

August 26

Doug Chapin

Copies of my letter to Keith  
Klein for you and for Al  
Farabee, as you requested.

  
Chuck Carlisle

August 26, 2004

Mr. Keith Klein  
Manager, Richland Operations Office  
U.S. Department of Energy  
P.O. Box 550  
Richland, WA 99352

Re: Final Disposition of the Fast Flux Test Facility (FFTF)

Dear Mr. Klein:

The recently posted Department of Energy Notice of Intent to prepare an Environmental Impact Statement addressing the decommissioning of FFTF invites comment concerning the alternatives to be considered. The proposal outlined in the enclosure is submitted as an alternative to those actions defined in the Notice of Intent.

This proposal, if accepted, offers the advantages of:

- A cost savings of several hundreds of millions of dollars in dismantling effort, and,
- Fulfillment of a real need to preserve fast reactor technology information and data.  
(Note the enclosed news release concerning the IAEA concern)

If you find that the proposal has merit, will you please support its consideration in the Department's review process.

In accordance with the instructions in the Notice of Intent I have submitted this proposal to Mr. Douglas H. Chapin, the DOE NEPA Document Manager of your staff via e-mail.

Very truly yours,

Charles S. Carlisle  
2348 Harris Avenue  
Richland, WA 99354

Enclosures (2)



## **THE FAST FLUX TEST FACILITY (FFTF)**

### **A PROPOSAL**

It is proposed that pending consideration pertaining to the final disposition of FFTF include the following described alternative.

#### Current Actions

Removal of the remaining nuclear fuel and liquid metal coolant (sodium) from the facility is in progress, along with other deactivation measures. When the deactivation is complete any remaining significant radioactivity will be confined to the Interim Examination Cell (IEM) and the reactor vessel. The remainder of the facility and its surroundings will be clean and amenable to unrestricted access.

#### Alternatives Now Being Considered for Final Disposition

Included are:

- Removal of all above grade structures, leaving the below grade structure, including the reactor vessel and IEM Cell, in place and weather capped. The cost, beyond the cost of completing the current actions described above, has been estimated at \$213M.\*
- Complete removal and/or reduction to rubble of the facility. The cost, beyond the cost of completing the current actions described above, has been estimated at \$596M.\*\*

\* Included in a Fluor Hanford rebaseline estimate submitted to DOE-RL on June 30, 2003

\*\*From an Accelerated Closure Team report completed on February 28, 2002

## Discussion

### FFTF

The FFTF was designed, built and operated very successfully as a fuels and materials test reactor as a part of the U.S. fast reactor development program. With the national decision to terminate that development program (and not to close the nuclear fuel cycle with its promise of an essential unlimited source of energy because of non-proliferation concerns) the primary purpose for FFTF ceased to exist. Notably, however, the facility and its operating record represented the advanced state of that technology, and were acclaimed both nationally and internationally.

### Fast Reactor Technology

The decision not to pursue, at present, further development of fast reactor technology, based on both non-proliferation and economic considerations, has been taken by both the United States and by most of the foreign countries who had such programs underway (Notably France, the United Kingdom, Germany, Japan and Russia). One consequence of that decision is that, absent remedial action, the technology information which has cost many billions of dollars to develop will, over time, be lost. Future generations, who almost certainly will have need of the energy which can be made available only by the use of fast reactors, will have to relearn all that which has been lost. Keeping available the information developed thus far in fast reactor technology may also prove to be an important and cost-effective assist in the future development of nuclear energy for space travel.

In recognition of that prospective loss the International Atomic Energy Agency (IAEA) has for the past two years had an effort underway to persuade the member nations to take steps to collect and preserve previously developed fast reactor information and data. One of the IAEA proposals is that each nation having fast reactor technology development information establish an information center, wherein information and data would be collected and preserved for future reference. Cross communications between the centers would serve to enhance their capability to ensure complete and continued availability of information.

There has not yet been U.S. action taken to implement the IAEA proposal to establish a fast reactor technology information center. The residual information (i.e., reactor and fuel design and engineering information, operating histories and experience, test data and evaluation, etc.) exists in a number of places in "dead" files, which will eventually, in the absence of preservative measures, be lost and destroyed as the engineers and technicians having the related fast reactor knowledge and experience retire and are no longer available to provide continuity.

### Alternative

Considering the above, it is proposed that, in deciding the final disposition of FFTF, the following alternative be considered:

- When the current actions to deactivate and stabilize the FFTF reactor plant are complete, retain it in that configuration.
- Utilize the deactivated plant as a combination artifact and national library for the collection and preservation of fast reactor technology information as recommended by the IAEA.
- When compatible with its service as a fast reactor technology preservation center, make the FFTF plant available for public viewing, as a museum within the Hanford Reach National Monument
- Assign custodial and management responsibility for the deactivated facility to Pacific Northwest National Laboratory (PNNL) and Argonne National Laboratory (ANL) as a joint undertaking to utilize their extensive background experience and information in the field of fast reactor technology, and to develop and maintain at FFTF a national fast reactor technology information center.

## Considerations

The estimates indicate that adapting this proposal will result in near term savings to the Government of about \$213M over the cost of disassembly to ground level, and about \$596M over the cost of complete disassembly and removal, and it will not add to any longer term cost legacy.

When all fuel and sodium have been removed from the facility, further disassembly will not provide significant further risk reduction.

When the plant is deactivated and stabilized as proposed, it is estimated that a staff of about ten employees and an annual budget of about \$5M will be required to provide custodial, janitorial and minor maintenance services for the facility, and to establish and maintain a fast reactor technology center. This will include the cost of maintaining electrical power, heat and ventilation, water and waste disposal services. The cost would not be appreciably more than that required for surveillance and maintenance of the deactivated facility.

The physical location of FFTF is such that it can be made readily accessible for both a national fast reactor technology information center and for museum purposes, once deactivation is complete.

Retaining this “state of the art” facility in tact and available for viewing will contribute significantly to the preservation of fast reactor technology information. When the FFTF plant is deactivated there will be adequate space available within the plant to provide for assembly, protection and access to a technical library and related artifacts. (If found to be practical, considerable realism could be added by moving the electronic logic components of the existing reactor operations simulator into the plant control room and displaying simulated plant operations on the existing control room panels).

There is precedence for retaining the facility as an artifact set by the retention of Experimental Breeder Reactor I (EBRI) as a Registered National Historic Landmark at the Idaho National Laboratory, and it is complimentary to current proposals to retain the B Reactor and other artifacts of the Manhattan Project as a part of the Hanford Reach National Monument. (FFTF has been nominated as an American Nuclear Society Historical Nuclear Landmark)

Submitted by:

Charles S. Carlisle  
2348 Harris Avenue  
Richland, WA 99354

August, 2004

Mr. Charles S. Cartisle  
2348 Harris Ave  
Richland, WA 99352-1962

first class



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DOUGLAS H. CHAPIN

Mr. Douglas H. Chapin  
U.S. Department of Energy  
Richland Operations Office  
P.O. Box 550, MS A3-04  
Richland, WA 99352





# Citizens Advisory Board

Idaho National Engineering and Environmental Laboratory

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04-CAB-190

September 23, 2004

Mr. Douglas H. Chapin  
NEPA Document Manager  
FFTF Decommissioning EIS  
U.S. Department of Energy, Richland Operations Office  
PO Box 550, Mail Stop A3-04  
Richland, WA, 99352

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Vice Chair:  
Lawrence Knight

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Carol Mascareñas

CAB Support Staff:  
Peggy Hinman  
Wendy Green Lowe  
Lori McNamara

**Subject: INEEL CAB Recommendation #115 on the Fast Flux Test Facility Decommissioning Environmental Impact Statement**

Dear Mr. Chapin:

The Site-Specific Advisory Board (SSAB) for the Idaho National Engineering and Environmental Laboratory (INEEL), also known as the INEEL Citizens Advisory Board (CAB), is a local advisory committee chartered under the Department of Energy's (DOE) Environmental Management SSAB Federal Advisory Committee Act Charter.

