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United States Government Department of Energy

memorandum

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DATE: MAR 20 1987

REPLY TO ATTN OF: RW-223

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SUBJECT: Commitments and Meeting Highlights of the Spokane Quarterly Meeting and Thanks to Participants

TO: Distribution

I want to extend my personal thanks to all of you who came to the Quarterly Meeting of DOE, States, and Indian Tribes in Spokane, Washington, on February 12, 1987.

I think the meeting provided a highly useful forum for exchanging information and views on the status of the high-level waste management program. I was pleased to announce that all of DOE's internal technical coordinating groups are now open to State and Indian Tribal participation, and am gratified by your positive response.

I want to also thank the State of Washington and Nez Perce Indian Tribe for their information displays at the meeting. The artifacts in the Nez Perce exhibit were especially interesting, and we look forward to more such displays in the future.

I assure you that the Department is giving prompt attention to the issues raised at the meeting. In particular, we have revised our grant review process in response to your concerns. This issue was presented and discussed in great detail at the recent ISCG meeting in Albuquerque.

Attached are the commitments and meeting highlights of the Quarterly Meeting. The Department welcomes your participation in the civilian radioactive waste management program, and I look forward to your continuing contribution at future Quarterly Meetings.

If you have any questions or comments, please contact Judy Leahy at (202) 586-8320.

Tom Isaacs

for Stephen H. Kale
Associate Director for
Geologic Repositories
Office of Civilian Radioactive
Waste Management

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PDR WASTE
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Attachments

WM Record File 109
1928#23

WM Project 1
Docket No.
PDR ✓
LPDR

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QUARTERLY MEETING OF DOE AND STATES AND INDIAN TRIBES

Spokane, Washington
February 12, 1987

Meeting Highlights

SPOKANE QUARTERLY MEETING COMMITMENTS

1. DOE will inform the States and Indian Tribes of steps to ensure opportunities for meaningful participation of the States and Indian Tribes in the DOE/NAS technical meetings.

2. DOE will develop a proposal for a one-year calendar of coordinating group meetings and send it to the States and Indian Tribes for comment.

3. DOE will send a copy of the FY '88 budget request to the States and Indian Tribes.

4. BWIP will meet with the State of Washington and the Indian Tribes to discuss the study on the diameter of the exploratory shaft that is reflected in the Mission Plan Amendment.

5. DOE is available to meet with the States and Indian Tribes to discuss the Draft Mission Plan Amendment before the April 3 deadline for comments.

6. At the DOE/NRC Interagency Coordinating Committee meeting, DOE will discuss with the States and Indian Tribes the LSS and the negotiated rulemaking, pending the S. Kale conversation with procurement officials.

7. BWIP will meet during the week of February 17 - 20 with the State of Washington and the Indian Tribes to address technical scoping and how full-year funding can be awarded in an expeditious manner.

8. BWIP will provide to the State of Washington and the Indian Tribes the exact date for closure on their grants as soon as possible after the meeting referenced above.

9. Each Project Office will continue to work with the States and Indian Tribes to come to agreement on full-year grants.

10. DOE will put on the ISCG agenda a discussion of grant problems and possible approaches to resolve problems.

11. DOE/HQ and BWIP will contact the State of Washington and the Indian Tribes to discuss and resolve quality assurance issues.

12. DOE will provide a description at the ISCG of the format of SCP reference documents and of the locations where the documents will be provided, and DOE will provide all reference documents at the same time the SCPs are released.

13. NNWSI will provide the State of Nevada with letters regarding participation in the stop work orders, and will provide a briefing at the State's request.

14. DOE will determine whether there are any studies (ongoing or planned) about barge transport to site-specific locations within Texas.

15. DOE/HQ and the Project Offices will:
    a) continue to work on near-term funding issues, identify any recommendations for changes, and report at the next ISCG meeting; and
    b) work on the near-term needs for urgent action to release funds.

16. States and Indian Tribes will make recommendations on how DOE should publicize quarterly meetings.

17. DOE will poll the States and Indian Tribes on the proposal to hold the next quarterly meeting in Las Vegas and on the date for that meeting.

AGENDA

The States and Indian Tribes proposed a modification of the planned agenda for the meeting. DOE agreed to follow the modified agenda (attachment 1).

REVIEW OF COMMITMENTS FROM PORTLAND MEETING

The commitments from the Quarterly Meeting held in Portland, Oregon, on August 13, 1986, were reviewed. Attachment 2 summarizes the status of these commitments as of February 12, 1987.

The States and Indian Tribes expressed concern about DOE's follow-up to commitment #11:

> "DOE will approach NAS to encourage the involvement of States and Indian Tribes in DOE/NAS meetings."

