



U.S. Department of Justice

Environment and Natural Resources Division

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August 10, 2009

Mary Sue Wilson
Sr. Assistant Attorney General
Andrew Fitz
Assistant Attorney General
Attorney General of Washington
Ecology Division
PO Box 40117
Olympia, WA 98504-0117

Re: State of Washington v. DOE, No. 08-5085-FVS (E.D. Wa.)

Dear Ms. Wilson and Mr. Fitz:

I write to confirm the agreement between the State of Washington (State) and the United States Department of Energy and Secretary of Energy Chu (collectively DOE), hereinafter the Parties, as embodied in this letter.

1. Consent Decree Entry

A proposed Consent Decree is attached to this letter. The Parties will lodge the proposed Consent Decree with the Court in this case by August 11, 2009, and submit the proposed Consent Decree for a 45-day public comment period, to run from September 24, 2009 to November 9, 2009. Once lodged, either Party may provide copies of the proposed Consent Decree to any member of the public in advance of the formal comment period. Each Party will share with the other any written comments received during the formal comment period. Signature and entry of the Consent Decree will be subject to public comment to the Parties.

Upon the satisfactory completion of this notice and comment process and publication of the Draft Environmental Impact Statement described below, the Parties will sign the proposed Consent Decree and modifications to the Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement (TPA)) described below, and jointly request that the Court enter the proposed Consent Decree. Before making such a request, DOE will have published its Draft Tank Closure and Waste Management Environmental Impact Statement (Draft EIS) that includes, as an element of DOE's preferred alternative, limitations and exemptions on off-site

waste importation at Hanford until at least the Waste Treatment Plant is operational, as those limitations and exemptions are defined in DOE's January 6, 2006 Settlement Agreement with the State (as amended on June 5, 2008) regarding Washington v. Bodman, No. 2:03-cv-05018-AAM.

Upon completion of the public notice and comment process, and absent either party having a notice-and-comment based reason not to execute and request the Court to enter the proposed Consent Decree, the State will advise DOE in writing that it is ready to seek entry of the Consent Decree by the Court, using the following language:

By this letter, the State of Washington notifies DOE that applicable notice and comment processes have been completed and all conditions necessary for the State and DOE to jointly move the Court to enter the proposed Consent Decree in this case, as well as all conditions necessary for the State to execute certain proposed modifications to the Hanford Federal Facility Agreement and Consent Order, have been met, subject to the following sentence. The State will join DOE in moving for such entry, and execute such modifications, once DOE publishes its Draft Tank Closure and Waste Management Environmental Impact Statement that includes the element of the preferred alternative as described in the agreement between the Parties in the letter dated August 10, 2009.

If, after receipt of the above written statement by the State, DOE does not within a reasonable period complete and publish its Draft EIS that includes the element of the preferred alternative as described above, then the State may, after 30-day advance notice to DOE, withdraw its consent from the proposed Consent Decree. In the event of such withdrawal, the State will be free to resume litigation in this case. Further, if the modifications to the TPA described below are not executed, either party may withdraw its consent to the proposed Consent Decree.

Once the Consent Decree is lodged, the Parties will promptly file a joint motion to hold the case in abeyance, pending the execution and entry of the Consent Decree. In the event that the Court does not enter the Consent Decree or it is withdrawn from consideration for entry by the Court, the Parties will request that the Court adopt a modified schedule that extends each of the dates in the prior schedule by the period of time from the lodging of the Decree until either the Court does not enter the Decree or it is withdrawn from consideration for entry by the Court. Unless and until either the Court does not enter the Decree or the Decree is withdrawn from consideration for entry by the Court, the Parties will conduct their affairs in a manner consistent with the milestones in the proposed Consent Decree.

