



CONFEDERATED TRIBES
of the
Umatilla Indian Reservation

101.7
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LPDR-WM-10(2)

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May 8, 1987

Stephen Kale
Associate Director for Geologic Repositories
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1000 Independence Avenue, S.W.
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Washington, D.C. 20585

WM Record File
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Distribution:
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Dear Steve:

At the QACG meeting in Germantown, Maryland on April 23, 1987, the group discussed affected party participation in QA audits. The Umatilla Tribe presented a position on behalf of the Umatilla and Nez Perce Tribes. Attached is the full formal position.

During the QACG meeting seven (7) "Affirmative Action" criteria were addressed (see Position Paper) and thoroughly discussed. It is our understanding the DOE agreed in principle to all seven points. Below is listed several modifications to the seven points that we agree should be followed:

1. BWIP and HQ will develop an overall meeting schedule and, within reason, try to avoid conflicts in meeting times.
2. Project Offices will send notices of upcoming audits at least 30 days prior to an audit. Additionally, an audit schedule will be issued on an annual basis setting tentative audit dates.
3. Instead of including an agenda or schedule in the 30 day notice, a scope of work for the audit will be identified in the letter to allow tribes and other affected parties time to respond back to DOE who we would like to send.

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Stephen Kale
May 5, 1987
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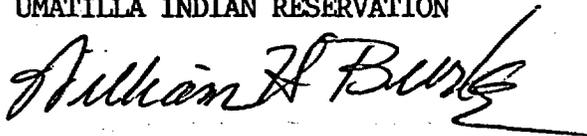
4. DOE agreed to prepare a comprehensive mailing list, and to use MCI mail to identify changes in the audit schedule, scope of work or checklist.
5. The Umatilla Tribe agrees to give DOE at least two weeks notice on who we would like to send to a given audit.
6. DOE agreed not to limit attendance at audits, but if a problem existed they would inform the affected parties, and it could be negotiated. DOE also agreed that they would allow at least one representative from each affected party to attend any audit.
7. DOE agreed to send an audit checklist prior to the audit to observers 10 days prior to the audit. The understanding is that audit checklists can change up to the date of the audit. There was no commitment by DOE to send a detailed agenda or an audit plan to the affected parties.

We are pleased at the progress at this QACG meeting, and would like to thank both Carl Newton and Jim Knight for moderating the meeting in a positive and highly productive manner. We hope to continue this spirit of mutual understanding with DOE and other affected parties.

If you would like clarification on any of these points or wish to consult with us further, please feel free to call.

Sincerely,

CONFEDERATED TRIBES OF THE
UMATILLA INDIAN RESERVATION



William H. Burke, Director
Nuclear Waste Study Program

cc: All Affected Parties
Jim Knight
Carl Newton
Pierre Saget

CLC/WHB/sm

POSITION PAPER ON QA PROGRAM PARTICIPATION
BY THE AFFECTED INDIAN TRIBES

PREFACE

The Affected Tribes would like to participate fully in the DOE Quality Assurance Program. In order to achieve this goal, the following four key areas need to be clearly understood by DOE:

1. Communication by DOE to the Affected Tribes;
2. Consultation by DOE with the Affected Tribes;
3. Affirmative action to correct deficiencies;
4. Full participation by the Affected Tribes in DOE QA.

These areas are discussed in detail, with examples of several past failures to achieve full participation. Suggestions for achieving this goal through improvements to the management of the DOE/HQ and DOE/RL QA programs are also discussed. Prior to this discussion, however, the Nez Perce Tribe's perception of the QA program is discussed.

TRIBAL PERCEPTION OF QA

Quality Assurance and Quality Control are often discussed reverentially by DOE and the affected parties, reinforcing the esoteric nature of the subject. The Nez Perce Tribe would like to demystify the mystique surrounding QA/QC. Until this takes place, it appears that full Tribal participation cannot be achieved. Currently, DOE QACG quarterly meetings are being held on a regular schedule and DOE QA activities are being planned and carried out. The Tribes continue to feel, however, that their participation is being misconstrued as "intervening" and is being yielded to only grudgingly. The following paragraphs provide two examples of the reasons for this continuing feeling by the Tribes. The sections following these examples identify Tribal concerns and discuss some of the reasons for their continued existence.

DOE/RL sent a written transmittal informing the CTUIR and Nez Perce of a QA audit of the exploratory shaft design team to be held in Oakland, California, on April 7-10, 1987. When both Tribes requested permission to send observers to the audit, BWIP QA personnel informed the Tribes that all affected parties would be collectively limited to one observer, and that the Yakima Nation would provide this single observer. DOE stated that this "single-observer" decision was made because more than one observer would be "disruptive" to the audit process. (Such a position suggested to the Tribes that DOE regards full state and Tribal participation in the QA program as "disruptive".) Legal council for both CTUIR and Nez Perce recommended sending a single

observer from the Council of Energy Resource Tribes to represent the two Tribes at this important audit. On arrival at Kaiser Engineering, Inc., in Oakland, the CERT observer was told that if he elected to remain at the meeting, the audit team would not conduct the audit at that time. Not wishing to be viewed as disruptive to the auditing process, the CERT observer left Kaiser, allowing the audit to proceed as planned.

The CTUIR and Nez Perce also received notice of an audit of DOE/RL to be conducted by MAC in Richland on April 14-16. On arrival at the regular Monday afternoon meeting with Jack Keating and Pierre Saget, state and Tribal representatives learned, for the first time, of a pre-audit briefing that was being conducted that same afternoon. A pre-audit "audit", held the previous Friday with the auditees, was not disclosed to the Tribal observer until well into the audit.

