Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

January 9, 2019

Theresa Kliczewski
U.S. Department of Energy
Office of Environmental Management
Office of Waste and Materials Management, EM-4.2
1000 Independence Avenue SW
Washington, DC 20585

RE: ***U.S. Department of Energy Interpretation of High-Level Radioactive Waste***
(Federal Register Vol. 83, No. 196, Wednesday, October 10, 2018)

Dear Ms. Kliczewski:

The Confederated Tribes and Bands of the Yakama Nation (Yakama Nation) hereby submits comments on the "U.S. Department of Energy (DOE) Interpretation of High-Level Radioactive Waste" (Federal Register Vol. 83, No. 196). In addition we also request a government-to-government consultation with you prior to DOE taking any final agency action based on this interpretive rule.

The Hanford Site, which is known to have an inventory of more untreated high-level waste (HLW) than any other DOE site, is located on Yakama treaty ceded lands. Hanford also has more transuranic (TRU) waste than other sites, over forty miles of trenches that contain wastes yet to be remediated, and multiple liquid waste discharge sites and cribs that contain wastes affected by this proposed new interpretation. When implemented the proposed interpretive rule will very likely result in more waste left at Hanford, and more HLW waste left in shallow disposal. This means less HLW treatment and less volume vitrified, and TRU waste left in the ground instead of packaged and transported to the Waste Isolation Pilot Plant (WIPP). Well over 1 million gallons in tank waste that have been discharged to the soil or spilled will not be treated to the standards currently required. HLW constituents in groundwater the flow to the Columbia River may be left untreated and held to a lower standard of clean-up.

Based on DOE's statements and prior actions, the Yakama Nation has good reason to fear that, if DOE unilaterally – and in conflict with the plain language of the Nuclear Waste Policy Act (NWPA) – redefines HLW, it will likely implement actions leaving such waste inappropriately in near soil surface landfills, contaminated soils, tanks, piping and equipment at Hanford. Such abandonment – even if coupled with caps – will likely lead to direct exposures and environmental contamination injuring the Yakama people, as Congress found when it directed that high-level radioactive wastes should be disposed deep underground. In the past, DOE has sought to abandon HLW, including pieces of Spent Nuclear Fuel in near surface landfills near the Columbia River (e.g., 100-B and C Reactor Areas, and 300 Area); high-level radioactive liquid wastes leaked or spilled during operation of high-level waste tanks; and high-level radioactive wastes remaining in pipelines and other equipment.

The concerns of the Yakama Nation are based on DOE repeatedly seeking to consider abandoning HLW in place. For example, in 2017, DOE considered a scenario in which it "closed" Hanford's 49 massive single shell high level waste tanks (most of which have leaked) with the waste remaining in them. This would violate the clear requirement of the NWPA that high level radioactive wastes must be disposed in deep geologic repositories. As we document in these comments, Congress made clear that these wastes are "high-level radioactive wastes" which must be removed; and that DOE has no authority to redefine what wastes are high-level radioactive wastes.

Furthermore, if DOE adopts this interpretation, it would throw into chaos the entire system agreed to in the Hanford Cleanup Federal Facility Agreement and Consent Order (Tri-Party Agreement or "TPA"). The separation and removal of "key radionuclides" is an essential element of that agreement for wastes to be removed from tanks, vitrified (solidified in a glass mixture) and either disposed in a deep geologic repository or reclassified in accordance with NRC interpretations and rules as waste incidental to reprocessing and disposed in Hanford's Integrated Disposal Facility (IDF), following "removal of key radionuclides." USDOE's proposed interpretation would eliminate any requirement to consider if "key radionuclides" have been removed from the 56 million gallons of deadly High Level Nuclear Wastes remaining in Hanford's tanks prior to near surface disposal in IDF.