2. TPA Modifications

DOE will prepare proposed change packages based on the proposed modifications to the TPA contained in "Enclosure B," "Enclosure C," and "Enclosure E" attached to this letter. Contemporaneous with lodging of the Consent Decree in this case, the Parties will submit the proposed change packages for a 45-day public comment period, to run from September 24, 2009 to November 9, 2009. Final approval of the change packages by the three parties to the TPA (DOE, the United States Environmental Protection Agency, and the Washington Department of

Ecology) will be subject to public comment. Following conclusion of the public comment period, the three parties to the TPA will consider any comments received and make any appropriate changes. A response to comments document will be prepared and issued.

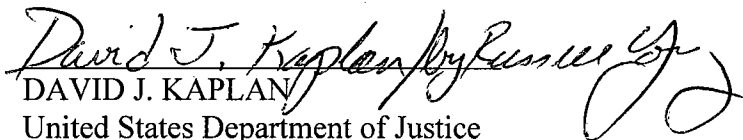
Upon the completion of these processes, and absent a notice-and-comment based reason not to execute the change packages, the Parties will simultaneously execute the proposed change packages and the proposed Consent Decree. The modifications become effective once the proposed Consent Decree is entered by the Court. In the event that the Court does not enter the proposed Consent Decree or it is withdrawn from consideration for entry by the Court, either DOE, EPA, or the State may withdraw their consent to the TPA modifications.

Prior to the TPA modifications taking effect, the Parties will conduct their affairs in a manner consistent with the requirements of the change packages, until those change packages either take effect or the proposed Consent Decree is withdrawn from consideration for entry by the Court.

We look forward to receiving written confirmation of the State's acceptance of the provisions of this letter.

Sincerely,

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment & Nat. Resources Div.


DAVID J. KAPLAN

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Attachments:

Proposed Consent Decree, including attachments
Proposed HFFACO modifications ("Enclosure B"; "Enclosure C"; "Enclosure E")

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

STEVEN CHU, Secretary of the
United States Department of
Energy, and the UNITED STATES
DEPARTMENT OF ENERGY,

Defendants.

NO. 08-5085-FVS

CONSENT DECREE

I. INTRODUCTION

WHEREAS, Plaintiff State of Washington, through its Department of Ecology (State or Ecology), has filed a complaint that alleges violations by Defendants Secretary of Energy Steven Chu and the United States Department of Energy (collectively DOE) of the Hanford Federal Facility Agreement and Consent Order (HFFACO) and regulations promulgated under the Hazardous Waste Management Act (HWMA), Chapter 70.105 Revised Code of Washington (RCW), such regulations which are authorized under the Resource Conservation and Recovery Act (RCRA) pursuant to 42 U.S.C. § 6926; and

WHEREAS, on May 15, 1989, DOE and Ecology entered into the HFFACO. The HFFACO establishes milestones for DOE to, among other matters, construct and operate a Waste Treatment Plant (WTP) to treat (vitrify)

1 all Hanford tank waste by December 31, 2028, and to complete waste retrieval
2 from 149 single-shell tanks (SSTs) by September 30, 2018; and

3 WHEREAS, the WTP is a highly complex facility and a number of
4 challenges in its construction have arisen since the HFFACO was signed. DOE
5 has previously requested and Ecology has agreed to a number of schedule
6 extensions using procedures specified in the HFFACO; and

7 WHEREAS, DOE is behind schedule with the WTP construction, having
8 not completed certain WTP-related HFFACO milestones, and requires
9 additional time beyond the schedule in the HFFACO as of April 3, 2009 to
10 complete WTP construction. To date, the WTP Complex is approximately 44%
11 constructed and 75% designed; and

12 WHEREAS, although DOE has completed retrieval of waste from seven
13 single-shell tanks, DOE is behind schedule with waste retrievals, having not
14 completed certain retrieval-related HFFACO milestones, and requires
15 additional time beyond the schedule in the HFFACO as of April 3, 2009 to
16 retrieve waste from all of Hanford's SSTs; and

17 WHEREAS, Ecology alleges that DOE's continued storage of land
18 disposal restricted tank waste, as well as the conditions of and continued storage
19 of waste in Hanford's SSTs, violate applicable regulations promulgated under
20 the HWMA and authorized under RCRA; and