Attached is the INEEL CAB's recommendation #115, developed through consensus at the CAB's September 2004 meeting, transmitting scoping comments on the subject EIS.

Thank you, in advance, for your prompt response.

Sincerely,

*David Kipping*

David Kipping, Chair  
INEEL CAB

cc: Elizabeth Sellers, DOE-ID  
Paul Golan, DOE-HQ  
William Magwood, DOE-HQ  
Sandra Waisley, DOE-HQ  
Governor Dirk Kempthorne  
Larry Craig, U.S. Senate  
Mike Crapo, U.S. Senate  
Mike Simpson, U.S. House of Representatives  
Butch Otter, U.S. House of Representatives  
Robert L. Geddes, President Pro Tem, Idaho Senate  
Laird Noh, Chair, Idaho Senate Resources and Environment Committee  
Bruce Newcomb, Speaker, Idaho House of Representatives  
Bert Stevenson, Chair, Idaho House Resources and Conservation Committee

Dell Raybould, Chair, Idaho House Environmental Affairs Committee  
Shannon Brennan, DOE-ID  
Bill Leake, DOE-ID  
Site Specific Advisory Board Chairs  
INEEL CAB Member



**Citizens Advisory Board  
Idaho National Engineering and Environmental Laboratory**

**Scoping Comments for the Fast Flux Test Facility Decommissioning  
Environmental Impact Statement**

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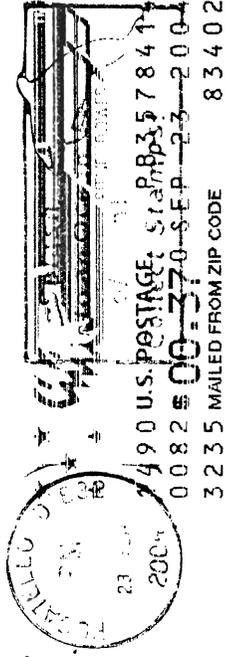
The Idaho National Engineering and Environmental Laboratory (INEEL) Citizens Advisory Board (CAB) reviewed the Notice of Intent (NOI) for the Environmental Impact Statement (EIS) for Decommissioning of the Fast Flux Test Facility (FFTF) at Hanford, near Richland, Washington. We noted that facilities and capabilities at Argonne National Laboratory-West (ANL-West) at INEEL present a possible alternative for conducting key waste processing activities related to the decommissioning of FFTF.

The INEEL CAB submits the following recommendations for consideration during the scoping period for the FFTF EIS.

1. The INEEL CAB recommends that DOE evaluate the environmental impacts of construction and operation of the Remote Treatment Facility at Hanford instead of INEEL.
2. The INEEL CAB recommends that DOE evaluate the environmental impacts of building a new sodium processing facility at Hanford. In particular, the cost savings and reduced risks due to elimination of the need for transportation to INEEL should be evaluated.
3. The INEEL CAB recommends that the Draft EIS include complete and detailed descriptions of each alternative considered, including:
  - Detailed descriptions of how each alternative would be implemented
  - Bounding estimates of the volumes and characteristics of materials and wastes that would be shipped to ANL-W
  - Complete descriptions of all activities that would be conducted at ANL-W involving those materials and wastes
  - Complete descriptions of the on-site treatment and storage required for responsible management of those materials while they remain in Idaho
  - Complete descriptions of ultimate disposal for all those materials
  - Size, frequency, and number of expected shipments of all nuclear and hazardous materials and waste coming into Idaho and leaving Idaho on an annual basis
  - Availability of approved shipping containers and plans for acquiring shipping containers if not already available
  - Requirements for safeguards and securities needed to protect shipments and the populations that live along transportation routes
  - Detailed timelines and schedules for each major milestone associated with each alternative
  - Estimates of the duration of time that materials shipped to Idaho would remain in Idaho

- Detailed explanation of the size and required competencies of the workforce necessary to implement each alternative
  - DOE's plans for remaining in compliance with all federal and state regulations and all court-enforceable and legally-binding requirements (including the Idaho Settlement Agreement) under realistic budget assumptions
  - Full evaluation of the extent to which fuel separation techniques would present a nuclear arms proliferation risk
  - Detailed explanations of any alternatives dismissed from further evaluation and DOE's rationale for determination that each is unworthy of further consideration.
4. The INEEL CAB recommends that the FFTF EIS include full and complete cost information for each alternative, including:
    - Estimates of the costs of implementing each alternative, including activities at Hanford to remove the radioactive sodium, reactor components, and sodium bonded spent nuclear fuel; preparation for shipment to ANL-W, treatment costs, and interim storage costs until all materials can be sent to their final disposal site
    - Estimates for any necessary upgrades to existing facilities, new construction, and increases in security and safeguards (at the site and during transportation events) necessitated by the proposed shipment of materials and waste to ANL-W
    - Funding sources for all activities, including upgrades, new construction, and security and safeguards, as well as projected impacts on other projects funded by the same funding source
    - Estimates of all transportation costs to and from ANL-W, including packaging
    - Cost and schedule impacts on other ANL-W customers
  5. The INEEL CAB recommends that the Draft EIS evaluate all impacts associated with receiving, handling, storage, and treatment of radioactive sodium, reactor components, and sodium-bonded spent nuclear fuel under each alternative course of action.
  6. The INEEL CAB recommends that the Draft EIS evaluate all impacts of transportation associated with the radioactive sodium (in liquid and solid form), reactor components, and sodium bonded spent nuclear fuel that would be shipped to ANL-W for treatment, including, bounding estimates of the volumes and characteristics of all radioactive and hazardous materials and wastes that would be produced at ANL-W as a result of treatment of the incoming materials and waste.
  7. In any alternative that would entail shipments of sodium coolant to INEEL for treatment, consider converting the liquid sodium hydroxide to a solid form before shipment back to Hanford.
  8. The Draft EIS should explain DOE's contingency plans if a geologic repository is not approved and constructed to receive spent nuclear fuel.
  9. The waste resulting from reprocessing of sodium-bonded spent nuclear fuel should be returned to Hanford. Co-mingled wastes should be allocated on a prorated basis.

INEEL Citizens Advisory Board  
c/o North Wind, Inc.  
1425 Higham Street  
Idaho Falls, ID 83402



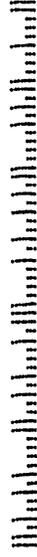
Douglas H. Chapin  
NEPA Document Manager  
FFTF Decommissioning EIS  
U.S. Department of Energy  
Richland Operations Office  
P.O. Box 350, MS A3-04  
Richland, WA 99352

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SEP 28 2004

**DOE-RL/RLCC**

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9/25/04

Dear Mr Chasin -

If grouting the below grade portions of the FFTF were an acceptable means of benching radioactive items, we'd be grouting everything. Grouting is not an acceptable option for this or any such material. Grouting leaks, crumbles, cracks and makes later efforts to remedy the situation next to impossible. Please find another option -

Thank you -

Gordon Smith  
8029 Meridian  
Seattle 98103

8029 Maribian/D.  
98103



Isamu Noguchi 1904-1988

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Mr D Chapin  
KE PA Docman Max  
FFTA De Commissioning EIS  
USDOT  
PO Box 550 MS: A3-04  
Richland WA 99352-0550

0550





## **Rich F. Vance, P.E.**

1776 Fowler Street, Suite 23 • Richland, Washington 99352  
RFVance@aol.com (509) 734-3239

28 September 2004

Doug Chapin, NEPA Document Manager  
FFTF Decommissioning EIS  
U.S. Department of Energy  
Richland Operations Office  
P.O. Box 550, A3-04  
Richland, WA 99352

Subject: Comment on FFTF Decommissioning EIS

Dear Mr. Chapin,

I am a consulting chemical engineer with over 30 years experience in the nuclear industry. For the past five years I have been developing Closure Engineering Reports for the West Valley Demonstration Project at West Valley, New York, in support of the Environmental Impact Statement (EIS) process there. I am submitting the following remarks as a interested resident of Richland, Washington, having relevant experience, but with no direct ties to the Hanford Site.

