

EDO Principal Correspondence Control

FROM: DUE: 08/06/08

EDO CONTROL: G20080506

DOC DT: 07/16/08

FINAL REPLY:

Russell Jim  
Confederated Tribes and Bands  
of the Yakama Nation

TO:

Chairman Klein

FOR SIGNATURE OF :

\*\* PRI \*\*

CRC NO: 08-0400

Chairman Klein

DESC:

ROUTING:

NRC's Trustee Responsibilities to the Yakama  
National and Other Indian Tribes - American  
Ecology Low-Level Radioactive Waste Disposal Site  
(EDATS: SECY-2008-0439)

Borchardt  
Virgilio  
Mallett  
Ash  
Ordaz  
Cyr/Burns  
Collins, RIV  
Cyr, OGC  
Pelton, OEDO

DATE: 07/25/08

ASSIGNED TO:

CONTACT:

NMSS

Weber

SPECIAL INSTRUCTIONS OR REMARKS:

Coordinate with OGC.

# EDATS

Electronic Document and Action Tracking System

**EDATS Number:** SECY-2008-0439

**Source:** SECY

## General Information

**Assigned To:** NMSS

**OEDO Due Date:** 8/6/2008 5:00 PM

**Other Assignees:**

**SECY Due Date:** 8/8/2008 5:00 PM

**Subject:** NRC's Trustee Responsibilities to the Yakama National and other Indian Tribes - American Ecology Low-Level Radioactive Waste Disposal Site

**Description:**

**CC Routing:** Region IV; OGC

**ADAMS Accession Numbers - Incoming:** NONE

**Response/Package:** NONE

## Other Information

**Cross Reference Number:** G20080506, LTR-08-0400

**Staff Initiated:** NO

**Related Task:**

**Recurring Item:** NO

**File Routing:** EDATS

**Agency Lesson Learned:** NO

**Roadmap Item:** NO

## Process Information

**Action Type:** Letter

**Priority:** Medium

**Sensitivity:** None

**Signature Level:** Chairman Klein

**Urgency:** NO

**OEDO Concurrence:** YES

**OCM Concurrence:** NO

**OCA Concurrence:** NO

**Special Instructions:** Coordinate with OGC.

## Document Information

**Originator Name:** Russell Jim

**Date of Incoming:** 7/16/2008

**Originating Organization:** Confederated Tribes & Bands of the Yakama Nation

**Document Received by SECY Date:** 7/25/2008

**Addressee:** Chairman Klein

**Date Response Requested by Originator:** NONE

**Incoming Task Received:** Letter

OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET

Date Printed: Jul 25, 2008 14:17

PAPER NUMBER: LTR-08-0400  
ACTION OFFICE: ED/GC

LOGGING DATE: 07/25/2008

AUTHOR: Russell Jim  
AFFILIATION: NV  
ADDRESSEE: Dale Klein  
SUBJECT: NRC's Trustee responsibilities to the Yakama Nation and other Indian tribes and issues of concern regarding the American Ecology-low level radioactive waste Disposal Site  
ACTION: Signature of Chairman  
DISTRIBUTION: RF, OGC, SECY to Ack  
LETTER DATE: 07/25/2008  
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SPECIAL HANDLING: Made publicly available in ADAMS via EDO....Coordinate response with OGC.....  
NOTES: Commission Correspondence  
FILE LOCATION: ADAMS  
DATE DUE: 08/08/2008

DATE SIGNED:

EDO --G20080506



Confederated Tribes and Bands  
of the Yakama Nation

Established by the  
Treaty of June 9, 1855

July 16, 2008

The Honorable Dale E. Klein  
Chairman  
U.S. Nuclear Regulatory Commission  
Mail Stop O-16G4  
Washington, DC 20555-0001

**Re: NRC's Trustee Responsibilities to the Yakama Nation and other Indian tribes;  
and issues of concern regarding the American Ecology Low-level Radioactive Waste  
Disposal Site**

Dear Chairman Klein:

I am writing: (1) to seek clarification regarding the NRC's trustee responsibilities to the Confederated Tribes and Bands of the Yakama Nation, and other federally recognized tribes residing in NRC Agreement states; and (2) to raise serious concerns regarding disposal of radioactive wastes at the American Ecology low-level waste disposal site, near Richland Washington.

