalty of \$9,700.00, jointly and severally, to the United States Department Of Energy (USDOE – penalty docket #99NWPKW-21) and Bechtel Hanford incorporated (BHI – penalty docket #99NWPKW-22), under the provisions of the Revised Code of Washington (RCW) 70.105.080. The penalty was assessed due to failure of the USDOE and BHI to adequately designate waste stored in the 271-U 90-day accumulation area prior to disposal in the Environmental Remediation Disposal Facility (ERDF).

In accordance with the procedures set forth in RCW 43.21B.300, the USDOE and BHI were provided the following options:

- 1) paying the fine as assessed;
- 2) submitting an Application for Relief from Penalty; or
- 3) appealing the penalty to the Pollution Control Hearings Board.

The USDOE and BHI have requested cancellation of the penalty in a joint Application for Relief dated December 1, 1999. According to RCW 43.21B.300, Ecology is to, "... remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty."

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After considering the information provided in your joint Application for Relief, Ecology herein formally denies relief from Penalty #99NWPKW-21/#99NWPKW-22 for the reasons stated below. USDOE and/or BHI may appeal this determination to the Pollution Control Hearings Board per RCW 43.21B.300 within thirty (30) days of receipt of this notice, or pay the penalty in full within thirty (30) days of receipt of this notice.

In your December 1st Application for Relief you asserted that a Notice of Violation (NOV) received by you on November 17, 1999, from the United States Environmental Protection Agency (EPA) and Ecology, was "new information" that should be considered regarding the penalty issued solely by Ecology under separate cover on the same date. You further assert that Ecology's penalty for failing to designate the waste in the 271-U 90-day area is "substantially identical to the second violation . . . in the joint EPA and Ecology NOV." Your Application for Relief states that the second violation cited in the joint EPA/Ecology NOV was, "failure to sample the waste in accordance with the Sampling and Analysis Plan (SAP) for the 221-U Facility, but instead relying on process knowledge to make a waste designation."

The violation in the joint EPA/Ecology letter addresses the failure of the USDOE and BHI to sample for specific constituents as required in the 221-U SAP pursuant to Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) management practices established at the 221-U area. Ecology and the EPA share joint lead on this CERCLA facility, thus the joint letter from both agencies on the failure to sample waste produced in the area. This violation is subject to stipulated CERCLA penalties as defined in Article XX, paragraph 72 of the Tri-Party Agreement (TPA) and will be administered solely by the EPA.

Ecology's Notice of Penalty addresses the failure of the USDOE and BHI to designate the waste prior to disposal, as required by Ecology's Dangerous Waste Regulations within Washington State's Administrative Code (WAC) Chapter 173-303, as promulgated from Washington State's Hazardous Waste Management Act, Chapter 70.105 RCW. As stated above the NOV was issued for failure to sample for specific constituents per the 221-U SAP. The two (2) activities satisfy different waste management requirements under different regulatory authorities, and are performed for different purposes. Therefore, the two (2) violations are not "substantially identical" as you claim.

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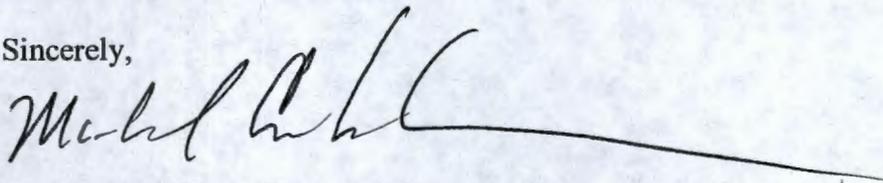
You are in error regarding your statement that the CERCLA violation in the EPA/Ecology NOV was for, "... relying on process knowledge to make a waste designation." The requirement for sampling waste per the 221-U SAP is not to designate waste, rather it is to confirm that adequate knowledge of the waste is acquired for safe management while within a CERCLA unit. Designation per the WAC is required prior to disposal of the waste.

Your assertion that the EPA/Ecology NOV was "new information" that should be considered regarding the penalty assessment issued solely by Ecology is also without merit. Ecology, as a signatory on the joint EPA/Ecology NOV, was clearly aware of the citations in the NOV when developing its penalty, which was issued concurrently with the NOV.

For the foregoing reasons, Ecology concludes that the USDOE and BHI have not demonstrated extraordinary circumstances which justify relief from the penalty. Accordingly, your Application for Relief is hereby denied.

If you have any questions regarding the information presented in this letter, please call Bob Wilson at (509) 736-3031.

Sincerely,



Michael A. Wilson, Program Manager
Nuclear Waste Program

MAW:RW:ld

cc: Mary Lou Blazek, OOE
Administrative Record