



U.S. Department of Energy
Office of River Protection

P.O. Box 450, MSIN H6-60
Richland, Washington 99352

APR 17 2008

08-AMD-097

Mr. Joseph J. Holonich, Director, PMDA/NMSS
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852

Dear Mr. Holonich:

AGREEMENT NO. DE-AI27-04RV14670 – DOWNWINDERS DOCUMENT
DESTRUCTION MORATORIUM

In 1990, several thousand plaintiffs filed lawsuits against former Hanford Site contractors alleging the radioactive releases from the Hanford Site in the 1940s and 1950s had caused the plaintiffs harm. During the extensive discovery process, the Federal District Court ordered a prohibition on “destroying or altering any document or tangible item relating to any issue raised by the pleadings.” In the attached message to all Hanford employees, the U.S. Department of Energy (DOE) provided its interpretation of what “any issue raised by the pleadings” meant. That interpretation and previous direction from DOE related to it remains in effect for all current Hanford employees and contractors.

The Ninth Circuit Court of Appeals, on April 4, 2008, issued a revised ruling on the issues raised in the case. That ruling remanded several issues to the Federal District Court and left open questions that may merit consideration by the U.S. Supreme Court, should either party decide to seek such a decision. Therefore, final resolution of this case may be years away.

Please ensure your commission continues to adhere to the attached direction regarding destruction of documents. Should you have any questions in general or questions about preserving specific documents, please contact me, or your staff may contact Marla Marvin, Office of Chief Counsel, (509) 376-1975.

Sincerely,

George F. Champlain
Contracting Officer

AMD:GFC

Attachment

cc w/attach:

M. K. Marvin, RL

ANNOUNCEMENT

WORKING COPY

Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

RL No.: 96-131

Issued: 6/12/96

To: ALL HANFORD EMPLOYEES

Subject: IN RE HANFORD NUCLEAR RESERVATION LITIGATION

The Hanford Site has been engaged in producing documents in a law suit filed by "Downwinders" against former Hanford contractors. On April 15, 1996, Judge Alan A. McDonald approved a STIPULATED ORDER RE DOCUMENT PRESERVATION. Paragraph 3 of the Order requires that the Department of Energy (DOE) distribute the Order to all DOE and Contractor employees at the Hanford Site. A copy of the Order is attached to this announcement.

Please read the Order and comply with its directions. After reading the Order you may ask:

- What does this Order mean to the employees at Hanford?

During this law suit, it is critical that you do not destroy those documents in your control that are related to any issue raised by the pleadings in this litigation.

- What are documents related to any issue raised by the pleadings in this litigation?

The Court has defined "document" as all books, documents or tangible things and shall include all writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, (and) translated, if necessary, into reasonably useful form.

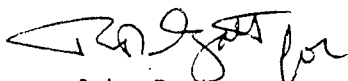
The litigation involves "releases" of hazardous and radioactive materials from the Hanford site since its inception, and whether those releases caused harmful health effects to individuals. Documents related to this litigation are those that might reveal information pertaining to those releases, effects of the releases or the efficiency of mechanisms to prevent the releases. Whether a document is related to an issue raised by the pleadings is not always obvious. If there is any doubt, the document should be retained.

One example of documents potentially covered by this Order involves the surveys completed in February 1996. Starting February 9, 1996, all employees at Hanford were required to complete a survey about the

documents in their own office or offices for which they were responsible for. At the end of the survey were questions pertaining to litigation related subjects. If you answered yes to any of those questions, all documents in your office or listed in your response which prompted your answer are to be retained. The "Downwinder" attorneys have indicated they plan to request more information from those who answered yes to the survey questions, and from other indexes that have been prepared. Our ability to produce the documents identified in your survey responses or any other indexes is critically important, so those documents are not to be destroyed.

Responding to document requests in this litigation is a priority second only to safety at the Hanford Site. Your support and response to the requests that have been made in the past are extraordinary and greatly appreciated. We must maintain the effort until the requests for documents cease. Thank you for your continued support.

In addition, this directive does not change or supersede the December 1990 moratorium on destruction of records. If you have any questions about the maintenance of documents, please contact your records management personnel or Linda Jarnigan, the Hanford Site Records Officer (376-4466). If you have any questions on the process to produce documents, please contact your legal office or Jim Bauer of my staff at 376-7218.



John D. Wagoner
Manager

OCC:JDB

Distribution
"D"

APR 19 1996

JAMES H. LANSSEN, Clerk

Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

In Re Hanford Nuclear
Reservation Litigation

MASTER FILE NO.
CY-91-3015-AAM

This document relates to all cases.

STIPULATED ORDER RE DOCUMENT PRESERVATION

The third party United States Department of Energy ("DOE") and plaintiffs, through their respective undersigned counsel, hereby stipulate and agree as follows, subject to approval of the Court:

WHEREAS, on March 12, 1996, plaintiffs' lead and liaison counsel filed an Application for an Order Prohibiting Document Destruction (the "Application"); and

WHEREAS, other plaintiffs' counsel subsequently filed papers in support of the Application; and

WHEREAS, Defendants and DOE opposed the Application; and

WHEREAS, DOE does not admit the allegations in the Application and does not concede the legal arguments advanced by plaintiffs in support thereof; and

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1 WHEREAS, on March 29, 1996, DOE and the Plaintiffs reached
2 and reported to the Court a tentative agreement relating to the
3 issues raised by the Application; and

4 WHEREAS, DOE and the Plaintiffs wish to memorialize the
5 terms of their agreement in the form of a stipulation embodied as
6 an Order of this Court; and

7 ~~WHEREAS, Plaintiffs forego adjudication of their motion upon~~
8 entry of this Stipulated Order;

9 NOW, THEREFORE, subject to approval of the Court, DOE and
10 the Plaintiffs hereby STIPULATE and AGREE as follows:

11 1. During the pendency of this litigation, DOE shall be
12 bound by paragraph "C Preservation of Evidence" set forth in the
13 Court's February 19, 1991 Pretrial Order and as repeated in
14 paragraph 2 below.

15 2. During the pendency of this litigation, all parties to
16 this consolidated action and their respective officers,
17 directors, agents, servants and employees, are prohibited from
18 destroying or altering any document or other tangible item
19 relating to any issue raised by the pleadings except upon
20 agreement of counsel or upon motion to and approval by the
21 Special Discovery Master.

22 3. DOE shall cause this Stipulated Order to be distributed
23 to all DOE and non-defendant DOE Contractor employees at the
24 Hanford Site.

1 AGREED AS TO FORM AND CONTENT:

2
3 John S. Moore
4 John S. Moore
5 Velikanje, Moore & Shore,
6 Inc., P.S.
7 405 East Lincoln
8 Yakima, WA 98901
9 (509) 248-6030

Raphael O. Gomez 4/10/96
Raphael O. Gomez
U.S. Department of Justice
Civil Division - Room 1068
Federal Programs Branch
901 "E" Street, N.W.
Washington, D.C. 20044
(202) 514-1318

7 Liaison Counsel for Plaintiffs

Counsel for the United States
Department of Energy

IT IS SO ORDERED:

10
11 April 15, 1996

Alan A. McDonald
The Honorable Alan A. McDonald