**NRC's Trustee Responsibilities to Indian Tribes**

We are increasingly concerned that the NRC may have, for lack of awareness, assumed a tacit policy by which trustee responsibilities to Indian tribes have been delegated, along with regulatory authority, to the NRC Agreement states. In wake of growing interest in expanding nuclear power, the cultural and natural resources as well as the health and safety of Indian tribes are affected by nearly all aspects of the nuclear fuel cycle in which the NRC has a responsibility. We are concerned that that NRC staff appears to have little understanding of its trustee responsibilities – and that there appears a tendency to lump tribes together with “stakeholders.”

In 1995 the State of Washington has a “government to government” relationship with the tribes. The state regularly consults with the Yakama Nation and other tribes. However, this does not relieve the NRC of its trustee responsibilities.

As you know, Indian tribes are not “stakeholders.” Because of treaties entered into with the United States, a government-to-government relationship exists between the federally

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recognized tribes and the U.S. government. As such, federal agencies, including the Nuclear Regulatory Commission, have a responsibility as trustee to Indian tribes, which it cannot delegate to states. In fact there are at least 308 federally recognized tribes in 24 out of 33 NRC Agreement States (see attachment). According to the U.S. Department of Energy American Indian and Alaska Native tribal government policy, issued in 2000:

***“Trust Responsibility*** includes, but is not limited to: promotion and protection of tribal treaty rights, federally recognized reserved rights, and other federally recognized interests of the beneficiary American Indian and Alaska Native nations; determining, documenting, notifying, and interacting with tribal governments with regard to the impact of Departmental programs, policies, and regulations to protect American Indian and Alaska Native traditional and cultural life ways, natural resources, treaty and other federally recognized and reserved rights.”

Why hasn't the Nuclear Regulatory Commission taken steps to officially recognize its trustee responsibility to American Indian tribes by establishing a formal policy, as has other federal agencies? In particular, the NRC has a responsibility to ensure protection of tribal treaty rights and cultural and natural resources in states, especially where it has delegated regulatory authority to the states. We are happy to work with you and your staff in establishing this important policy. We suggest that you contact the National Congress of American Indians, which has a Nuclear Task Force who may also assist you in the endeavor.

### **The U.S. Ecology Low-Level Radioactive Waste Disposal Site**

Of particular concern to the Yakama Nation is the American Ecology low-level radioactive waste disposal site in Washington State. The site is also located on land to which the Yakama Nation has ceded rights to under the Treaty of 1855. This Treaty is active and valid and is upheld by the courts and the Constitution of the United States and may not be amended. The treaty reserves rights that support the continuity and well being of the Native American people and their cultural traditions. Moreover, contaminants from this site, along with DOE's nuclear weapons waste disposal sites, have caused significant and widespread soil and groundwater contamination which enters the Columbia River – a vital treaty, cultural and food resource for the Yakama Nation and many other tribes.

### **Unresolved questions about the disposal of TRU wastes at the U.S. Ecology site remain a major concern.**

NRC estimated in 1980 that approximately 180,000 cubic feet of transuranic wastes might have been disposed at this site.<sup>1</sup> Approximately 67,500 grams of plutonium-239