USDOE seek to reclassify waste in two ways which are mutually exclusive. DOE lacks authority to do either under the specific language of the NWPA and Atomic Energy Act (AEA). DOE separately contends that it may reclassify wastes as "Waste Incidental to Reprocessing" (WIR) under Order 435.1. DOE has just concluded a comment period on its proposal to use this "WIR" to reclassify wastes remaining in Hanford's C-Farm High Level Waste tanks. Under the WIR process, USDOE must demonstrate that it has removed key radionuclides. It is clearly unable to meet these criteria, because the wastes have never been processed. Removal of 91 to 94% of the waste volume from a tank does not meet the criterial of removal of key radionuclides. Faced with this reality that it cannot meet its own criteria, DOE now wants to assert that it has unilateral authority to determine if the wastes in the tanks (or leaked from the tanks or in miles of piping) has ever been high-level radioactive waste. DOE lacks any statutory authority to either reclassify Hanford tank wastes under Order 435.1 or to do an end run around its own criteria by adopting the proposed interpretation of the definition of high-level waste. This latter and latest effort by DOE is clearly aimed at enabling DOE to determine that the wastes were never HLW at all.

History of HLW definition

Atomic Energy Act and Department of Energy Organization Act. The AEA was first enacted in 1946 with the establishment of the Atomic Energy Commission (AEC). The AEC was granted total authority over nuclear energy and scientific programs. In the 1960s, AEC's regulations became more rigorous with the establishment of radiation protection, nuclear safety, and environmental protection standards. In the early 1970s Congress noticed the AEC had too much control over the nuclear programs in the US, and desired to make changes.

In 1974, Congress passed the Energy Reorganization Act (ERA) abolishing the AEC and establishing the Energy Research and Development Administration (ERDA) with authority over

defense and non-civilian nuclear programs, and the Nuclear Regulatory Commission (NRC) with authority over civilian and commercial nuclear programs. In 1977, the Department of Energy Organization Act is enacted replacing the ERDA with a new Department of Energy.

10 CFR Part 50, Appendix F. The first regulatory definition of HLW was issued by the AEC in 1970. This definition was incorporated into 10 CFR Part 50, Appendix F, "Policy Relating to the Siting of Fuel Reprocessing Plants and Related Waste Management Facilities." Appendix F defined HLW as:

> Those aqueous wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuels.

The intent of the AEC was to "permanently removing these wastes from man's biological environment ... disposal in deep geologic formations."

Marine Protection, Research, and Sanctuaries Act. The first statutory definition of HLW appeared in the Marine Protection, Research, and Sanctuaries Act (also called the Marine Protection Act) of 1972. HLW was defined as:

> The aqueous waste resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated waste from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuels, or irradiated fuel from nuclear power reactors.

33 U.S.C. § 1402. The definitions in both of the AEA and Marine Protection Act focused on the source of waste, (i.e., material left after reprocessing, rather than the waste's constituents or radiological hazards).

West Valley Demonstration Project Act (WVDPA). In 1980, Congress provided another definition of HLW in the WVDPA, which defined HLW as:

> The high level radioactive waste which was produced by the reprocessing at the Center of spent nuclear fuel. Such term includes both liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste, and such other material as the NRC designates as HLW for the purposes of protecting the public health and safety.

P.L. 96-368, § 6(4).

10 CFR Part 60. In 1981, the NRC developed a definition of HLW as part of its promulgation of regulations for "Disposal of HLW in Geologic Repositories." NRC defined HLW as:

1. Irradiated reactor fuel,
2. Liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuel, and

3. Solids into which such liquid wastes have been converted.

10 CFR § 60.2.

Nuclear Waste Policy Act of 1982 (NWPA). The NWPA addressed the interim and final disposal of HLW and spent nuclear fuel and established the criteria for the national repository. The NWPA does not address storage of HLW, closure of waste facilities, or HLW treatment. It does provide the HLW definition that is currently being used by all federal agencies. The NWPA in § 2 defines HLW as:

(a) The highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fissions products in sufficient concentrations; and

(b) Other highly radioactive material that the NRC, consistent with existing law, determines by rule requires permanent isolation.

