Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

October 10, 2011

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Subject: Review of the "Environmental Assessment for Closure of the Non-Radioactive Dangerous Waste Landfill (NRDWL) and Solid Waste Landfill (SWL), Hanford Site, Richland, Washington DOE/EA-1707D, Revised Pre-decisional Draft"

Dear Messrs. Dowell, Russell and Leary,

The Yakama Nation ERWM Program appreciates the opportunity to review and provide comments on the "Environmental Assessment for Closure of the Non-Radioactive Dangerous Waste Landfill (NRDWL) and Solid Waste Landfill (SWL), Hanford Site, Richland, Washington DOE/EA-1707D, Revised Pre-decisional Draft."

The Confederated Tribes and Bands of the Yakama Nation is a federally recognized sovereign pursuant of the Treaty of June 9, 1855 made with the United States of America (12 Stat. 951). The U.S. Department of Energy's Hanford site was developed on land ceded by the Yakama Nation under the 1855 Treaty with the United States. The Yakama Nation retains reserved rights to this land under the Treaty.

In our review of the Interim Action Environmental Assessment (EA) for Closures of the Non-Radioactive Dangerous Waste Landfill (NRDWL) and Solid Waste Landfill (SWL), DOE/EA-1707D, the Yakama Nation ERWM Program has identified the following areas of concern and requests clarification and discussion. This letter in no way is meant to limit our ongoing participation and future concerns as the review process continues.

- **Purpose and Need for Agency Action:** We understand the proposed use of Borrow Area C soils is to provide an Evapo-Transpiration (ET) barrier over the contaminated waste storage area known as NonRadioactive Dangerous Waste Landfill (NRDWL) and Solid Waste Landfill (SWL). As the engineering report for the cover design and the

closure plan are not complete, allocation of this soil seems premature. Particularly as there is a Tri-Party Agency planned workshop to discuss barrier design, etc. planned in the near term. Furthermore, reference to submitted, yet unapproved, closure plans to Ecology is not a defensible reason for limited evaluations.

- **Alternatives Considered but Not Analyzed in Detail: Section 2.3:** There is not sufficient detail provided to support ruling out these alternatives. Statements that mobile contaminates placed in NRDWL/SWL now have no substantial quantity of solid source materials or have migrated into the deeper vadose zone or groundwater or would be secured in place with an ET barrier implies the proposed *Complete to RHD Alternative* is frivolous and biases the selection of alternatives. We continue to support selective removal of contaminants from NRDWL, based on an observational approach, (with disposal in RCRA compliant disposal facility (i.e., a lined, monitored facility).
    a. Alternatives that would avoid the increased disturbance to Borrow Area C and the associated cultural impacts should have been thoroughly evaluated and documented in this EA and were not. Statements to commitments for future NEPA actions do not replace obligations to evaluate all reasonable alternatives per CERCLA requirements.
    b. The proposed actions within the scope of this draft Environmental Assessment include use of Borrow Area C soils; postponing the analysis of Borrow Area C and other borrow sources reduces the transparency, credibility, and completeness of the NEPA review.

- **Over-reliance on the Draft TC&WM EIS:** While the EA indicates that the proposed actions analyzed are "within the scope of the *Draft Tank Closure and Waste Management Environmental Impact Statement for the Hanford Site, Richland, Washington* (TC&WM EIS)," the TC&WM EIS does not evaluate these currently proposed actions in sufficient detail. Asserting that any ROD based on the final TC&WM EIS analyses provides DOE with the opportunity to address any further mitigation concerns that may be associated with implementing the preferred alternatives(s) or the closure activities proposed in this EA is presumptuous. This EA should contain sufficient information to make a finding (i.e. Finding of No Significant Impact, or a Finding of Significant Impact) regarding all specific impacts of this proposal (including the groundwater pathway).

- **Incomplete cover design:** Information provided in Figure 2-2 and Page 2-1 is a gross over-simplification, and at best, considered a basis of design. The statement that proposed closure and postclosure activities have been addressed in the NRDWL/SWL Closure Plan (DOE/RL-90-17, Rev. 2) is insufficient to allow a thorough review of impacts [ex. Calculations of soil volumes]. Compliance with Dangerous Waste Closure requirements and suggestion of future possible installation of equipment as appropriate in accordance with final closure plan requirements is insufficient detail to meet EA needs to provide an analytical basis for determining choice of alternatives. The aforementioned plan should be available for review and all activities evaluated in this EA. The YN ERWM Program previously identified concerns which have yet to be address. These concerns remain valid. *[7/9/2010, David Brockman/DOE/RL].*

- **Compliance with Other Laws:** Prior to any permitting actions, a State Environmental Policy Act (SEPA) checklist must be submitted, reviewed, and a determination made. It does not appear that information currently provided in this EA will suffice as a basis for a SEPA determination. Additionally, while the TPA does include agreements on how the

permitting process will be carried out, any TPA discussions should be considered implementation details within the regulatory framework and requirements of the dangerous waste rules. The TPA does not establish any particular regulatory authority or obligation that does not otherwise have a basis in the dangerous waste rule.