The notice of intent published in the *Federal Register*, Vol. 69, No. 156, pages 50176 - 50176 included three alternatives for decommissioning of the Fast Flux Test Facility (FFTF): (1) No Action, (2) Entombment, and (3) Removal. None of the alternatives as described would allow unrestricted release of the 400 Area. I recommend that a variation of the "Removal Alternative" be evaluated, which would allow for the 400 Area to be released without restrictions. A description of such an alternative follows:

- Decontaminate, dismantle and remove above grade structures, as would be done for the Removal Alternative.
- Remove the reactor vessel, along with radioactive and contaminated equipment, components, piping, and materials including asbestos, depleted uranium shielding, and lead shielding, as would be done for the Removal Alternative.
- Decontaminate the remaining below grade structures sufficiently well that the area could be released by the DOE for public use without the NRC having to impose restrictions. To do this the below grade structures should be decontaminated to the requirements of 10 CFR 20.1402, and verified by a survey conducted in accordance with the Multi-Agency Radiation Survey and Site Investigation Manual (NUREG-1575).

- Core-drill holes in the below-grade floors to preclude accumulation and retention of water after closure.
- Backfill with materials native to the area.

This proposed closure alternative has some distinct advantages for the DOE.

1. The DOE foot-print at Hanford could be reduced by releasing the 400 Area for unrestricted use.
2. Adverse ground vibration impacts at the Laser Interferometer Gravitational-Wave Observatory (LIGO) would be reduced by eliminating the need to construct an engineered barrier over the top of the former reactor site. It could also be mitigated by decontaminating rather than by demolishing the below-grade structures, and by core-drilling holes in the below-grade floors rather than by using aggressive demolition techniques to break-up the floors.
3. The relative cost, compared to the Removal Alternative, should be reduced. The increased costs of the additional decontamination work should be less than the savings realized by not having to use grout for backfill, by not having to construct an engineered cover, and by elimination of the need to maintain long-term institutional controls.
4. The relative schedule, compared to that of the Removal Alternative, might be shortened. The increased time needed to achieve adequate final decontamination might be less than that required to construct the engineered cover. This would be driven by the scope of the decontamination work required after all the contaminated equipment has been removed, and would be quantified by the engineering calculations performed in support of the EIS.
5. Public resistance likely would be reduced in comparison to any of the proposed alternatives, because none of the proposed alternatives would leave the site as clean.

I appreciate the opportunity to provide this input into the EIS process for decommissioning of the FFTF, and trust that you will seriously consider my comments.

Sincerely,



Rich F. Vance

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<b>AMRC</b>					
<b>Assistant Manager for the River Corridor</b>					
DOCUMENT/LETTER #:		ACTION:		ACTION DUE DATE:	
		NO <input checked="" type="checkbox"/> YES <input type="checkbox"/> MGR ACTION YES <input type="checkbox"/>		N/A	
<b>Subject:</b> <i>Ltr from Rich Vance to D. Chapin</i>					
Asst Mgr for the River Corridor		I	A	Others:	
		I	A		
Olinger, Shirley J- Acting Assistant Manager				Ballard, Wade W (Matrixed)	
Daily, James L - General Mgr				Evans, David T (Matrixed)	
Angulo, Carole - Program Asst.				Light, Ron J	
Gloria, Ofelia T - Secretary				Puthoff, Rick O	
River Corridor Project Team		I	A	Sieracki, Sally A	
Bazzell, Kevin D - Acting Project Director					
Goodenough, James D					
Guercia, Rudolph F (Rudy)				Henrich, Dianne	
Neath, John P				Rochelle, Diane	
Pressentin, Roger A					
Sands, John P					
Smith, Douglas C (Chris)					
Warren, Russell N					
Westover, Kent R					
Zeisloft, Jamie					
FFTF Closure Project Team		I	A		
Farabee, Al - Acting Project Director (Matrixed)					
Chapin, Douglas H			<input checked="" type="checkbox"/>		
Almquist, Rodney A					
Site Closure Team		I	A		
Wisness, Steven H - Team Lead (Matrixed)					
Hathaway, HB (Boyd)					
Larsen, Astrid P					
Teimouri, Alex E					
Ward, Dana C					
Site Infrastructure Team		I	A		
Augustenborg, Jay - Team Lead (Matrixed)					
Burnum, Steven T					
Claussen, Dennis W					
Ellis-Balone, Geneva					
Hall, John B					
Kilbury, Ryan M					
Krekel, Randall N					
Ortiz, Dickie J					
I = Info Copy A=Action Party <b>SCAN:</b> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> <b>SENSITIVE LTR.</b> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> <b>SENSITIVE ATT.</b> YES <input type="checkbox"/> NO <input type="checkbox"/> RLCC Contact: 372-9689		Notes:		Date Ltr. Rec'd: <b>RECEIVED</b> OCT 1 2004 DOE-RL/RLCC	



**Neva J. Corkrum**  
District 1

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**Kathleen "Sue" Miller**  
District 2

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**Frank H. Brock**  
District 3

**Fred H. Bowen**  
County Administrator

---

**Patricia L. Shults**  
Executive Secretary

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**Mary Withers**  
Clerk To The Board



**Board of County Commissioners**  
**FRANKLIN COUNTY**

October 4, 2004

Mr. Douglas H. Chapin  
NEPA Document Manager  
FFTF Decommissioning EIS  
U.S. Department of Energy  
P.O. Box 550 MS: A3-04  
Richland, WA 99352-0177  
Fax: (509) 376-0177  
Email: Douglas\_H\_Chapin@rl.gov

Dear Mr. Chapin:

**Re: Draft FFTF Decommissioning Environmental Impact Statement –  
Public Scoping**

As a Franklin County Commissioner, I continue to believe that the Nation's interest for medical isotopes and nuclear research and development would best be served with the utilization of this marvelous facility.

I am concerned by the award of the contract to SEC Closure Alliance, LLC of Hanford, Wash., as this appears to predetermine the outcome. The contract is the same Fast Flux Test Facility (FFTF) Closure Project that has had no environmental review prior to the Environmental Impact Statement (EIS) process, which has just commenced. Entombment must not be allowed!

Franklin County is downwind from the Hanford 400 Area. There is no radiological contamination in the Hanford 400 Area. Both the entombment and the removal alternatives as proposed by the Department of Energy (DOE) would create a high-level radiological waste dump. The 400 Area is also adjacent to the Hanford National Monument and within a few miles of salmon spawning beds of both the Columbia and the Yakima Rivers.

Mr. Douglas H. Chapin  
Page 2  
October 4, 2004

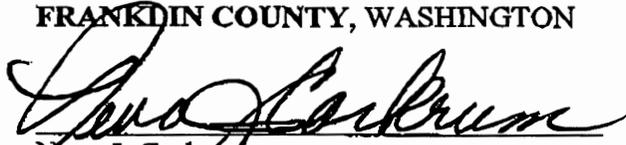
According to Mr. Al Farabec of the DOE, the FFTF is "recoverable." As the Environmental Impact Statement process is now underway, under the NO ACTION alternative, the FFTF must remain recoverable pending direction from the Record of Decision (ROD). The ROD is expected by mid-2005. Any contractor activity that would destroy recoverability of the facility prior to the ROD would appear to be illegal.