They indicated that NAS had met with DOE on several occasions without notifying States and Indian Tribes or asking them to participate, and sought assurances that DOE will develop other means of independent oversight outside the NAS review process if NAS's provisions for State and Indian Tribal participation are not adequate. DOE stated that NAS has extensive experience with public involvement in its activities and that the mechanics of State and Tribal participation are still being worked out within NAS. A State representative said that States and Indian Tribes are entitled to participate under the provisions of the NWPA, and, therefore, that their desire to participate warrants special consideration. DOE agreed to take more specific actions to ensure that States and Indian Tribes have adequate opportunities to participate in DOE/NAS meetings. SEE COMMITMENT #1

COORDINATING GROUP MEETINGS

Stephen Kale (DOE-HQ) gave a presentation on the purpose and structure of the OCRWM coordinating groups and announced that all groups will now be opened to States and Indian Tribes. HQ suggested that the next meeting of the ISCG would be an appropriate forum for working out the details of how States and Indian Tribes can participate in the coordinating groups.

A State representative thanked DOE for opening the coordinating groups. On the subject of scheduling, he indicated that with all the groups open, a calendar might be useful, which spaced the meetings in some sort of logical sequence. DOE agreed to develop a proposed one-year calendar of coordinating group meetings and send it to States and Indian Tribes for comment. SEE COMMITMENT #2

In response to a question on whether working groups will also be opened, DOE stated that working groups may meet immediately following regular plenery sessions, as is done with working groups of the ISCG.

DRAFT MISSION PLAN AMENDMENT

Roger Gale (DOE-HQ) reviewed the purpose of the Draft Mission Plan Amendment and highlighted the five major topics discussed in the Amendment: (1) achievements in the waste-management program, (2) 5-year extension in the first repository program schedule, (3) postponement of site-specific work on the second repository, (4) status of the MRS proposal, and (5) progress in defining consultation and cooperation. The Department indicated that it is seeking specific guidance from Congress on items 2, 3, and 4. The Amendment has been issued for comment to States, Indian Tribes, and other Federal agencies. The end of the comment period is April 3, 1987, and DOE plans to submit the revised amendment to Congress 60 days thereafter.

The States and Indian Tribes sought clarification of DOE's plans for the second repository, especially in view of the Secretary of Energy's testimony before Congress on February 11. In his testimony the Secretary indicated that site-specific work on the second repository would be started in the summer of 1987 if the Congress did not take "affirmative" action on DOE's plan in the Amendment to postpone the second repository. States then asked whether their review of the Amendment has any meaning in view of the Secretary's statement of DOE's plans for the second repository. DOE replied that the Amendment represents DOE's current position, and that Congress needs only to take affirmative action on the direction of the program. States then asked how comments on the Amendment would be dealt with, to which DOE replied that a comment response document will be submitted to Congress with the revised Amendment. States suggested that the positions in the Amendment are a "foregone" conclusion and that the Department should issue a preliminary draft Amendment for review. DOE stated that the Amendment will not be submitted to Congress until it has been revised in response to comments.

Attendees discussed at length the relationship between DOE's program budget and the Mission Plan Amendment. The States and Indian Tribes asked whether the Department's budget request for FY '88 reflects the program outlined in the Mission Plan Amendment. DOE stated that the budget for FY '87 is approximately $500 million, whereas the program described in the Amendment

will cost approximately $725 million in FY '88. The States asked whether they were reviewing the $500 or $725 million dollar program. DOE indicated that it was the proposed program ($725 million) and that this request includes a specific amount for the second repository program. DOE later added that reviewers should look at the Amendment as a proposed policy statement on the direction the program should proceed. An Indian Tribal representative asked if the Amendment would, in effect, be ratified if Congress approves the $725 million request. DOE said it is not appropriate for the Department to analyze "what if" scenarios for Congressional action on the Amendment and the budget.

Sam Rousso (DOE-HQ) then gave a presentation on projections of spent fuel accumulation. Discussion continued to focus on the relationship between DOE's proposed budget and Congressional action of the Draft Mission Plan Amendment. A State representative asked whether DOE's plans for the coming year are predicated on approval of its budget request or on approval of the Amendment. DOE indicated that it is up to Congress to decide what vehicle it will use to give direction to the program.

A State representative noted that DOE assumes Congress will approve a monitored retrievable storage (MRS) facility, but that DOE has not submitted a proposal for an MRS to Congress. In view of such uncertainties, States asked how DOE's waste acceptance strategy would change if the MRS is not approved. DOE responded that this is one of several possible contingencies that the Mission Plan addresses.

A State representative asked about changes in projections of defense waste. DOE responded that 8,000 metric tons of defense waste would be disposed of in the repository in 16,000 canisters.