COMMUNICATIONS

One example of the lack of "participant" status being acknowledged by DOE is in the communication of QA meeting announcements and agendas to the Tribes. This lack of notice prevents the review and analysis necessary to enable the Tribes to submit a carefully prepared response. Several methods of correcting this problem follow.

A major communication problem is timely notification of the Tribes of dates and agendas for the DOE/RL QA audits of DOE and its contractors involved in BWIP. Notice of the April 14-16 audit of the DOE BWIP-related operations at Richland was received by the Tribal On-Site Representative only 10 days before the audit was to begin. The dates for this audit coincided with a BWIP Quarterly Technical Meeting that had been scheduled for three months. A complaint to Pierre Saget about this schedule produced no changes in the audit dates or times to allow a single Tribal technical observer to participate in the entire audit. As a result, Tribal observers had to alternate between the two meetings as they were available.

A second problem involves DOE mailings to the Affected Tribes. DOE/HQ needs to consolidate its several QA mailing lists and update the consolidated list. All current program participants need to be included on the new list, with their correct mailing address.

Receipt of mail from DOE/HQ to the party responsible for the QA program is often delayed due to these differences in lists. This delay may prevent insufficient time for full participation by the Tribes in the QA program. An updated mailing list has been requested by the Tribes on several occasions, most recently by Ron Halfmoon at the QACG meeting in Columbus. Based on recent mailings from DOE, this list has apparently not been completed by DOE/HQ to date.

CONSULTATION

The statutory standing of the Affected Tribes is apparently not recognized by the QA personnel in either DOE/HQ or DOE/RL. Just as any failure of or breakdown in the communication process prevents full Tribal participation in the QA process, non-recognition or ignorance of the statutory rights of the Affected Tribes under the NWPA affects the achievement of that goal. Consultation by DOE on all aspects of the first repository program with the Affected Tribes is not just one of the principles of the Tribal programs, it is the overriding principle.

Since the May 28, 1986, selection of the three sites for characterization, the DOE project offices have been anxious to begin the testing, research, and investigation phases of the characterization process. Since that date, DOE QA activities have taken on a new perspective. This perspective no longer includes just the review and comment on draft documents and attendance at QACG meetings that characterized the pre-announcement QA program.

Now, the DOE agenda includes surveillances, audits, and readiness reviews as new opportunities for Tribal participation. These new activities evolved simultaneously as the first round repository program began proceeding on an aggressive and fast track. These activities, combined with an ever-increasing number of quarterly meetings as more coordinating groups are opened up for Tribal participation, have created a severe strain on the existing tribal staffs.

In spite of the current strain on Tribal staffs, however, the Tribes plan to participate as fully in QA/QC activities as in all other parts of the repository program. As it happens, the subject of QA/QC had not been a high priority at the beginning of the Tribal nuclear waste programs, being relegated to a management responsibility. What was not anticipated was the length and frequency of the activities of the QA/QC program other than the quarterly QACG meetings. Also not anticipated was the DOE attitude that only one "observer", untrained in formal QA auditing procedures, would be allowed for all of the affected parties at many of the audits. In order to insure their full rights of participation under the NWPA, each Tribe must exercise its individual, not collective, prerogative in determining which DOE audits to attend, in spite of any strain on Tribal staffs that this might create. This prerogative must be based on the importance of each individual QA activity to the objectives of the Tribal program and on the internal judgement of each Tribal program manager. It is a violation of the spirit of the full participation section of the NWPA for DOE QA personnel to predetermine an individual Tribe's ability or capability to participate by denying attendance at an audit or any other QA activity.

AFFIRMATIVE ACTION

The following is a list of suggestions to DOE to further the goal of full participation by the Affected Tribes in the QA/QC program, both at BWIP and in the national repository program:

1. Consult with other BWIP and HQ programs to determine potentially conflicting meetings prior to determining tentative dates for QA activities.
2. Send notices to the Affected Tribes at least 30 days in advance of each audit or readiness review of DOE/RL, DOE/HQ, and any DOE contractor associated with the BWIP or national repository programs.
3. Include an agenda or schedule, even if it is only tentative, with this initial 30-day notification.
4. Prepare a single, comprehensive mailing list for all QA activities, and use only that list for all QA-related mailings.
5. Allow the Tribal Nuclear Waste Program Manager to determine the importance of participation in each QA/QC activity after the 30-day notice is received, as a function of the significant of the activity to the Tribal program goals and the availability of staff.
6. If a limit on attendance is necessary, inform the Tribal Manager of that need, but allow at least one representative from each affected party.
7. Send a detailed agenda, an audit checklist, and an audit plan to each name on the consolidated mailing list at least 10 days in advance of the activity. The agenda and audit plan should include a list of audit participants and notice of any pre-audit meetings or special exit meetings with the auditee.

PARTICIPATION

The Affected Tribes feel that there is no ambiguity in their rights of participation. The NWPA provides for rights of participation to any Tribe designated as "affected" by the Secretary of Interior. This status is not currently acknowledged by many in DOE, which routinely leads to the Tribes being viewed as "observers", "intervenor", or "the public", and not as full participants. The Tribes believe that the suggestions listed above will not only remove this misconception, but will improve the overall acceptance of the DOE program by all of the program participants.