Therefore, Franklin County makes its first preference known: the NO ACTION alternative with Surveillance and Maintenance of the facility as RECOVERABLE.

The Nuclear Regulatory Commission requirement and the international standard for decommission of a nuclear reactor is GREENFIELD. If the facility is to be destroyed via direction from the ROD, then the only option is GREENFIELD.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
FRANKLIN COUNTY, WASHINGTON

  
Neva J. Corkrum  
Chairman

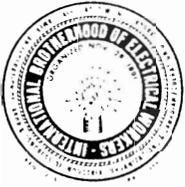
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**INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS  
LOCAL 112**

October 6, 2004

Mr. Douglas H. Chapin  
NEPA Document Manager  
FFTF Decommissioning EIS  
U.S. Department of Energy  
P. O. Box 550 MS A3-04  
Richland, WA 99352

Re: Draft FFTF Decommissioning Environmental Impact Statement – Public Scoping

Dear Mr. Chapin:

As my Local Union's Principal Officer, I still believe that our nation's interest would best be served if this extraordinary facility was utilized for medical isotopes and nuclear research and development.

It would appear by the contract award to SEC Closure Alliance, LLC of Hanford, Washington, that the outcome has already been determined. I am not aware of any environmental review done prior to the just now commencing Environmental Impact Statement on the same Fast Flux Test Facility Closure Project which SEC's contract embraces. Entombment is simply not an acceptable option!

The majority of the members I represent are down wind of the 400 Area which raises natural concerns. Currently the 400 Area has no radiological contamination and the entombment and the removal alternatives as proposed by the U.S. DOE would change that to a high level radiological waste dump. In as much as the 400 Area is adjacent to the Hanford National Monument and only a few miles away from salmon spawning beds of both the Columbia and Yakima Rivers, risk of critical radiological contamination appears imminent.

According to Mr. Al Farabee of the DOE, the FFTF is still "recoverable". As the EIS process is ongoing, under the **NO ACTION** alternative, the FFTF must remain recoverable pending direction from the Record of Decision which is expected by mid 2005. To destroy the recoverability of the facility through any contractor activity prior to the ROD would, at best, be a questionable legal action.

For these reasons, the International Brotherhood of Electrical Workers, Local Union 112, makes known its' first preference to be the **NO ACTION** alternative with **Surveillance and Maintenance of the facility as Recoverable.**

# International Brotherhood of Electrical Workers



LOCAL UNION 112

KENNEWICK, WA 99336

Mr. Douglas H. Chapin  
October 6, 2004  
Page 2

If the facility is to be destroyed by direction of the ROD, the only remaining option is Greenfield. This option is supported by the Nuclear Regulatory Commission requirement and the international standard for decommission of a nuclear reactor.

Sincerely,

A handwritten signature in cursive script that reads "David M. Smith".

David M. Smith  
Business Manager/Financial Sec'y.  
ltj

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS LOCAL 112



2637 WEST ALBANY  
KENNEWICK, WASHINGTON  
99336-3183



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Mr. Douglas H. Chapin  
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FFTF Decommissioning EIS  
U. S. Department of Energy  
P.O. Box 550 MS A3-04  
Richland, WA 99352

99332+0330 03





October 6, 2004

Mr. Douglas H. Chapin  
NEPA Document Manager  
FFTF Decommissioning EIS  
U.S. Department of Energy, Richland Operations Office  
PO Box 550, Mail Stop A3-04  
Richland, WA 99352

Dear Mr. Chapin:

The "Notice of Intent to Prepare an Environmental Impact Statement for the Decommissioning of the Fast Flux Test Facility at the Hanford Site, Richland, WA" in the Aug. 13, 2004 Federal Register invited public comments on the proposed scope of the EIS. One comment is to allow for retention of MASF (Maintenance and Storage Facility) as an option under each of the <sup>three</sup> proposed alternatives (No Action Alternative, Entombment Alternative, and Removal Alternative), or as a fourth alternative. MASF periodically has been used for by projects other than FFTF, and the need for MASF is likely to continue for many years. Keeping MASF for future use will eliminate for now the environmental impacts and costs of disposing of MASF materials.

Sincerely,  
James N. Paglieri  
James N. Paglieri  
1734 Horn Ave.  
Richland, WA 99354-2314



Mr. James Paglieri  
1734 Horn Ave.  
Richland, WA 99352<sup>H</sup>



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OCT 08 2004

DOE-RL

Mr. Douglas R. Rappin

NEPA Document Manager

FFTF Decommissioning EIS

USDOE, Richland Operations Office

PO Box 550, Mail Stop A3-04

Richland, WA 99352





October 8, 2004

→ Mr. Douglas Chapin  
NEPA Document Manager-Department of Energy  
P.O.B. 550 MS: A3-04  
Richland, WA 99352-0550 ph 509-376-0177

Dear Sir:

This letter is addressed to your office and as such contains my comments in response to a request for input to the proposed scope for an EIS entitled "Notice of Intent To Prepare an EIS for the Decommissioning of the FFTF at the Hanford Site Richland Wa." (CFR, Vol. 69, No. 156, Friday August 13, 2004/Notices).

As reiterated in my presentation at the Richland Public Hearing, I strongly support the need for a thorough and comprehensive investigation. Since I don't feel competent to conduct a full review of the situation, I shall report some situations of concern of which I am aware that may necessitate a full review/investigation by those trained and competent in seeking appropriate facts and information.

#### SUMMARY OF COMMENTS

I, as a citizen, request that an investigation be conducted into the following DOE practices/activities (and others as needed) :

- a) **DOE management, controls, and administration of how the federal requirements of NEPA compliance are being met in regard to the closure, surplussing, disposal, and/or re-use**
- b) **The use of federal funds to attempt a closure of an operational nuclear research reactor via the regulations of CERCLA which was not applicable**
- c) **Non-compliance with DOE Policy Rules of Procurement (likely stem from Federal Procurement Regulations) that relate to environmental requirements, specifically Rule 216, and other apparent violations brought forth by objections from unsuccessful bidders and worker organizations**
- d) **DOE contracting and administrative procedures that appear to foretell the outcome of the NEPA process. Generally, minus complete public review and thorough coverage of the suitable alternatives: all directly contrary to the express intent and purpose of NEPA**
- e) **DOE proceeding with the destruction of the FFTF re-use potential without public review and comment**
- f) **Disregard of NEPA Supplementation requirements when presented with Cabinet level and National Policy and Advisory requests (such as NERAC, DOE-IG on Pu 238, etc.)**
- g) **DOE apparent disregard for the rulings of Judge Shea in regard to a lawsuit by Benton County as plaintiff (see attachment of legal proceedings 9<sup>th</sup> District Federal Court of Appeals)**
- h) **Possible conflict of interest in the contracting and administration of the Hanford Program for surplussing and disposal of public property**

I do not believe that DOE has adequately complied with the Federal Statutes pertaining to NEPA including proper planning and contracting. The total program for FFTF needs investigation, a new program plan, and new direction.

It is my suggestion that all current work activities be halted (Stop Work Order) until a new program course is developed. This new course needs to be checked to comply with all legal requirements, and should be prepared, reviewed, and validated per quality standards of the Council on Environmental Quality (C.E.Q.).

## **MY REASONS AND QUALIFICATIONS AS A COMMENTER**

I am a registered professional engineer and do not take to things lightly, and my experience and training strongly emphasizes a thorough research before any conclusions can be drawn. I have direct experience in many of the activities concerning FFTF, including making presentations and submitting comments on several hearing related to the matters concerning possible closure of the FFTF. I served several years as the Hanford Regulatory Specialist and am well versed in Federal Regulatory Requirements and D.O.E policies and procedures in past years.

