



0058931

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

03-RCA-0157

FEB 25 2003

Mr. Michael A. Wilson, Program Manager  
Nuclear Waste Program  
State of Washington  
Department of Ecology  
1315 W. Fourth Avenue  
Kennewick, Washington 99336

RECEIVED  
MAR 17 2003  
EDMC

Dear Mr. Wilson:

**NOTIFICATION OF STATUS OF FAST FLUX TEST FACILITY (FFTF) LITIGATION-  
POTENTIAL IMPACT UPON HANFORD FEDERAL FACILITY AGREEMENT AND  
CONSENT ORDER (TRI-PARTY AGREEMENT) MILESTONES**

The U.S. Department of Energy (DOE) and the State of Washington Department of Ecology (Ecology) have been addressing changes to the milestones set forth in the Tri-Party Agreement relating to deactivation of the FFTF (Milestone Series M-81). As you are aware, in November of 2002, the County of Benton, State of Washington, filed suit against the United States, seeking to enjoin DOE from proceeding with the deactivation activities. This letter is written to apprise you of the current status of the litigation and to provide notice that should the litigation not be favorably resolved in the short term, DOE will not be able to perform on the schedule contained in the proposed revised M-81 series milestones.

At the time the lawsuit was filed, representatives of DOE contacted those members of the State of Washington Attorney General's office who work with Ecology on Tri-Party Agreement matters and advised them of the lawsuit, DOE plans to seek a speedy resolution of the matter, and the potential for the litigation to impact the ability of DOE to move forward with deactivation of the FFTF on the schedule that is contained in the proposed revised M-81 series of milestones. We have proceeded in the manner discussed with the Attorney General's office and we are hopeful that a favorable summary judgment decision will be rendered in a timeframe that will allow DOE to meet the proposed milestone schedules.

DOE has taken appropriate steps to seek a prompt resolution of the matter. In order to allow the parties and the Court to focus their efforts upon a final resolution of the case, DOE agreed to maintain the status quo of the facility until March 12, 2003, by placing a hold upon activities that could be reasonably expected to degrade the physical condition of the FFTF so as to adversely affect the ability of the facility to be restarted, including but not limited to, draining of the

FEB 25 2003

coolant systems. DOE negotiated and agreed with the plaintiff to propose to the Court an expedited briefing schedule for cross motions for summary judgment. The Court accepted that schedule and it has set oral argument for February 25, 2003.

We are hopeful that the Court will issue a favorable decision that will allow DOE to meet the schedule for deactivation activities that are contained in the proposed revised milestones. The Court, *sua sponte*, directed DOE to maintain the status quo until the Court issues its decision. If the decision is not issued by March 12, 2003, or if DOE is required by the Court to maintain the hold on deactivation activities after that date, DOE may be unable to perform the milestone work by the required milestone dates. This letter provides early notification to Ecology that such an event would be a force majeure as set forth in Article XLVII of the Tri-Party Agreement, paragraph 145 D, and DOE would seek an extension of affected milestones pursuant to Paragraph XL of the Tri-Party Agreement.

We remain committed to seeking to meet the proposed revised M-81 series milestone dates and do not believe it is necessary to modify the proposed revised milestones at this time. We will advise you if the Court's order is not lifted by March 12, 2003, and in that event, will thereafter make a request for a revision of milestone dates when sufficient information is available.

If you have any questions, please contact Dale Jackson, of my staff, on (509) 376-8086.

Sincerely,



Joel Hebdon, Director  
Regulatory Compliance and Analysis Division

RCA:DEJ

cc: R. Bond, Ecology  
N. Ceto, EPA  
R. Gay, CTUIR  
J. S. Hertz, FHI  
R. Jim, YN  
O. S. Kramer, FHI  
T. M. Martin, HAB  
E. J. Murphy-Fitch, FHI  
K. Niles, Oregon Energy  
P. Sobotta, NPT  
R. F. Stanley, Ecology  
D. A. Isom, Admin Record, H6-08