42 U.S.C. § 10101(12). In 1988, Congress amended the AEA of 1954 to define the term "HLW" adopting the same definition that was in the NWPA. P.L. 100-408; 42 U.S.C. § 2014(dd).

In 1987, the NRC issued an Advanced Notice of Proposed Rulemaking, "Definition of "High-Level Radioactive Waste." The NRC was looking at clarifying the definition of HLW in Clause A of the NWPA by (a) setting numerical limits to define "sufficient" concentrations to distinguish HLW from non-HLW or (b) define HLW to equate the waste in Clause A to what has been traditionally considered to be HLW under 10 CFR Part 50, Appendix F. In addition, the NRC considered how it should exercise its authority to define other material as HLW. As a result of differing views expressed in the comments the NRC received, they abandoned its effort to define numerically HLW and adopted the traditional approach.

Ronald W. Reagan National Defense Authorization Act of Fiscal Year 2005. Section 3116 of the NDAA for FY 2005 (Public Law 108-375) was the result of an effort by DOE to legislatively reverse a decision by the U.S. District Court for the District of Idaho in *NRDC v. Abraham*, 271 F. Supp.2d 1260, 1266 (D. Idaho 2003). Congress in this law provided as follows:

(a) IN GENERAL. – Notwithstanding the provisions of the NWPA of 1982, the requirements of section 202 of the Energy Reorganization Act of 1974, and other laws that define classes of radioactive waste, with respect to material stored at a DOE site at which activities are regulated by a covered State pursuant to approved closure plans or permits issued by the State, the term "high-level radioactive waste" does not include radioactive waste resulting from the reprocessing of spent nuclear fuel that the Secretary of Energy, in consultation with the NRC determines –

(1) Does not require permanent isolation in a deep geologic repository for spent fuel or high-level radioactive waste;

(2) Has had highly radioactive radionuclides removed to the maximum extent practical; and

(3) (A) Does not exceed concentration limits for Class C low-level waste as set out in section 61.55 of Title 10, Code of Federal Regulations, and will be disposed of [disposal requirements follow].

P.L. 108-375, § 3116(a). "Covered states" are defined in the statute as "The State of South Carolina" and "The State of Idaho." *Id.*, § 3116(d). A savings clause in the statute provides that, "Nothing in this section establishes any precedent or is binding on the State of Washington, the State of Oregon, or any other State not covered by subsection (d) for the management, storage, treatment, and disposition of radioactive and hazardous materials." *Id.*, § 3116(e)(2).

The definition of HLW under statutory construction principles

The goal in construing a statutory term, and the mission of any federal agency like DOE, is to determine and effectuate the intent of Congress. See *United States v. Am. Trucking Ass'ns, Inc.*, 310 U.S. 534, 542 (1940). In the NWPA, which now controls the disposal of DOE's inventory of HLW at Hanford, Congress' definition of "high-level radioactive waste" was not cut from whole cloth. Rather it was based on previous enactments with certain assumptions attached to them that can be used as guides for legislative intent. *See* WVDPA, P.L. 96-368, § 6(4).

The primary assumption is that "the" waste or "those" wastes from reprocessing of nuclear fuel are to be considered "high-level" (i.e., "highly radioactive") and nothing else. This choice by Congress and the NRC of definitive articles ("the" or "those") in their description of the waste in the relevant definitions should not be considered inadvertent under principles of statutory construction. See *American Bus. Ass'n v. Slater,* 231 F.3d 1, 4-5 (D.C. Cir. 2000) ("The definite article 'the' particularizes the subject which it precedes. It is a word of limitation as opposed to the indefinite or generalizing force of 'a' or 'an'"); see also *Freytag v. Commissioner,* 501 U.S. 868, 902 (1991) (Scalia, J., concurring) (contending that use of the definite article in the Constitution's conferral of appointment authority on "the Courts of Law" "obviously narrows the class of eligible 'Courts of Law' to those courts of law envisioned by the Constitution"). Examining the other definitions in the NWPA is illustrative of this principle; most of them use the indefinite articles "any" or "an" before the definitive terms – to clearly indicate that there may be others that are excepted from the statute. See, e.g., 42 U.S.C. § 10101(2) ("any" Indian tribe); § 10101(3) ("any" activity of the Secretary); § 10101(4) ("an" area). Congress also uses the definite article "the" in the NWPA definitions to indicate that there is only one such unitary entity or concept. See 42 U.S.C. § 10101(8) ("the" Department of Energy); § 10101(9) ("the" emplacement in a repository); 10101(34) ("the" storage facility).