## **THE FACILITY SCENARIO**

The entanglements of the FFTF Project, as a facility and its practicable uses, is a very complex subject covering national needs, technical requirements, and safety and health; and, likely above all has heavy and serious political overtones. It is my strong feelings that the predominant determining factors in this program from basically its inception all the way to closure/decommissioning have been political. Mixing political ends with the management of Major System Acquisitions (as is the FFTF Project) is a tough task; particularly since its tenure covers the time span of several Administrations. For that I give credit; where I don't give credit are those items of alleged mismanagement that jeopardize the health and safety of the environment, the plant workers, and the general public.

## **CORRECTIVE ACTIONS**

To help assure that an investigation may indeed take place, I have addressed request letters to the GAO and Inspector General of DOE. Copies of these letters are included for your review and are to be considered as my comment input. These letters are shown as attachments to this letter.

I have not pulled another report of mine to compare it with the alleged problems represented above; but I feel confident that some of the above management concerns are reflected therein. The report to which I refer is my submittal to the DOE policy advisory board that solicited comments in the Federal Register several months back. This report of mine was somewhat of a digest of a longer list of policy concerns that were emailed to the Senate Energy Committee.

Objective #1 is the immediate DOE cleanup of its environmental programs (FFTF leading the way). Objective #2 is to halt all current FFTF activities until direction of a NEPA generated Record of Decision (ROD) provides the direction needed.

## **GENERAL COMMENTS**

Though I have spent much of my life in conducting, reviewing, and reporting DOE related activities, I now feel that since retirement that the Government (including DOE) has very little (if any) interest in either me, or what my opinions and knowledge could add to their endeavors. SAD, SAD! For example, I have drafted and forwarded an Executive Order for the President on FFTF, and facilitated medical isotope program transmissions to the H. &H.S. Headquarters Office. Some oral acknowledgments were expressed; but, rarely any replies or confirmations.

I am far from being alone in this request for investigations. Validation by other individuals and organizations can be obtained if needed. Attention is being directed to my Congressman by copy of this letter.

I, and my peers, am very willing to cooperate in your investigations.

Sincerely,

 10/8/4  
Ralph E. Johnson, P.E.

Attachment (addressee only)

- Plaintiff/Appellant Benton County's Motion for Extension of Injunction  
U.S. Court of Appeals for the Ninth Circuit No. D.C.No. CT-02-5100-EFS (E.D. Wash.)
- Copy of Letter to the GAO Requesting an Investigation
- Copy of Letter to the Inspector General-DOE Requesting an Investigation

Cc: Congressman Doc Hastings  
Director FBI  
Andy Miller, Benton County Prosecuting Attorney  
Hanford Atomic Metal Trades Council  
Vice President Cheney

ATTACHMENT  
(Enclosure 1)

P. Stephen DiJulio  
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ATTORNEYS FOR PLAINTIFF / APPELLANT

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

BENTON COUNTY,	)	
	)	
Plaintiff/Appellant,	)	No.
	)	
v.	)	D.C. No. CT-02-5100-EFS
	)	(E.D. Wash.)
U.S. DEPARTMENT OF ENERGY, a	)	
federal agency; SPENCER ABRAHAM,	)	
the Secretary of the U.S. Department of	)	PLAINTIFF / APPELLANT
Energy; RICHLAND OPERATIONS	)	BENTON COUNTY'S MOTION
OFFICE, a local Operations Office of the	)	FOR EXTENSION OF
U.S. Department of Energy; and	)	INJUNCTION WITHOUT BOND
KEITH A. KLEIN, the Manager for the	)	PENDING APPEAL
Richland Operations Office of the	)	
U.S. Department of Energy,	)	
	)	
Defendants/Respondents.	)	
_____	)	

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## A. INTRODUCTION

Plaintiff/Appellant Benton County filed suit to enjoin the Department of Energy (“DOE”) from implementing its plans to deactivate, decommission, and decontaminate the Fast Flux Test Facility (“FFTF”) nuclear reactor at the Hanford DOE site in Richland, Washington. *Deactivation* will involve draining 260,000 gallons of liquid sodium coolant from the reactor and will require the immediate removal, transport, and storage of both irradiated fuel and unirradiated (“green”) plutonium/uranium oxide. Both fuels are extremely hazardous. In addition, the green fuel must be carefully transported and stored at a secure facility, because it can be used to produce nuclear weapons.

The environmental analysis for DOE’s deactivation decision is contained in the December 2000 Final Programmatic Environmental Impact Statement (“PEIS”). The only discussion of deactivation in the 2000 PEIS is DOE’s incorporation by reference of a 1995 Environmental Assessment (“EA”).

Deactivation is an irreversible process that will almost inevitably lead to decommissioning of the FFTF. *Decommissioning* involves destruction of the reactor building and entombment of the reactor core and other contaminated reactor components. *It is undisputed that DOE has never performed a NEPA analysis on decommissioning.*

DOE’s NEPA analysis in this case is deficient for four reasons:

1. **DOE has begun decommissioning without NEPA review.** On July 15, 2002, DOE's Chief of Staff wrote to DOE's Secretary for Environmental Management stating: *“On December 19, 2001, Secretary Abraham directed that actions be taken to proceed immediately with the deactivation, decontamination, and decommissioning of the fast flux reactor.”* (Emphasis added). The memorandum went on to request that *“a project plan for fast flux deactivation, decontamination, and decommissioning, including schedules and funding*

*estimates, should be submitted to the CFO by August 30, 2002 to support long range budget analysis and planning.*” DOE issued a contract for decommissioning, which it later revised during this litigation to remove the language regarding decommissioning activities.

2. **DOE failed to supplement the PEIS in the face of critical new information.** The PEIS relies on the 1995 EA’s discussion of deactivation impacts. The 1995 EA concluded that the FFTF’s nuclear fuel could be stored on-site at a secure location at Hanford called the Plutonium Finishing Plant (“PFP”). DOE has since begun demolishing the PFP, and DOE now admits that it might have to store the FFTF nuclear fuel at another site at Hanford or possibly at its Savannah River facility in South Carolina. ***DOE has not done any NEPA analysis of the impact of closing the PFP or the impacts from transporting and storing the nuclear fuel to a yet-to-be-identified site.***
3. **DOE has improperly segmented its NEPA review.** DOE argues that it does not have to analyze decommissioning at this time, because the FFTF could exist in a deactivated state for an extended time. DOE ignores that 1) it has already begun decommissioning activities and, 2) deactivation is irreversible and will almost inevitably lead to decommissioning. The cause-and-effect linkage between these two activities required that all of the environmental impacts from both be analyzed in a single NEPA document. Without reasonable justification for its decision, DOE has refused to undertake this combined review.
4. **DOE has failed to consider the cumulative impact of decommissioning as part of its NEPA analysis of deactivation.** Even if deactivation and decommissioning could be considered separate actions with independent utility, NEPA requires analysis of “cumulative impacts.” 40 CFR § 1508.7. Decommissioning is a present or reasonably foreseeable future action of deactivation with significant environmental impacts. NEPA required DOE either analyze the cumulative impacts of decommissioning or to provide a “convincing statement” of reasons why the potential effects of decommissioning are not significant. DOE has not met either of these NEPA requirements.

Without an injunction pending appeal, DOE intends to begin immediately removing the liquid sodium coolant from the FFTF. DOE’s rush to action is contrary to NEPA’s policy of reasoned decision-making *before* making an irretrievable commitment of resources. In addition to the environmental consequences of transporting and storing nuclear fuel and reactive liquid sodium, DOE’s decision would preclude beneficial uses of the FFTF. In his October 8,

2002 letter to Secretary of Energy, Spencer Abraham, Secretary of Health and Human Services, Tommy G. Thompson, recognized that the FFTF is a one-of-a-kind facility that is uniquely suited for the production of medical radioisotopes for the treatment of cancer, over 90% of which are currently imported from foreign sources. Exhibit O to the County's First Amended Complaint ("Complaint").