21 WHEREAS, Ecology and DOE (the Parties) wish to resolve this action
22 without litigation and have, therefore, agreed to entry of this Consent Decree

1 without adjudication of any issues of fact or law contained herein. This Decree
2 is filed to resolve litigation, solely for the matters covered by this Decree,
3 between the State and DOE regarding certain milestones in the HFFACO and
4 alleged violations of those portions of the regulations which underlie these
5 milestones and portions of milestones in the HFFACO; and

6 WHEREAS, certain HFFACO modifications become effective
7 simultaneous with entry of this Decree, regarding matters not covered by this
8 Decree.

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

11 II. JURISDICTION

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

15 III. PARTIES BOUND

16 This Decree applies to and is binding upon the United States Department
17 of Energy, the State of Washington, Department of Ecology, and their
18 successors. DOE remains obligated by this Decree regardless of whether it
19 carries out the terms through agents, contractors, and/or consultants. This
20 Decree neither applies to nor is binding upon any other agency of the United
21 States. Nothing in this Consent Decree shall be construed to make any person
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1 or entity not executing this Consent Decree a third-party beneficiary to this
2 Consent Decree.

3 **IV. WORK TO BE PERFORMED AND SCHEDULE**

4 **A. Waste Treatment Plant (WTP) Construction and Startup.**

5 1. In accordance with Appendix A to this Decree, DOE shall achieve
6 “Hot Start of Waste Treatment Plant” by December 31, 2019, and achieve
7 “initial plant operations” of the WTP no later than December 31, 2022.

8 2. “Hot Start of Waste Treatment Plant” means the initiation of
9 simultaneous operation of the Pretreatment (PT) Facility, High-level Waste
10 (HLW) Facility and Low-activity Waste (LAW) Facility (including as needed
11 the operations of the Analytical Laboratory (LAB) and the Balance of
12 Facilities) treating Hanford tank wastes and producing a waste glass product.

13 3. “Initial plant operations” under this Decree is defined as, over a
14 rolling period of at least 3 months leading to the milestone date, operating the
15 WTP to produce high-level waste glass at an average rate of at least 4.2 Metric
16 Tons of Glass (MTG)/day, and low-activity waste glass at an average rate of at
17 least 21 MTG/day.

18 4. Each milestone set forth in Appendix A shall be completed by the
19 specified date for that milestone in Appendix A. In the event that the State
20 seeks to enforce an interim milestone in Appendix A, it shall be a defense to
21 such enforcement (such that failure to meet the interim milestone by that date
22 will not constitute a violation of the Consent Decree) if DOE demonstrates that

1 it will (a) complete the interim milestone as soon as practicable and (b)
2 notwithstanding the missed interim milestone date, achieve WTP hot start by
3 December 31, 2019, and initial plant operations of the WTP no later than
4 December 31, 2022, as required in paragraph 1 above.

5 **B. Single-shell Tank (SST) Waste Retrievals.**

6 1. In accordance with Appendix B, no later than September 30, 2014,
7 DOE shall complete retrieval of tank waste from the ten (10) remaining SSTs in
8 Waste Management Area C for which waste has not yet been retrieved.

9 2. In accordance with Appendix B, no later than December 31, 2022,
10 DOE shall complete retrieval of tank waste from nine (9) additional SSTs
11 selected by DOE.

12 3. For purposes of paragraph 2 above, the tanks shall be selected by
13 DOE after consultation with Ecology. The selected tanks shall include only 100
14 series tanks (excluding tank S-102), with consideration given to optimizing
15 WTP waste feed blending and addressing tanks that pose a high risk due to tank
16 contents, previous leaks, or the risk of future leaks. Once tanks have been
17 selected, DOE may substitute alternative tanks, but such substitution shall be
18 subject to the consultation and selection criteria of this paragraph.

