

July 26, 2001

Mr. Harry L. Boston, Manager
U. S. Department of Energy
Office of River Protection
P. O. Box 450
Richland, Washington 99352

Dear Mr. Boston:

RE: Final Determination pursuant to Hanford Federal Facility Agreement and Consent Order (HFFACO, aka Tri-Party Agreement), disapproving the Department of Energy's Change Control Form M-62-01-02.

In 1999 and early 2000, our agencies attempted to reach agreement on a new compliance schedule for constructing and operating a vitrification complex at Hanford. Although the Department of Energy (USDOE) proposed many and agreed to all of the key milestones that were discussed, your agency ultimately would not agree to basic accountability requirements necessary to assure the milestones would be met. In order to resolve the impasse, I exercised my authority under the Tri-Party Agreement (TPA) to issue a "final determination" (on March 29, 2000), with the support of the Environmental Protection Agency (EPA). This action incorporated the schedule USDOE had agreed to, along with the associated accountability measures, into the TPA. We were disappointed when you appealed the action to the Pollution Control Hearings Board, but were relieved when the issue was finally resolved when the board upheld my decision.

One of the key milestones requires USDOE to begin constructing the vitrification complex by July 31, 2001. While we appreciate the significant efforts you and your staff have undertaken to keep the vitrification project on track, we simply cannot agree to your proposal to change milestones instead of meet them.

Over the past 12 years, we have worked with the USDOE to establish and implement reasonable compliance schedules for managing wastes in the double-shell and single-shell tanks at Hanford. Unfortunately, these efforts have been the subject of so many delays that today, more than a decade after the Tri-Party Agreement initially was approved, USDOE still has not begun building the necessary treatment facilities. Meanwhile, the tanks continue to deteriorate and foul the environment.

Under my tenure at the Department of Ecology, we and EPA have steadfastly insisted on accountability, action, and follow-through. There should be no doubt about our expectation now. Thus, we were surprised by your proposal to simply delete key commitments and replace them with vague promises that the federal government may not even agree to re-establish in the future. This is clearly unacceptable.

Enclosed please find Ecology's final determination in this matter pursuant to HFFACO Part Two, Article VIII, paragraph 30 (D). USDOE's proposed revisions are disapproved, including the proposal to strike the July 31, 2001, deadline for starting construction. If construction has not started by July 31, USDOE will stand in violation of the agreement.

By this letter, I am also demanding that you submit to Ecology by October 1, 2001, a recovery plan documenting actions and associated schedules USDOE proposes to implement to assure compliance with HFFACO requirements. USDOE's recovery plan must include the date by which USDOE proposes to initiate construction, as well as your proposal for establishing the two construction progress milestones described in milestone M-62-07. Your recovery plan must also demonstrate that the 2007 deadline for beginning waste treatment at the vitrification complex will be met.

As a further incentive to get this project on track and under way, I am exercising my authority to assess weekly stipulated penalties, pursuant to HFFACO Article IX, paragraph 31, effective August 1, 2001. These penalties, in the amount of \$5,000 for the first week and \$10,000 for each successive week, will be assessed until either, (1) USDOE begins construction, as defined in milestone M-62-06 or (2) until USDOE submits and Ecology approves an acceptable recovery plan. In addition to the terms described above, this plan must also demonstrate that USDOE has in place FY-2002 funds and the necessary spending authority from the Bush administration to fully support implementing the recovery plan.

In conclusion, I want to assure you that my staff and I remain dedicated to working with you and your staff in these matters. Nonetheless, the state of Washington, with EPA's support, will do everything in its power to ensure that USDOE's tank wastes are cleaned up as expeditiously as possible and that human health and the environment are protected.

Sincerely,

Tom Fitzsimmons
Director
(As issuing agency)

Chuck Findley
Acting Administrator
U. S. Environmental Protection Agency, Region 10
(As oversight agency in support of issuance)

cc: Governor Gary Locke
Attorney General Christine Gregoire
Washington Congressional Delegation

Tank Waste Treatment Final Determination
July 26, 2001

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