UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON, Plaintiff, v. STEVEN CHU, Secretary of the United States Department of Energy, and the UNITED STATES DEPARTMENT OF ENERGY, Defendants. STATE OF OREGON, Intervenor.	Civil Action No. 08-5085-FVS CONSENT DECREE BETWEEN DEFENDANTS SECRETARY OF ENERGY STEVEN CHU AND THE U.S. DEPARTMENT OF ENERGY AND INTERVENOR STATE OF OREGON

WHEREAS, the State of Oregon has intervened in the above-captioned case and alleged that Defendants Secretary of Energy Steven Chu and the United States Department of Energy (collectively DOE) have violated certain provisions of the Hanford Federal Facility Agreement and Consent Order (HFFACO);

WHEREAS, the State of Oregon contends that it has an interest in this matter, and in the resolution of the claims brought by the State of Washington, to protect the public health and environment in Oregon;

WHEREAS, this Consent Decree is separate from the Consent Decree in this case between DOE and the State of Washington on behalf of the Washington Department of Ecology (Ecology) in this case, and is entered in respect to Oregon's role as a neighboring State intervenor;

WHEREAS, Oregon and DOE (the Parties) wish to resolve Oregon's claims in intervention without litigation and have, therefore, agreed to entry of this Consent Decree without adjudication of any issues of fact or law contained herein. This Decree is filed to resolve litigation, solely for the matters covered by this Decree, between Oregon and DOE;

NOW THEREFORE, it is hereby ordered, adjudged, and decreed as follows:

1. The Court has jurisdiction over the subject matter and the Parties to this Decree. Venue is proper in the United States District Court for the Eastern District of Washington.

2. This Decree applies to and is binding upon DOE and the State of Oregon. DOE remains obligated by this Decree regardless of whether it carries out the terms through agents, contractors, and/or consultants. This Decree neither applies to nor is binding upon any other agency of the United States.

3. DOE shall, on a semi-annual basis, submit to Oregon, on the same day that it submits to Ecology, a written report documenting waste treatment plant (WTP) construction and startup activities and tank retrieval activities at Hanford that occurred during the period covered by the report. This written report shall provide the status of progress made during the reporting period and shall include:

a. A brief description of project accomplishments and project issues encountered during the reporting period and/or expected in the next six (6) months;

b. A definitive statement describing whether or not DOE has complied

with milestones that have already come due as of the date of the report, and how any missed milestones may affect compliance with other milestones;

c. Where applicable, a description of actions initiated or otherwise taken to address any schedule slippage;

d. Budget/cost status; and

e. Copies of written directives given by DOE to the contractors for work required by the Decree entered in this case between DOE and Ecology, if requested by Oregon.

4. DOE shall, on a monthly basis, submit to Oregon, on the same day that it submits to Ecology, a written summary report (*e.g.*, approximately 10 to 15 pages in length) documenting WTP construction and startup activities and tank retrieval activities covered by the Decree entered between DOE and Ecology in this case. The monthly report shall address: (a) cost and schedule performance (earned value management system graphs) for each major activity; (b) significant accomplishments during the prior month; and (c) significant planned activities for the next month.

5. In the event DOE determines that a serious risk has arisen that DOE may be unable to meet a schedule as required in Section IV of the Consent Decree entered in this case between DOE and Ecology, DOE shall notify Oregon, on the same day that it notifies Ecology.

6. Absent exigent circumstances, no less than 10 days before DOE files in the Court a motion or petition to modify, or to request judicial dispute resolution

under, the Consent Decree entered between DOE and Ecology in this case, DOE shall provide Oregon with notice of DOE's intent to file such a motion or request and the intended nature of that motion or request.

7. The Consent Decree between DOE and Ecology requires those parties to meet periodically in intervals of approximately three years to review the requirements of that Consent Decree and to discuss any circumstances that may necessitate the reconsideration of and/or modification to the outstanding requirements of that Decree. DOE agrees to provide Oregon with notice of these meetings no less than 30 days before they are scheduled to occur, and Oregon representatives may attend to observe such meetings. Such permission to attend shall not vest Oregon with any rights as a party to those proceedings. Oregon's unavailability after reasonable notice shall not require the delay or rescheduling of such meetings.

8. No provision of this Decree shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, to the extent applicable.

9. This Decree resolves all claims that have been raised by Oregon in its complaint in intervention or any other legal claims that could have been raised by Oregon based upon the facts alleged that form the basis for the claims in Oregon's complaint in intervention, including that DOE has violated or will violate the requirements of the HFFACO (as the HFFACO existed on April 3, 2009), the

Washington State Hazardous Waste Management Act or the Resource Conservation and Recovery Act. Except to enforce the requirement of this Decree, Oregon hereby covenants not to bring any civil, judicial, or administrative enforcement action against DOE, its officials or employees, or its contractors or their subcontractors, their officials, or employees, with respect to such claims.

10. This Court retains jurisdiction to enforce the terms of this Decree.

11. After entry of the Decree by the Court, the Parties intend to resolve the State's claim for costs of litigation (including reasonable attorney and expert witness fees) under 42 U.S.C. § 6972(e). In the event the Parties are unable to reach agreement as to that claim, the State reserves the right to file an application with the Court for such costs.

12. This Consent Decree shall be effective upon the date of its entry and of the entry of the Consent Decree between DOE and Ecology by the Court.

13. This Consent Decree shall terminate when the Consent Decree entered between DOE and Ecology has been terminated.

DATED this 25th day of October, 2010.

s/ Fred Van Sickle
United States District Judge

FOR DEFENDANTS SECRETARY OF ENERGY STEVEN CHU and the UNITED STATES DEPARTMENT OF ENERGY

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