19 4. a. At least 180 days before DOE plans to initiate the installation of
20 equipment for retrieval of waste from a tank or set of tanks covered by Section
21 IV-B of this Decree, DOE shall submit to Ecology, for its approval, a Tank
22

1 Waste Retrieval Work Plan (TWRWP) that sets out in a Part 1 and a Part 2 of
2 the TWRWP the information required in Part 1 and Part 2 of Appendix C.

3 The TWRWP shall be deemed approved if Ecology notifies DOE of its
4 approval or if 60 days have elapsed after the date DOE submitted the TWRWP
5 to Ecology and Ecology has not disapproved the TWRWP within that 60-day
6 period.

7 b. In the event of a disapproval by Ecology, within 30 days of such
8 disapproval, DOE shall submit a revised TWRWP for a tank or set of tanks
9 covered by Section IV-B of this Decree addressing Ecology's comments. If
10 DOE and Ecology cannot resolve the concern(s) raised by Ecology within 60
11 days of Ecology's initial disapproval, the Parties shall utilize Section IX of the
12 Decree and the Court shall resolve their dispute under Section IX of the Decree
13 regarding the disputed elements of Part 1 or Part 2 of the TWRWP. Once the
14 TWRWP is established for a tank or set of tanks covered by Section IV-B
15 (either by approval of Ecology or after dispute resolution by the Court under
16 Section IX of the Decree), DOE may start and carry out tank waste retrieval
17 activities for the tank(s) addressed by the TWRWP.

18 c. Notwithstanding the provisions of Section IX-C, any period of delay
19 in resolving a dispute regarding approval of a TWRWP beyond 180 days after
20 DOE submits a TWRWP for a tank or set of tanks covered by Section IV-B to
21 Ecology shall extend by a corresponding period the affected milestones in this
22 Decree, but only for that portion of time that this corresponding period extends

1 beyond the date DOE planned to initiate the installation of equipment for tank
2 waste retrieval from that tank or set of tanks covered by Section IV-B of the
3 Decree. For purposes of this paragraph, “affected milestones” are defined as
4 Section IV-B-1, Section IV-B-2, Milestone B-1 in Appendix B, Milestone B-3
5 in Appendix B, or Milestone B-4 in Appendix B, involving the tank or set of
6 tanks addressed in the TWRWP. Ecology may petition the Court to argue that
7 an extension under this default schedule adjustment should not apply due to the
8 delay in establishing a TWRWP (either by approval of Ecology or after dispute
9 resolution by the Court under Section IX of the Decree). In any such petition,
10 the Court should determine whether, notwithstanding the delay in establishing
11 the TWRWP, DOE can still meet the scheduled date in the affected milestones
12 by exercising reasonable diligence under the circumstances. The Court may
13 consider any allegation concerning whether DOE or the State failed to exercise
14 reasonable diligence in producing or reviewing the TWRWP and resolving any
15 disputes.

16 d. Nothing in paragraph 4 shall affect DOE’s right to relief under Section
17 VI, VII, VIII, and IX of the Decree, to the extent such relief would otherwise be
18 available.

19 5. When DOE completes retrieval of waste from a tank covered by this
20 Decree, DOE will submit to Ecology a written certification that DOE has
21 completed retrieval of that tank. For purposes of this Consent Decree,
22 “complete retrieval” means the retrieval of tank waste in accordance with Part 1

1 of Appendix C and with the retrieval technology/systems that were established
2 by Part 1 of the TWRWP either by approval of Ecology or after dispute
3 resolution by the Court under Section IX of the Decree.

4 **C. Reporting.**

5 1. Semi-Annual Reports. DOE shall, on a semi-annual basis, submit to
6 Ecology a written report documenting WTP construction and startup activities
7 and tank retrieval activities that occurred during the period covered by the
8 report. This written report shall provide the status of progress made during the
9 reporting period and shall include:

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

13 b. A definitive statement describing whether or not DOE has
14 complied with milestones that have already come due as of the date of
15 the report, and how any missed milestones may affect compliance with
16 other milestones;

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

19 d. Budget/cost status; and

20 e. Copies of written directives given by DOE to the contractors
21 for work required by this Decree.
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