The cost of maintaining the FFTF in its current condition is 3 million dollars per month. The cost to deactivate the FFTF is 547 million dollars, and the cost to complete decontamination and decommissioning could be as high as 2.1 billion dollars. Both the irreversible nature of deactivation and the enormous commitment of resources that it will entail warrant imposition of an injunction pending appeal in this case. Complaint Ex. J, pg. 7; Complaint Ex. S, pg. 5.

#### **B. RELIEF REQUESTED**

Pursuant to Fed. R. Civ. P. 62 and 65, the County seeks an order enjoining DOE from deactivating or decommissioning the FFTF. Benton County requests that the existing injunction be extended, without bond, pending a final decision on the merits of the County's appeal.

#### **C. RELEVANT FACTS**

##### **1. The FFTF Nuclear Reactor.**

The FFTF is a one-of-a-kind, 400-megawatt thermal, liquid-cooled (with sodium) nuclear test and research reactor. The FFTF is currently in "hot standby" mode, which allows it to be easily reactivated. During its decade of operation (until April 1992), the FFTF successfully tested advanced nuclear fuels and produced a wide variety of medical isotopes, 90% of which are now imported from foreign countries. Complaint at pp. 4-5.

The fuel for the FFTF is a mixture of plutonium/uranium oxide pellets in fuel assemblies. *See* Declaration of Kenneth D. Dobbin, submitted with Benton County's motion to the District Court on March 19, 2003 ("3/19 Dobbin Decl.") at ¶ 3.1. When these fuel assemblies are irradiated in the FFTF reactor, they become known as "irradiated spent fuel," which is proliferation-resistant due to high radiation. *Id.* In this condition, the assemblies are not useful to a terrorist, and they are eligible for transport to, and permanent storage at Yucca Mountain. *Id.*

Before they are irradiated, the assemblies are called "green fuel" and must be guarded because the plutonium can be separated and made into bombs. 3/19 Dobbin Decl. at ¶ 3.2. The FFTF contains many green fuel assemblies in tanks of liquid sodium. *Id.*

## 2. NEPA Review.

In 1995, DOE performed an EA on deactivating the FFTF facility. In part because of negotiations between Benton County and then-Secretary, Hazel O'Leary, DOE superceded its decision to begin deactivation activities and, instead, decided to begin a programmatic review of possible missions for the FFTF facility. In 1997, DOE directed that the FFTF be placed in "safe standby" condition, pending evaluation of new missions. DOE Stmt. Of Material Facts for SJ ¶ 28.

In December 2000, DOE issued its PEIS. The PEIS did not contain any independent analysis of deactivation. Instead, the PEIS incorporates the analysis of the 1995 EA. Neither the PEIS nor the EA discuss decommissioning. *Id.* at ¶ 37; Dobbin Decl. at ¶ 3.3.

On January 19, 2001, DOE issued a Record of Decision ("ROD") that is the basis for this NEPA appeal. The ROD, which references the PEIS as the NEPA process for the decision, examined five alternatives including restarting the FFTF

(Alternative 1) and permanently deactivating the FFTF (Alternative 2 and Alternative 5). The ROD named Alternative 2 as the preferred alternative.

*Deactivation of the FFTF is irreversible.* The FFTF is cooled by over 260,000 gallons of liquid sodium. Deactivation will require drilling a hole in the reactor vessel and draining the liquid sodium. This will result in corrosion of the cooling lines and will require the immediate removal of the radioactive fuel from the reactor core. Because of the potential for such corrosion, the FFTF nuclear safety system could never be restarted without prohibitively expensive rebuilding of the coolant system. 3/19 Dobbin Decl. at ¶ 6.

A critical deficiency of the PEIS is that it relied on outdated data in the superceded EA regarding the disposal both the FFTF's green fuel. The PEIS assumed that the green fuel would be moved from the FFTF to the protected area at the Plutonium Finishing Plant ("PFP") on-site at the Hanford Nuclear Reservation. 3/19 Dobbin Decl. at ¶ 3.3. Neither the PEIS nor any other NEPA document discusses the fact that DOE has already issued a contract to demolish the PFP by December 31, 2005. *Id.*

The PEIS does not address moving the green fuel assemblies to any other on-site or off-site location. *Id.* There has been no environmental review (and necessarily no public comment) regarding transport and management of the green fuel at another location, or any explanation of how DOE intends to provide for the long-term storage and security of this extremely dangerous material. *Id.*

The proper disposition of the green fuel is to place it back into the reactor vessel and irradiate it to a spent fuel standard that is self-protecting and eligible to be shipped to the proper repository for spent fuel, Yucca Mountain. Dobbin Decl. at ¶ 6. If the sodium is drained from the coolant loops, this option is forever

precluded. *Id.* After sodium drain, there is no other facility in the world that can irradiate the green fuel and it must be guarded against terrorists in perpetuity. *Id.*

#### **D. ISSUES PRESENTED**

1. Under FRCP 62, should an injunction be granted when the County can demonstrate: (a) a strong probability of success on the merits of its appeal; (b) that the balance of hardships tips sharply in its favor; and (c) that the public interest would be best served by granting the injunction?

2. In granting an injunction, should this Court waive the bond requirement of FRCP 65, when a substantial bond would deter Benton County from prosecuting its appeal and reward DOE for its NEPA non-compliance?

#### **E. EVIDENCE RELIED UPON**

Benton County's motion is based on the pleadings filed in this case to date, particularly the County's injunction motion filed below (copy attached to the Declaration of Marco J. Magnano, Jr. filed herewith, at Exhibit A) and the Declarations of Kenneth D. Dobbin and David A. Sparks.

#### **F. AUTHORITY**

1. An Injunction Is Both Appropriate And Necessary In This Case.

Under FRCP 62, a judgment in an action for an injunction may be stayed during the pendency of an appeal upon motion by any party:

when an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

FRCP 62(c); *see also* FRAP 8.

“[T]he presence of a strong NEPA claim gives rise to more liberal standards for granting an injunction.” *American Motorcyclist Ass'n v. Watt*, 714 F.2d 962,

965 (9<sup>th</sup> Cir. 1983). The equitable tests are relaxed in NEPA cases because (1) irreparable damage may be implied from the agency's failure to evaluate thoroughly the environmental impacts of the proposed action and (2) the court must consider the public interest in a NEPA injunction action. *Id* at 966-67.

The District Court found that, because of the irreversible consequences of DOE's proposed action, the weighing of the equities and the public interest both favored extension of the injunction to allow further appeal. 2/28 Order at p. 14; 3/27 Order at pp. 7-8.

The standard for granting injunctions pending appeal is not, as claimed by DOE, "likelihood of success on the merits." The standard is either probable success on the merits *or* sufficiently serious questions on the merits, together with a balance of hardships in the plaintiff's favor. *People of the Village of Gambell v. Hodel*, 774 F.2d 1414, 1419 (9<sup>th</sup> Cir. 1985).<sup>1</sup>

[T]he critical element in determining the test to be applied is the relative hardship to the parties. If the balance of harm tips decidedly toward the plaintiff, then the plaintiff need not show as robust a likelihood of success on the merits as when the balance tips less decidedly.

*Benda v. Grand Lodge of Intl. Ass'n of Machinists*, 584 F.2d 308, 315 (9<sup>th</sup> Cir. 1978).

An injunction pending appeal is critical because DOE intends to immediately drain the liquid sodium from the FFTF, rendering it useless and creating unavoidable, significant risks of environmental harm based on a woefully inadequate NEPA analysis.