Use of the definite article to qualify the term "highly radioactive material" indicates the clear assumption and intent of Congress that *the* waste resulting from reprocessing of nuclear fuel is "highly radioactive" and is therefore "high-level waste" for purposes of geologic disposal. This is why a reasonable person reading the statute would derive the plain meaning that the source of the waste – reprocessing – is the only criterion for geologic disposal under the first part of this definition. 42 U.S.C. § 10101(12)(a). Whether this should be true from a policy or empirical perspective is irrelevant; the plain meaning of the statute controls, whether DOE argues for the existence of "incidental waste" or not. See *United States Nat'l Bank of Oregon v. Independent*

Ins. Agents, 508 U.S. 439, 454 (1993) ("plain meaning must be enforced...and the meaning of a statute will typically heed the commands of its punctuation").

Congress' references to liquid and solid wastes in the first subsection of the NWPA definition do not, as DOE claims, leave the door open for exceptions to the source-based criterion. By the time the NWPA was enacted, Congress was assumed to understand that efforts to solidify liquid HLW for geologic disposal were already authorized by the recent WVDPA and subsequent NRC regulations. See 10 CFR § 60.2(3). The phrase "including....any solid material derived from such liquid waste that contains fissions products in sufficient concentrations" merely recognizes that any liquid waste converted into a solid through a treatment process (e.g., vitrification) prior to geologic disposal will also be considered HLW, as long as the previous concentration of radionuclides remains. The notion that DOE can simply anoint HLW as low-level waste before that treatment occurs is therefore not reasonably derived from a plain reading of the definition.

Congress' inclusion of subsection (b) of the HLW definition § 2(12) of the NWPA also militates in favor of an exclusively source-based criterion for geologic disposal in subsection (a). Subsection (b) grants the NRC some discretion under its recognized expertise to designate certain types of materials as HLW. 42 U.S.C. § 10101(12)(b). DOE's main obstacle in its interpretation of this definition is that if subsection (a) were not meant as a strictly source-based criterion, and indeed granted the agency some discretion to determine what "material" is "highly radioactive," there would be no need for NRC's opinion in subsection (b). See *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (a statute "should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant"). A reasonable person reading the phrase "other highly radioactive material that the NRC...determines by rule requires permanent isolation" would interpret those words as creating a discretionary "catch-all" exception to the rule in subsection (a) that "the highly radioactive material resulting from the reprocessing of spent nuclear fuel" is always considered HLW. Again this is consistent with Congress' previous enactment of the WVDPA, which had almost the exact same language. P.L. 96-368, § 6(4). Congress specified in the NWPA and AEA that only the NRC, not the Department of Energy, has the authority to determine which "(o)ther highly radioactive material" requires permanent isolation. See 42 U.S.C. § 10101(12); 42 U.S.C. § 2014(dd). Congress made no provision for, and did not grant any authority to DOE regarding interpreting or changing the scope of wastes which are "high-level radioactive waste" or requiring permanent disposal.