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<sup>1</sup> U.S. Nuclear Regulatory Commission, Environmental Impact Appraisal for Renewal of the Special Nuclear Material Disposal at the Nuclear Engineering Co. Hanford Facility, January 18, 1980 (Hereafter known as NRC 1980)

were disposed.<sup>2</sup> These estimates appear to have elements of speculation particularly with respect to buried TRU wastes that were dumped from 1965 to 1973, when isotopic measurements weren't required. Based on the source term estimates provided by the operator, it appears that the U.S. Ecology landfill contains one of the largest concentrations of transuranic wastes in the United States (See Table 1). It holds about 40 percent of the total activity in buried TRU wastes at the Hanford site.<sup>3</sup> If the density of the TRU-contaminated materials is similar to that which was disposed by DOE at the Hanford site, transuranic concentrations could be greater than 400 nCi/g<sup>4</sup> -- large enough to require exhumation and geological disposal under current federal standards. As you know, DOE requires wastes generated after 1970 containing 100nCi/g or more of transuranic materials to be geologically disposed.

**Table 1 Total Volume and Radioactivity of Previously Disposed TRU-Contaminated Waste**

Site	Volume (Cubic meters)	TRU Activity
<b>Idaho National Engineering Laboratory</b>	<b>36,800</b>	<b>297,000 Ci</b>
<b>Los Alamos National Laboratory</b>	<b>8,620</b>	<b>21,000Ci</b>
<b>Nevada Test Site</b>	<b>116</b>	<b>493 Ci</b>
<b>Savannah River Site</b>	<b>4,530</b>	<b>18,500 Ci</b>
<b>Oak Ridge Reservation</b>	<b>7,450</b>	<b>1,966 Ci</b>
<b>Hanford Site (DOE)</b>	<b>75,800</b>	<b>60,000 Ci</b>
<b>U.S. Ecology</b>	<b>5,097</b>	<b>42,800 Ci</b>

Sources: DOE 2001, NRC 1980, DOH 2004

In February 1980, the State of Washington amended the license for this operation and prohibited disposal of TRU wastes greater than 10 nCi/g. It is our understanding that as a result NRC requested DOE to explore the feasibility of accepting commercial TRU wastes at a DOE operated site.<sup>5</sup> TRU wastes accepted by the DOE would be placed in retrievable storage in accordance with DOE policy which requires retrievable storage of transuranic wastes pending final disposition in a geologic repository. We have several questions about this matter:

<sup>2</sup> Washington Department of Health, Final Environmental Impact Statement, Commercial Low-Level Radioactive Waste Disposal Site, Richland Washington, DOH Publication 320-03, Table 2 D, May 28, 2004

<sup>3</sup> U.S. Department of Energy, Office of Environmental Management, Summary Data on the Radioactive Waste, Spent Nuclear Fuel, and Contaminated Media Managed by the U.S. Department of Energy, 2000, Chapter 7. (Hereafter known as DOE 2000)

<sup>4</sup> 42,800 Ci  $\approx$   $4.3 \times 10^{13}$  nCi --- 5,100 m<sup>3</sup> at 2g/cc  $\approx$   $1 \times 10^{10}$  g, -- e.g. >400nCi/g.

<sup>5</sup> Taboas, A.L. Bennett, W.S. Brown, C.M., US Department of Energy acceptance of commercial transuranic waste, RFP-3110, February 1980.

- Did the Energy department consider the NRC's request in 1980 and if so, what did the DOE conclude?
- Did the NRC or the State of Washington ever determine if TRU concentrations exceed NRC's limits for LLW disposal at the American Ecology site?
- Given that post 1970 defense transuranic wastes are to be disposed in a geological repository, what is NRC's disposal policy for wastes that exceed the 100 nCi/g limit that was generated commercially?
- Does the U.S. Ecology site contain TRU wastes that exceed the 100nCi/g limit?