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<sup>1</sup> See also *Idaho Sporting Congress Inc. v. Alexander*, 222 F.3d 562, 565 (9<sup>th</sup> Cir. 2000) (setting forth the relevant factors as either: (1) a combination of probable success on the merits and the possibility of irreparable injury; or (2) a combination of serious legal questions and the balance of hardships tipping in the movant's favor).

a. Benton County Has A Strong Likelihood of Success on the Merits of Its Appeal.

i. **Benton County Timely Filed Suit In This Case**

The District Court erred in concluding that the County's claims challenging the deactivation activities described in the 1995 EA were precluded by the Administrative Procedure Act's ("APA's") six-year limitations period. Regardless of whether the issue of timeliness should be decided under the APA's six-year limitation period or the doctrine of laches, the District Court erroneously decided that the time began running when the 1995 EA and FONSI were issued.

The County is not challenging the 1995 EA or Finding of No Significant Impacts ("FONSI"). The FONSI became irrelevant when DOE broadened the potential alternatives for the FFTF and prepared a PEIS for the expanded proposal. The County is challenging the analysis that originated in the 1995 EA only because it was incorporated into the 2000 PEIS as the only analysis of the deactivation alternative in the 2001 ROD.

NEPA challenges are limited to final agency actions. *Ohio Forestry Ass'n. v. Sierra Club*, 523 U.S. 726, 727, 118 S.Ct. 1665, 140 L.Ed.2d 921 (1998); 5 U.S.C. §704 (APA limits judicial review to "final agency action for which there is no adequate remedy").

The NEPA regulation addressing "incorporation by reference," 40 CFR §1502.21, provides that "agencies shall incorporate material into environmental impact statements by reference . . . without impeding agency and public review of the action . . ." No material may be incorporated by reference unless it is "reasonably available for inspection" during the comment period. *Id.* The incorporated materials must be available for inspection because those materials become part of the environmental documentation for the new proposed action.

The ROD specifically references the PEIS as the NEPA review that supports the decision to select Alternative 2, which called for the deactivation of the FFTF. DOE cannot have it both ways. It cannot incorporate the EA into the PEIS's analysis leading to the selection of Alternative 2 in the 2001 ROD, and also claim that the EA is unassailable because it had been published in support of a superceded decision made in 1995. Neither the APA's limitations period nor the doctrine of laches bars Benton County from pursuing its claims. Those claims were brought less than a year from the DOE's December 2001 decision to implement the January 2001 ROD.

**ii. Benton County Did Not Waive Its Right To Challenge DOE's Findings Under the PEIS.**

The District Court erred when it concluded that Benton County's comment letter and participation in the PEIS process was not specific enough to permit appeal of DOE's proposed action.

The County participated in the PEIS process by testifying at the August 31, 2000 public hearing on the draft PEIS (Comment 2563-1 from Commissioner Bowman, PEIS pg. 3-351) and by filing Comment Letter 619 on August 31, 2000 (signed by Commissioners Benitz, Bowman, and Oliver). Comment Letter 619 provided "it is pointless and imprudent to mothball or decommission such an underutilized national asset and investment of public capital when so many community, scientific, and industrial benefits can be derived from its use."

Copies attached to the Declaration of Carl Holder filed below.

**iii. DOE Failed to Supplement the PEIS, as Required Under NEPA, with New Information on Probable Significant Environmental Impacts.**

The District Court erred in finding that no new information had become available that required supplementation of DOE's NEPA analysis. In part, this is because the information in the EA regarding the storage and disposal of the green fuel is inaccurate. The EA relies on the existence of the PFP facility, which DOE now admits will be demolished in as little as two years.

A supplemental EIS is required when new information becomes available regarding the proposal, or its impacts, that significantly affects the quality of the environment. *Oregon Natural Resource Council v. Marsh*, 832 F.2d 1489 (9<sup>th</sup> Cir. 1987); § 40 CFR § 1502.9(c)(1)(i) & (ii). This Court articulated the following factors to guide when a SEIS should be prepared:

When new information comes to light the agency must evaluate it, and make a reasoned determination whether it is of such significance as to require implementation of formal NEPA filing procedures. Reasonableness depends on such factors as the environmental significance of the new information, the probable accuracy of the new information, the degree of care with which the agency considered the information and evaluated the impact, and the degree to which the agency supported its decision not to supplement the statement with a statement of explanation or additional data.

*Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1024 (9<sup>th</sup> Cir. 1980).

The CEQ regulations require that an agency "shall" prepare a supplemental EIS if "the Agency makes substantial changes in the proposed action" or "there are significant new circumstances or information relevant to environmental concerns." 40 CFR § 1502.9(c)(1)(i) & (ii); *Dubois v. United States Dep't of Agric.*, 102 F.3d 1273, 1291-92 (1<sup>st</sup> Cir. 1996) ("the use of the word "shall" is mandatory, not precatory").

Here, DOE has made a substantial change to the proposed action by planning to eliminate the designated on-site storage facility for the FFTF green

fuel.<sup>2</sup> The heightened threat of terrorist activities, which has occurred since the issuance of the December 2000 PEIS, provides another basis for supplementation, given that DOE's unanalyzed back-up plan may be to ship this dangerous material across the country to its Savannah River facility. Finally, DOE has not provided any convincing statement of reasons to show that it took the requisite "hard look" for its decision not to supplement the PEIS.

Amazingly, DOE contends that *"the possibility that unirradiated fuel might be stored in another location is not a significant circumstance under NEPA bearing on the decision to deactivate the FFTF, as it could be stored at other secure locations at Hanford or shipped to DOE's Savannah River Site for use in other projects and programs prior to a point when PFP is not available for storage."* DOE Opp. at p. 7.

DOE's NEPA obligation is continuing and requires supplementation of the PEIS. *Marsh*, 490 U.S. 360, 371 (1989) (it would be inconsistent with NEPA's purposes "for the blinders to adverse environmental effects, once unequivocally removed, to be restored prior to the completion of agency action").

In this case, DOE has restored its blinders. Clearly, the early shutdown of the PFP, which was to be used for the storage of the FFTF's fuel, is significant new information regarding the potential adverse (and even catastrophic) impacts of the proposed action on the environment. Since the requirement to store the FFTF's

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<sup>2</sup> On Thursday, March 13, 2003, the Tri-City Herald published an article entitled **PFP Cleanup Well Ahead of Schedule**. This article notes that "the cleanout of plutonium at Hanford's Plutonium Finishing Plant appears significantly ahead of schedule" and could end months ahead of the May 2004 legal deadline. The article goes on to state that, because of political opposition from South Carolina (the site of the Savannah River nuclear facility), DOE may be forced to establish a temporary on-site storage space for the plutonium outside of the PFP. Copy attached as Exhibit A to the Declaration of James P. McNeill, III In Support of Motion for Extension of Injunction Without Bond Pending Appeal filed in the District Court.

fuel is directly linked to the decision to deactivate the reactor, these linked actions should have been analyzed in a supplemental NEPA document.

iv. **DOE Improperly Segmented NEPA Review Because Deactivation and Decommissioning Are Not Separate Activities Under NEPA.**

The District Court erred when it ruled, based on DOE definitions that were not adopted by rule or other legal authority, that deactivation and decommissioning are separate activities that excused environmental review on both deactivation and decommissioning in a single environmental document. NEPA does not permit segmentation of environmental review because such segmentation is contrary to the statute's "hard look" requirement. *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1332 (9<sup>th</sup> Cir. 1993).