It is extremely unlikely that Congress would make an express choice for one agency to determine wastes for disposal in one provision, and at the same time only implicitly permit another agency to have similar authority in a closely related provision. The canon of *expressio unius est exclusio alterius* (the inclusion of one is the exclusion of others) should apply in this context. See, e.g., *Lamie v. United States Trustee,* 540 U.S. 526, 537 (2004) ("there is a basic difference between filling a gap left by Congress' silence and rewriting rules that Congress has affirmatively and specifically enacted"). Therefore the regulatory claim which DOE has been promoting for two decades – that Congress left a gap in the NWPA for the agency to fill in its AEA discretion – is simply unwarranted under this proper construction. If Congress had wanted to grant DOE the authority to separate out various types of waste from the reprocessing waste stream to avoid geologic disposal it would have done so expressly.

It is a fundamental standard for statutory interpretation that if Congress provides authority only for one agency to interpret a statute to expand the scope of the statutory definition, then other agencies (such as DOE) do not have authority to adopt rules or regulations to reduce that scope. See, e.g., *Chevron v. NRDC*, 467 U.S. 837 (1984). There is no gap for DOE to offer its own interpretation. Congress' intent is clear: by rule NRC may expand the scope of waste requiring permanent isolation, but neither DOE or NRC may reduce that scope.

The fact that there is no exception in the NWPA to the source-based rule, other than NRC's determination of what constitutes eligible waste, indicates quite clearly that DOE lacks any authority under any other statute to determine which waste is HLW and which is not. Congressional silence in this regard should hold substantial weight, because it is generally assumed that Congress will speak expressly and directly to major national issues like authority over HLW disposal. See *Whitman v. American Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001) ("Congress...does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions – it does not... hide elephants in mouseholes"). However, Congress did speak expressly and directly to what HLW is, and that very precise language should control. The U.S. District Court in *NRDC v. Abraham* stated this principle well, and it bears repeating for the record:

> The NWPA is neither silent, nor ambiguous on the classification of radioactive waste. The definitions section of the NWPA necessarily involves the manner in which the DOE should classify radioactive waste. *See* 42 U.S.C. § 10101(12). If Congress had intended to allow the DOE complete discretion as to the classification of radioactive waste for management purposes it is highly unlikely that it would have included the meaning of high-level waste in the NWPA's definitions section. *See id.* By defining a specific class of radioactive waste, i.e., high-level radioactive waste, Congress has issued a de facto limitation upon the DOE's authority to classify radioactive waste for management purposes.

NRDC v. Abraham, U.S. District Court No. CV-01-413-S-BLW (D. Idaho), Memorandum Decision and Order, August 9, 2002). Because the meaning of the NWPA definition of HLW is not ambiguous, DOE does not receive *Chevron* agency deference under the Administrative Procedure Act.

Aside from the plain meaning of the NWPA definition, Congress in the NDAA for FY2005 made its legislative intent even more clear. Subsequent legislation declaring the intent of an earlier statute "is entitled to great weight in statutory construction." *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 380-81 (1969). Other statutes may be expressly premised on a particular interpretation of an earlier statute; this interpretation may be given effect, especially if a contrary interpretation would render the amendments pointless or ineffectual. See *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 156 (2000) (because legislation restricting the advertising and labeling of tobacco products had been premised on an understanding that the FDA lacked jurisdiction over tobacco, Congress had "effectively ratified" that interpretation of FDA authority).

The language of § 3116 of the NDAA expressly grants DOE the authority to classify and exclude different types of waste from the NWPA and other statutory directives "notwithstanding the

provisions" of the "laws that define classes of radioactive waste." P.L. 108-375, § 3116(a). The provisions that follow this "notwithstanding" clause are the "waste incidental to reprocessing" rules promulgated by DOE in Order 435.1 in 1998, now expressed in words with clear legislative intent. If Congress had intended this broad authority to be implicit in the original NWPA definition of HLW, it would not have felt it necessary to enact this "new" express definition that excludes certain types of waste at DOE's discretion. This amendment to the earlier statute essentially ratifies the U.S. District Court's interpretation of the NWPA definition in *NRDC v. Abraham,* which should now control any disposal of HLW stored in facilities outside the States of South Carolina and Idaho. P.L. 108-375, § 3116(b)-(c).

