START

0024457

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

93-RPB-009

OCT 2 2 1992

Mr. David B. Jansen, P.E.
Hanford Project Manager
State of Washington
Department of Ecology
Post Office Box 47600
Olympia, Washington 98504-7600

Dear Mr. Jansen:

REQUEST FOR WITHDRAWAL OF THE 303-M OXIDE FACILITY PART A PERMIT APPLICATION

Reference: (1) Letter, D. B. Jansen, Ecology, to S. H. Wisness, RL, "Request for Withdrawal of 303-M Oxide Facility Part A Permit Application (M-20-30)," dated September 30, 1992. - 0025830

(2) Letter, R. D. Izatt, RL, and R. E. Lerch, WHC, to D. B. Jansen, Ecology, "Request for Withdrawal of the 303-M Oxide Facility Permit Application," 92-RPB-149, dated August 31, 1992. - 0024456

The purpose of this letter is to formally respond to Reference 1, wherein the State of Washington Department of Ecology (Ecology) denied approval to withdraw the 303-M Oxide Facility Part A Permit Application. Pursuant to the Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement), the U.S. Department of Energy, Richland Field Office (RL) is notifying you that RL objects to this determination. RL hereby invokes its rights under Tri-Party Agreement Article VIII, Paragraph 29, RESOLUTION OF DISPUTES.

By letter dated September 30, 1992, (received by RL on October 6, 1992) Ecology formally notified RL of their intention to deny RL's request to withdraw the 303-M Oxide Facility Part A Permit Application. RL objects to that decision, and the reasons and the bases upon which that determination was made and is so notifying Ecology within the time allocated by the Tri-Party Agreement. RL desires to attempt to promptly resolve this dispute informally. Towards this end, RL is requesting a meeting with Ecology to discuss this matter by October 30, 1992. The following paragraphs provide supporting information justifying RL's request for withdrawal of the 303-M Oxide Facility Part A Permit Application.

As discussed in Reference 2, the U.S. Environmental Protection Agency (EPA) issued a notice on July 3, 1986, specifying "That in order to obtain and maintain authorization to administer and enforce a hazardous waste program under Subtitle C of the Resource Conservation and Recovery Act (RCRA), States must apply for authorization to regulate the hazardous components of radioactive mixed waste as hazardous waste." In addition, EPA issued a clarification notice on September 23, 1988, regarding interim status for

9312890077

NOV 1992
RECEIVED
EDMC

facilities that manage radioactive mixed waste (53 Federal Register 37045). This Federal Register notice specifies the following:

> "Facilities treating, storing, or disposing of radioactive mixed waste but not other hazardous waste in a State with base program authorization are not subject to RCRA regulation until the State program is revised and authorized to issue RCRA permits for radioactive mixed waste. The effective date of the State's receipt of radioactive mixed waste regulatory authorization from EPA will therefore be the regulatory change that subjects these treatment, storage, or disposal facilities to RCRA permitting requirements."

In order to receive such authorization, it was necessary for the State of Washington to amend its hazardous waste laws to regulate the non-radioactive dangerous waste component of radioactive mixed waste. A statutory change in state law was not effective until July 26, 1987, when Chapter 488, Laws of 1987, 50th Legislature, became effective. Until that date, waste that was radioactive was statutorily excluded from the dangerous waste program pursuant to the definition of dangerous waste at RCW 70.105.010(5). The Tri-Party Agreement, of course, reflects that as of the date of signing the Tri-Party Agreement, state law had been amended and provided for regulation of the dangerous component of radioactive mixed waste. The fifth bullet on page 1-2 of the Action Plan indicates that state law was amended in the summer of 1987 and Ecology received authorization for its radioactive mixed waste program from EPA effective November 23, 1987. Ecology's denial letter fails to recognize the statutory amendments that were made to state law in order to regulate the dangerous component of mixed waste and that these changes were not effective until after use of the 303-M Oxide Facility ended.

We are particularly concerned that Ecology's September 30, 1992, letter suggests it is "counterproductive" for RL to raise an issue of this nature. Our experience with RCRA closure plans indicates that preparation of the closure plan document itself, up to the point of its final acceptance by Ecology, will cost RL a minimum of a quarter of a million dollars in addition to whatever costs are incurred by Ecology. These paperwork costs will, of course, not move the Hanford Site any closer to cleanup.

In addition, performing two separate remedial activities for this area is neither cost effective nor does it provide additional protection of human health or the environment. As discussed in Reference 2, the 303-M Oxide Facility ceased operation in February 1987, far earlier than the time when changes in state law and RCRA authorization made non-radioactive components of radioactive mixed waste subject to state regulation. Further, it was used solely for the management of radioactively contaminated ignitable zirconium metal, which was packaged for recycling and then removed from the facility. This facility does not pose a threat to human health or the environment in its current configuration.

9312890078

Finally, clean closure of this facility would be complicated because it is located on top of Burial Ground 618-1. Therefore, it would seem appropriate to use the opportunity provided by state and federal law to perform final cleanup actions in accordance with the Comprehensive Environmental Response, Compensation and Liability Act remedial action process. Any residual contamination derived from this facility would be addressed as part of the record of decision for the associated operable unit.

We hope you understand and share our goal of effectuating Hanford cleanup in a cost-effective manner rather than requiring costly paper studies that are not required by applicable law. We see this as an opportunity where Ecology, EPA and RL can demonstrate to the public our interest in performing cleanup in a cost-effective and legally appropriate manner. Should you have any questions regarding this transmittal, please contact either Mr. S. H. Wisness or Mr. J. E. Rasmussen of my staff on (509) 376-6798 or (509) 376-5441 respectively.

Sincerely,

James D Bauer

James D. Bauer, Acting Program Manager
Office of Environmental Assurance,
Permits, and Policy
DOE Richland Field Office

EAP:RNK

for

R. E. Lerch, Deputy Director
Restoration and Remediation
Westinghouse Hanford Company

cc: P. T. Day, EPA
R. E. Lerch, WHC
D. C. Nylander, Ecology
N. Pierce, Ecology

9 1 2 8 9 0 7 9