### **Disposal in Unlined Trenches**

This site occupies 100 acres of land leased to the State of Washington by the federal government near the center of U.S. Department of Energy's Hanford Site. This commercial low-level radioactive site has disposed large amounts of radioactive and non-radioactive hazardous wastes in unlined trenches for over four decades. Four unlined trenches continue in use, and twenty are filled. The amount of wastes disposed at the U.S. Ecology site is considerable. As of 2000 approximately 13.9 million cubic feet containing approximately 3.3 million curies were disposed at the American Ecology site.<sup>6</sup> It appears that the U.S. Ecology site has increased the total cumulative volume and radioactivity in low-level wastes at Hanford by 35 percent<sup>7</sup> and 28 percent respectively.<sup>8</sup>

Yet until the American Ecology Site is expected to close in 2056, it will continue to receive radioactive and non-radioactive hazardous materials in unlined trenches. Contamination from the landfill has already reached the groundwater including volatile organic chemicals. Given these circumstances, what is the NRC's justification for continuing to allow past and future disposal of low-level radioactive waste of this magnitude in unlined trenches on the Hanford site, especially when the Department of Energy is constructing a low-level radioactive disposal facility for DOE wastes that utilizes multiple liners and other barriers?

### **Risks to Tribal People**

As a result of ongoing contamination of the Columbia River, the U.S. Environmental Protection Agency estimated that tribal people eating fish from the stretch of the Columbia running through the Hanford site have a fatal cancer risk as high as 1 in 50. Any increment to this risk that may be added from the American Ecology and DOE wastes are unacceptable. It has been brought to our attention recently that the risk from the radioactive hazardous substance releases from the American Ecology landfill under the proposed closure standards applied by DoH would result in fatal cancer risks potentially higher than 5% for the reasonably foreseeable exposed Native American

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<sup>6</sup> Washington State Department of Health, Final Environmental Impact Statement, Commercial Low-Level Radioactive Waste Disposal Site, Richland Washington, 2004. (Hereafter known as DOH 2004)

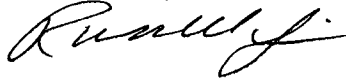
<sup>7</sup> U.S. Department of Energy, Office of Environmental Management, Hanford Cleanup, NAS Technology Roadmap Meeting, October 31, 2007.

<sup>8</sup> DOE 2000

child.<sup>9</sup> NRC has an obligation to investigate and require cleanup for releases far below this unacceptably high proposed standard.

We look forward to your response. Please feel free to contact me or my staff, if you have any questions at (509) 452-2502

Sincerely,



Russell Jim  
Manager,  
Yakama Environmental Restoration/  
Waste Management Program

cc Members of the Nuclear Regulatory Commission  
Robert Holden, Director Nuclear Waste Program,  
National Congress of American Indians  
Mary Selecky, Secretary of Health, Washington State  
Jay Manning, Director, Department of Ecology, Washington State  
The Honorable Patty Murray, U.S. Senate  
The Honorable Maria Cantwell, U.S. Senate  
The Honorable Doc Hastings, U.S. House of Representatives  
YN Radioactive/Hazardous Waste Management Committee  
Philip Rigdon, Deputy Director, YN DNR

<sup>9</sup> The National Academy of Sciences June 2005 BEIR VII report, which represents the best scientific consensus on radiation exposure risks estimates that 100 mrem/year of exposure will result in approximately 1 (1.142) cancer in every 100 people exposed, which includes 1 fatal cancer in every 175 people so exposed (5.7 in 1000).<sup>9</sup> DoH uses 100 mrem/year as an acceptable dose to the public in its license closure standard and EIS for annual exposures due to loss of institutional controls.<sup>9</sup> Children, as noted above, are 3 to 10 times more likely to get cancer from the same dose (and, this does not take into account the fact that the child's dose may be significantly greater than an adults from the same exposure pathway for the same duration. As we have previously commented on the US Ecology EIS, the Native American child's exposure would be significantly greater than the reference adult exposure.) Thus, the child's risk from the exposures that Ecology would allow before an investigation would be triggered would be expected to cause up to 5.7 fatal cancers per 100 exposed children: 5.7%.



MEMORANDUM FOR THE RECORD

SUBJECT: [Illegible]

DATE: [Illegible]  
BY: [Illegible]

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CHAIRMAN REC'D  
2008 JUL 23 PM 4:16