DOE's interpretation of HLW is not consistent with the clear language of the statute

In its interpretation of the NWPA (and AEA) definition of high-level waste, DOE throws these canons of statutory construction out the window and states that it "defines DOE reprocessing wastes to be classified as either HLW or non-HLW based on the radiological characteristics of the waste and their ability to meet appropriate disposal facility requirements." 83 Fed. Reg. 50910. DOE conflates its supposed agency expertise on what wastes are appropriate for geologic disposal with actual congressional intent by arguing that characterizing the waste as "highly radioactive" with "fission products in sufficient concentrations" leave gaps for DOE to fill: "Given Congress' intent that not all reprocessing waste is HLW, it is appropriate for DOE to use its expertise to interpret the definition of HLW, consistent with proper statutory construction, to distinguish waste that is non-HLW from waste that is HLW." 83 Fed. Reg. 50910.

Again, the clear language of 42 USC § 10101(12)(a) defeats this contention by using the unitary word "the" before the definition, which clearly indicates that waste from nuclear fuel reprocessing is HLW and nothing else, despite the words used to describe the character of the waste ("highly radioactive"). The waste examples that follow merely illustrate that solid material can be derived from liquid material through a treatment process before geologic disposal, and that this is also considered HLW if there is a similar concentration of fission products (but only *after* such treatment). However, any determination of "sufficient concentration" for solid wastes does not defeat the essential congressional intent that the waste from reprocessing is HLW until treated for geologic disposal.

Interestingly, DOE states that its process for determining whether material is "waste incidental to reprocessing" does not even matter anymore because it may simply designate something as "low-level" before any type of treatment or separation:

> The DOE interpretation does not require the removal of key radionuclides to the maximum extent that is technically and economically practical before DOE can define waste as non-HLW. Nothing in the statutory text of the AEA or the NWPA requires that radionuclides be removed to the maximum extent technically and economically practical prior to determining whether waste is HLW.

83 Fed. Reg. 50911. Of course this is an inadvertent admission that its interpretation is flawed, because the AEA/NWPA definition says nothing at all about "determining" HLW classification – Congress did not leave that discretionary door open for DOE, for WIR or anything else. Whether DOE will continue with its WIR process in light of this new definition is not clear.

However, it is Congress' provision in subsection (b) regarding NRC authority that ultimately defeats DOE's interpretation. DOE states that under this provision "classification of material as HLW is based on its radiological characteristics and whether the material requires permanent isolation." 83 Fed. Reg. 50910. There is no explanation of why NRC is granted express authority for this task and not DOE, or (more importantly) why Congress did not expressly grant DOE similar classification powers for reprocessing waste in subsection (a). In other words, it makes absolutely no sense that Congress would have two separate provisions for defining and classifying HLW, worded completely differently but meaning the same thing (i.e., classification is based on the characteristics and disposal suitability of the waste, not just the source).

Significantly, DOE spends much of its definition of HLW discussing the different NRC classifications of "low-level waste" as if they are the keys to understanding what wastes are "high-level waste." 83 Fed. Reg. 50910. However, there is no mention at all of these classes in the statutory text of the NWPA, because Congress is not concerned with that – what it wants to do in the statute is define what HLW is, not what it is not. This is perhaps DOE's biggest logical flaw in its construction of the statute(s), because if Congress had desired for DOE to go through that exercise to determine what waste is suitable for exclusion from geological disposal, it certainly would have expressly provided as such. It did not, except in the NDAA for FY2005 (and only in South Carolina and Idaho). DOE's definition of HLW is therefore not legally defensible or supported by principles of statutory interpretation.