A State representative noted that the Draft Mission Plan Amendment calls for expanding the size of exploratory shafts at BWIP, and indicated that the State is not able to comment since it does not know the basis for this proposal. DOE committed to meet with the State and Indian Tribes to review a study that discusses the need to change the size of the exploratory shafts. SEE COMMITMENT #4.

A State representative suggested that DOE treats the milestone dates in the NWPA as advisories only. In particular, he noted that even though DOE has adjusted the schedule for the first repository, it has not adjusted the deadline (January 1, 1990) for utilities to apply for Federal Interim Storage. This, he suggested, put the utilities at an unnecessary disadvantage, especially if Congress does not approve the MRS proposal. DOE stated that no utilities have asked for an extension in the deadline for applying for interim storage, but that DOE would consider any such request and review the deadline as warranted.

Discussion of the Draft Mission Plan Amendment continued after the public question and answer session. DOE offered to meet with any State or Indian Tribe to clarify any questions they have about the Amendment. SEE COMMITMENT #5.

A State representative asked for clarification of paragraph 1 on page 14 of the Amendment, which suggests that Congress may want to consider providing additional financial assistance to address possible unforeseen socioeconomic impacts of site characterization. DOE indicated that it simply wanted to cover all contingencies.

A Indian Tribal representative asked whether DOE is committed to amending the Mission Plan annually and involving States and Indian Tribes in the review process. DOE stated that it will review the Mission Plan each year to determine if an amendment is needed, and if not, the annual report to Congress will report on the program. The Tribal representative suggested that DOE issue a preliminary draft amendment for review, to which DOE responded that the Mission Plan Amendment is a draft for review.

An Indian Tribal representative asked what plans DOE has for continuing discussions with States and Indian Tribes on a mutually acceptable definition of consultation and cooperation (c&c), as indicated on page 13 of the Amendment. DOE replied that several parties could not attend a meeting in November 1986 in New Orleans to discuss this issue, and that DOE is available to meet with these parties to continue discussions on a definition of c&c. The Indian Tribal representative stated that the Tribes do not want to meet on this issue until DOE indicates its views on what c&c should be, and added that the Amendment, in his view, does not reflect what occurred at the meeting in New Orleans. DOE then stated that the Department is considering other initiatives outside the Mission Plan and is developing an action plan for alternative approaches to c&c.

LICENSING SUPPORT SYSTEM (LSS)

Stephen Kale (DOE-HQ) gave a presentation on the purpose and status of the LSS. An Indian Tribal representative asked what DOE's role would be in a negotiated rulemaking on the LSS and, in particular, whether DOE would already be committed to a specific approach to the LSS in view of the extensive groundwork on the system that would be laid before the rulemaking process begins. DOE replied that the LSS is a major tool to obtain licenses from the NRC and must, therefore, be acceptable to States and Indian Tribes as well as DOE. A State representative said the States and Indian Tribes have doubts that a rulemaking can work. He then sought a commitment from DOE that the Department will accept any outcome of the rulemaking process that is also acceptable to the NRC. DOE reiterated that the outcome must be acceptable to all parties. The State representative suggested that intermediate milestones could be established in the rulemaking process to assess the progress of the negotiations. The DOE representative suggested that further discussions on the LSS rulemaking are necessary. SEE COMMITMENT #6

GRANTS

Jerry Saltzman (DOE-HQ) gave a presentation on the interim OCRWM Financial Assistance Guidelines and asked for comments by March 13 on the interim Guidelines. After receiving comments on the interim Guidelines, DOE will initiate a program-wide rulemaking on financial assistance.

A State representative asked why payment-equal-to-taxes (PETT) will be included in the rulemaking for financial assistance. Referring to discussions of PETT at the last ISCG meeting, he stated that certain entities in each State have taxing authority, and asked why DOE would be any different from other taxpayers. DOE responded that the civilian radioactive waste management program is a hybrid between a private taxpayer and the Federal Government, which is not subject to taxation. The State representative suggested that the PETT guidelines create an unnecessary burden for local taxing authorities. DOE stated that the hybrid nature of the Department as a taxpayer made it necessary to establish a structure in the guidelines for assessing PETT, and added that DOE expects to negotiate the amount of PETT.

States and Indian Tribes then asked when they would receive full-year grants. A lengthy discussion took place on the issue of full-year grants. The States and Indian Tribes expressed their displeasure at DOE's long delays in responding to their grant requests. DOE indicated that the scope of proposed work in grant requests needs to be re-examined as the program changes. A State representative asked whether the scope of grant requests is tied to the phase DOE's program is in. DOE replied that its program has to be the reference point for most proposed technical work, but that certain areas, such as socioeconomic studies, are less phase-dependent. DOE committed to (1) work with Washington and the Indian Tribes to close on outstanding BWIP grants, and (2) work with States and Indian Tribes to come to agreement on full-year grants. SEE COMMITMENTS #8 & #9

A State representative stated that his State will be ready in a month to initiate socioeconomic studies and that subcontractors need assurances that funds will be available. Another State representative said that his State would run out of funds at the end of February. A DOE representative indicated that the Department intends to keep funds flowing. A representative from a national organization said their funds would also run out by the end of February and that they had received repeated assurances from DOE that funds would be forthcoming. DOE apologized for the delays and added that the organization is funded by means of a cooperative agreement, and that these agreements take longer to approve.