- **Predisposition Future Cleanup Decisions:**

    a. **Institutional Controls**: It is stated that DOE does not anticipate the proposed closure activities would prejudice its decision or limit its ability to select from among the proposed actions being evaluated in the TC&WM EIS, for closure of the single-shell tank farms, etc. This seems in direct conflict with previous and continued statements to the effect of use of Borrow Area C soils for barriers throughout the Central Plateau [ex., References to current applicability of the HSW EIS, HSW EIS analysis of the operation of Area C borrow pits with approximately 70 pits excavated over 12 plus years of the sites operation]. Hanford Advisory Board (HAB) Advise #174 (Considerations for Barrier Application) notes "engineered barriers should not be considered permanent. Risk assessments should examine the magnitude of barrier failure, the likelihood of failed Institutional Controls, and the resulting consequences to human health and the environment." YN ERWM supports a more conventional and mature approach to remediating subsurface contamination which permanently removes contamination from the site and does not require long term maintenance or monitoring or use of institutional controls for extended periods.

- **Cultural Resources, Significance of Impacts, and Appendix B (Final Proposed Amended Memorandum of Agreement – MOA-2):** The YN ERWM Program notes the following:

    a) Use of Borrow Area C: At the April 28, 2011 meeting the Yakama Nation Environmental Restoration/Waste Management (YN ER/WM) staff made it clear the Yakama Nation (YN) could not support any disturbance to the Borrow Area C site. Although current correspondence recognizes YN concerns, this EA document clearly suggests the Borrow Area C as a viable option and even preferred. This EA states a "new NEPA review will be conducted to analyze impacts of using Borrow Area C and other borrow areas located on the Hanford site." To determine if an undertaking may adversely affect the cultural significance of an area, you must consult with the people who place traditional value on the area. The Borrow Area C overlaps the boundary of the Laliik traditional cultural property (TCP), and the proposed area of disturbance lies within the TCP boundary, a place very sacred to the YN and the Washani community. The YN does not require a NEPA review to know the project will have a negative irreversible impact to the TCP, and has stated verbally and in written form the proposed undertaking will "adversely affect" [as defined in 36CFR800.5(2)] the Laliik TCP. It is not possible to mitigate the adverse effects resulting from this type of undertaking. Laliik must be preserved in accordance with the National Historic Preservation Act, Section 110(a)(2)(B). Adverse effects to the physical integrity of the TCP should be avoided, as stated in Executive Order 13007. YN ER/WM requests Borrow Area C be deleted from the list of options in the new NEPA review. We look forward to further consultation where we can look at other borrow material sources.

b) Provisions for land-use designations "amendments" were included in the Amended Record of Decision for the Hanford Comprehensive Land-Use Plan Environmental Impact Statement.

> "In keeping with DOE's commitments in the HCP EIS Chapter 6, and current NEPA guidance (refer to Section 1.0), it is expected that another SA for the HCP EIS would occur in approximately five years. That period could be shorter if (a) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (b) there are significant new circumstances or information relevant to environmental concerns bearing on the proposed action or its impacts."[1]

The Designation of Rattlesnake Mountain as a Traditional Cultural Property (TCP) cannot be seen as anything other than new circumstances and information, relative to plans and information that existed when the CLUP was adopted in 1999. The YN ERWM Program has voiced its opposition to use of the CLUP in remediation of the Hanford Site. [6/30/1998, John Wagoner/DOE/RL].

The Yakama Nation ERWM Program looks forward to dialog on these concerns and comments. If you have any questions please contact Russell Jim at (509) 945-6741, or Wade Riggsbee (509) 945-6756 or (509) 967-5375.

Sincerely,

Russell Jim
Yakama Nation
ERWM Program Manager

cc: Dennis Faulk, UPEPA
Jane Hedges, WA Ecology
Ken Niles, Oregon Dept of Energy
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Gabriel Bohnee, NPT
Marlene Shavehead, Yakama Nation ERWM
Dave Rowland, Yakama Nation ERWM
Jean Vanni, Yakama Nation ERWM
John Beckstrom, Yakama Nation ERWM
Administrative Record

[1] Final HCP EIS, Section 1.3; Comment Response *CR-53] [DOE Amended Record of Decision for the Hanford Comprehensive Land-Use Plan Environmental Impact Statement – 6450-01-P].*