DOE's interpretation and policy choices

In the Record of Decision for Hanford's Tank Closure and Waste Management EIS (TCWM EIS), DOE committed to only consider alternatives which removed better than 99% of the waste from Hanford's tanks – based on the limits of technology. DOE's current proposal to issue its own redefinition of whether the tank wastes were ever HLW, as with its recent "WIR" proposal to reclassify wastes remaining in tanks pursuant to Order 435.1, would vitiate that commitment and lead to immense environmental and health impacts. Those impacts, which the TCWM EIS documented could include exceeding current groundwater and drinking water protection standards over thousands of years, will harm the Yakama Nation for thousands of years. It is impossible not to be alarmed that DOE's Federal Register notice fails to make any mention of the commitment in the TCWM EIS Record of Decision, or any commitment to remove and treat high level radioactive wastes remaining in Hanford's tanks, pipelines or soils.

DOE lacks authority to determine what wastes are or are not high level radioactive wastes. Prior to having Congress engage in any discussion about whether the definition should be revised, or if DOE should have authority to revise and reclassify wastes, there should be an open public process with government-to-government consultation with DOE clearly delineating which wastes it would propose to redefine and exclude from being treated as HLW. A detailed analysis supported by independent expert participation should be part of such consultation and public process. Near term and long term impacts of this definition on HLW, TRU waste and other wastes at Hanford and around the DOE nuclear complex need to be assessed and shared through a transparent process prior to any final agency actions. This impact analysis must include a comprehensive and integrated evaluation of cultural, environmental, human health risk,

economic and regional affects to such a proposed change, and what mitigation factors might be required if such a change were to be implemented.

Yakama Nation requests that DOE conduct an accurate analysis of waste inventories, hazard characterizations, and the impact of this proposed notice holistically across the DOE nuclear weapons complex. An integrated team across DOE should conduct a mapping and estimating exercise of where all classifications of waste currently are, where there are unknowns, what will be impacted and what the consequences might be prior to any decision on this notice. These actions must be accomplished in coordination and government-to-government consultation with the Yakama Tribal Council as soon as possible.

Please contact Laurene Contreras at (509) 452-2502 to schedule meetings with tribal staff and officials to discuss this very important matter.

Sincerely,

Phil Rigdon
DNR Superintendent, Yakama Nation

cc:
Laurene Contreras, Yakama Nation
Julie Atwood, Yakama Nation
Tom Zeilman, Yakama Legal Counsel
Ethan Jones, Yakama Legal Counsel
Anne White, U.S. Department of Energy, EM
Brian Vance, U.S. Department of Energy, ORP
Doug Shoop, U.S. Department of Energy, RL
George Selam, Yakama Nation Committee Chairman
Charlene Tillequots, Yakama Nation
Edwin Lewis, Yakama Nation
Raymond Smartlowit, Yakama Nation
Jay Inslee, WA Governor
David Postman, WA Governor's Chief of Staff
Keith Phillips, WA Governor's Office Policy Director
Robert Duff,WA Governor's Office Policy Advisor
Kathryn Leathers, Governor's Legal Counsel
Patty Murray, U.S. Senator
Maria Cantwell, U.S. Senator
Adam Smith, U.S. Representative
Dan Newhouse, U.S. Representative
Maia Bellon, WA Department of Ecology
Alex Smith, WA Department of Ecology
John Price, WA Department of Ecology
Chris Hladick, U.S. Environmental Protection Agency

Sheryl Bilbrey, U.S. Environmental Protection Agency
David Einan, U.S. Environmental Protection Agency
Karen Lutz, U.S. Department of Energy, RL
Greg Phillips, U.S. Department of Energy, RL
Kate Brown, OR Governor
Oregon Congressional Delegation
Ken Niles, Oregon Department of Energy
Ron Wyden, U.S. Senator
Gary Burke, Confederated Tribes of the Umatilla Indian Reservation
Matt Johnson, Confederated Tribes of the Umatilla Indian Reservation
Jack Bell, Nez Perce Tribe
Shannon Wheeler, Nez Perce Tribe
Susan Leckband, Hanford Advisory Board
Dan Serres, Columbia Riverkeepers
Gerry Pollet, Heart of America Northwest
Tom Carpenter, Hanford Challenge
Geoffrey Fettus, Natural Resources Defense Council