A State representative then asked if DOE was considering placing State and Indian Tribal grant programs on a schedule consistent with the Federal fiscal year. A DOE representative replied that this has not been decided but that the Department has to project how much money will be needed for grant requests in FY '89. He added that grant requests could be divided into three groups: those that could be awarded immediately, those that need more information, and those that appear to be out of phase with the program. A State representative noted that his State has not received any comments from DOE on problems with its grant request in six months. An Indian Tribal representative said that the program is always changing and, therefore, a changing scope of work is not a sufficient reason for long delays in approving grants. DOE stated that it would close on outstanding grants as soon as possible and suggested that the ISCG develop ways to resolve day-to-day problems in the grants program. SEE COMMITMENT #10

SITE CHARACTERIZATION PLAN

DOE Project Managers presented reports on the status of activities at each Project Office.

A State representative asked whether the 90-day comment period for the site characterization plans (SCPs) would be extended in view of the length of the Plans. A DOE representative replied that the Department plans to stick to the 90-day review period, but that it has provided draft chapters of the SCPs to the States and Indian Tribes, and is willing to conduct workshops to assist in their review. A State representative asked whether DOE would provide references to the SCPs. The Department agreed to provide all references when the SCPs are released and will make a presentation at the next ISCG meeting on SCP references. SEE COMMITMENT #12

A State representative stated that quality assurance (QA) is a high priority, but that their review of the QA portions of the SCP for BWIP suggests that important QA issues still need to be resolved. He added that the State is especially concerned with the relationship between Headquarters and the Project Offices with respect to the management of QA. DOE committed to meeting with the State and Indian Tribes to resolve QA issues at BWIP. SEE COMMITMENT #11

A State representative questioned whether Project Offices are consistent in their relationships with their respective State or Indian Tribes. Specifically, he claimed that Nevada did not have the same opportunity that Washington did to participate in NRC decisions about stop work orders and compliance plans. A DOE representative suggested that the situations were not comparable, and committed to providing relevant correspondence. SEE COMMITMENT #13

A State representative asked when the State would receive chapters of the SCP and certain study plans. A DOE representative indicated when the SCP chapters would be available and clarified the Department's commitment to provide summaries of the study plans.

TRANSPORTATION

Lake Barrett (DOE-HQ) gave a presentation on transportation, storage, and the MRS. A State representative asked why DOE was planning to write an environmental impact statement after the MRS is designed. DOE responded that the NWPA gives no specific guidance in this matter, and that it is largely a question of the best way to comply with NEPA.

A State representative asked whether DOE is considering transporting waste to specific locations in Texas by barge. DOE indicated that it does not believe so but also committed to determining whether any such studies are on-going or planned. SEE COMMITMENT #14

At this point, the meeting was opened up to questions from the public.

WRAP-UP

An Indian Tribal representative stated that the need to resolve the most pressing, near-term grant issues had not been addressed. DOE agreed to (a) work on near-term funding issues and report on any recommendations at the next ISCG meeting and (b) work on near-term needs for urgent action to release funds. SEE COMMITMENT #15

A State representative criticized DOE for not publicizing the Quarterly Meeting enough. DOE asked for suggestions on how to better inform the public about Quarterly Meetings in the future, and the States and Indian Tribes agreed to make recommendations on how to publicize the meetings in the future. SEE COMMITMENT #16

Attendees discussed where to have the next Quarterly Meeting and DOE agreed to poll the States and Indian Tribes on a proposal to hold the next meeting in Las Vegas. SEE COMMITMENT #17

LIST OF PARTICIPANTS

CHAIRPERSON: Stephen Kale, DOE/HQ

States and Indian Tribes

Harold Aronson, Yakima Indian Nation
Warren Bishop, Washington
Mary Lou Blazek, Oregon Department of Energy
William Burke, Umatilla Indian Reservation
Louie Dick, Umatilla Indian Reservation
James Friloux, Louisiana
Steve Frishman, Texas
Kevin Gover, Nez Perce Indian Tribe
John Green, Mississippi
Candace Greene, Nez Perce Indian Tribe
Ron Halfmoon, Nez Perce Indian Tribe
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Tom Isaacs, HQ
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