The definitions of "deactivation" and "decommissioning" under 10 C.F.R. are as follows: **Deactivation** is defined as "[t]he process of placing a facility in a stable and known condition, including the removal of hazardous and radioactive materials." 10 C.F.R., Pt. 830, Subpt. B, App. A.<sup>3</sup> **Decommissioning** is defined as "[t]hose actions taking place after deactivation of a nuclear facility to retire it from service." *Id.* This includes "surveillance and maintenance, decontamination, and/or dismantlement." *Id.*

Because deactivation of the FFTF makes its decommissioning virtually certain, DOE's NEPA analysis violated NEPA for three reasons: (1) it was improperly segmented, since DOE admits it has never analyzed decommissioning (*See* DOE Opp. at p. 4); (2) the environmental analysis failed to include the

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<sup>3</sup> It is important to note that this definition of deactivation, used by DOE, was not even adopted as a guideline until February 2001, after the final PEIS was published in December 2000. *See* 66 FR 1810-01, 2001 WL 20555 (F.R.) (adopting Appendix A).

cumulative impacts of decommissioning; and (3) DOE has already made a decision to begin decommissioning without conducting NEPA review.

(1) **Segmentation.**

The District Court recognized that “the drainage of the sodium will make restart [of the FFTF] practically impossible.” SJ Order, pg. 4. If a decision is made to deactivate that makes decommissioning inevitable, the impacts of decommissioning must be addressed and considered before making the decision to deactivate, because these activities are connected actions. 40 CFR §1502.4(a), (“proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action, shall be evaluated in a single impact statement”).

DOE’s response has been that it does not need to address decommissioning activities because the FFTF can exist in a deactivated state for a long period of time and, therefore, that it would be speculative to discuss the impacts of decommissioning. *See* DOE’s SJ Memo p. 26-29.

One of NEPA’s central themes is early disclosure, to allow for public participation and to ensure that environmental information is factored into a reasoned decision, instead of being part of a post-hoc rationalization for a decision that has already been made. In *Kern v. United States Bureau of Land Management*, 284 F.3d 1062, 1072 (9<sup>th</sup> 2002), the Court addressed this point:

**NEPA is not designed to postpone analysis to the last possible moment. Rather, it is designed to require such analysis as soon as it can be reasonably done. Reasonable forecasting and speculation is . . . implicit in NEPA and we must reject any attempt by agencies to shirk their responsibilities under NEPA by**

labeling all discussion of future environmental effects as “crystal ball inquiry.”<sup>4</sup>

*Id.* at 715.

DOE cannot defer environmental review on decommissioning to some future date because it does not know precisely when it will undertake formal decommissioning. Even if there is uncertainty or lack of complete information about the environmental consequences of decommissioning, NEPA provides that an agency must undertake analysis of known information, gaps in information, and the risk of proceeding in the face of uncertainty. 40 CFR §1502.22.

Even if this Court were to conclude that deactivation and decommissioning are not connected actions, DOE has still violated NEPA because it has not addressed the cumulative impacts of these activities.

## (2) Cumulative Impacts.

“Cumulative impact” is the impact on the environment that results from the incremental impact of the action when added to other past, present, or reasonably foreseeable future actions. 40 CFR § 1508.7.

**Deactivation** entails draining the liquid sodium and removing the nuclear fuel from the FFTF. There are several potentially serious environmental consequences associated with deactivation, including removal, transport, and storage of the highly reactive liquid sodium, irradiated fuel, and green fuel.

**Decommissioning** follows deactivation and involves the physical destruction of the FFTF, entombment of the reactor core, further decontamination, and the

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<sup>4</sup> See also *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1312, 1313 (9<sup>th</sup> Cir. 1990) (“NEPA requires consideration of the potential impact of an action *before* the action takes place.”); *Save the Yaak Committee v. Block*, 840 F.2d 714 (9<sup>th</sup> Cir. 1988) (CEQ regulations “require federal agencies to ‘integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values.’”).

shipment and storage of highly radioactive materials. There is a direct link between these two activities that creates a cumulative risk of environmental harm.

If substantial questions are raised regarding whether the proposed action *may* have a significant effect upon the human environment, a decision not to prepare an EIS is unreasonable. Additionally, an agency's decision not to prepare an EIS will be considered unreasonable if the agency fails to "supply a convincing statement of reasons why the potential effects are insignificant."

*Save the Yaak Committee v. Block*, 840 F.2d 714, 717 (9<sup>th</sup> Cir. 1988).

In this case, DOE has not provided any convincing reasons for its failure to analyze the impacts of decommissioning before undertaking steps that make decommissioning virtually inevitable. DOE's failure in this regard is even more egregious because DOE has already made a decision to proceed with decommissioning and it has begun to act on that decision.

(3) **DOE Has Begun to Decommission FFTF Without Any NEPA Review.**

On July 15, 2002, DOE Chief of Staff Kyle E. McSarrow wrote a memorandum to DOE Secretary for Environmental Management, Jessie H. Roberson that stated: "*On December 19, 2001, Secretary Abraham directed that actions be taken to proceed immediately with the deactivation, decontamination, and decommissioning of the fast flux reactor.*" (Emphasis added). The memorandum went on to request that "*a project plan for fast flux deactivation, decontamination, and decommissioning, including schedules and funding estimates, should be submitted to the CFO by August 30, 2002 to support long range budget analysis and planning.*" (Emphasis added).

Since that time, DOE has acted to implement Secretary Abraham's directive for immediate decommissioning by entering into a contract to undertake decommissioning activities.

Until March 17, 2003, DOE had a contract with Hanford subcontractor Fluor (3/19 Dobbin Decl. at ¶ 7 and Exhibit B) that, under the title **Decommission FFTF Complex**, provided:

Demolish structures other than the reactor building to three feet below grade and backfill the footprint with fill material. Entomb the reactor building with an environmentally acceptable closure. The reactor vessel and irradiated internals will remain in place. As determined to be acceptable, other wastes may also be entombed within the reactor building. Install monitoring systems as required to verify the continued integrity of the entombment. At the point where all systems and spaces at the facility achieve their respective end state condition, disposition is achieved and the DOE will verify the end state.

While this suit was pending, DOE moved to sanitize the Fluor contract by removing the this reference to decommissioning activities. On March 17, 2003, DOE issued a contract modification that DOE first publicized in a declaration filed in opposition to Benton County's motion for an injunction pending appeal. See DOE Opp. at p. 8. DOE removed the offending language about demolishing buildings and entombing the reactor and replaced it with an innocuous directive to *"[p]repare analysis, including development of alternative descriptions and waste plans, as may be useful to either prepare appropriate NEPA or CERCLA documentation for decommissioning the FFTF."* Declaration of Oliver Farabee at Exhibit D, page C-87.

DOE's actions are the antithesis of the open disclosure and reasoned decisionmaking required by NEPA. See *Calvert Cliffs Coordinating Comm., Inc. v. Atomic Energy Commission*, 449 F.2d 1109 (D.C. Cir. 1971) (finding that

perhaps the greatest importance of NEPA is that NEPA compels federal agencies to take environmental values into account).

DOE has clearly articulated an intention of immediately decommissioning the FFTF reactor, and it has developed a very specific contract provision relating its methods for doing so. Despite the advanced stage of DOE's plan, it has never been subject to any form of NEPA analysis or public scrutiny. And, it does not require much imagination to conclude that a plan calling for the entombment of the "reactor and irradiated internals" is a federal action with a high likelihood of significant environmental impacts.

DOE's actions and its crabbed interpretation of its duties have violated both the spirit and the letter of NEPA. From NEPA's earliest days, courts have rejected this type of agency behavior.

Congress did not intend the Act to be such a paper tiger. Indeed, the requirement of environmental consideration to the fullest extent possible sets a high standard for the agencies, a standard which must be rigorously enforced by the reviewing courts.

*Calvert Cliffs' Coordinating Comm., Inc. v. Atomic Energy Comm'n*, 449 F.2d 1109, 1115 (D.C. Cir. 1971).

b. The Balance of Hardships Tips Sharply In Benton County's Favor.

The District Court erred in finding that the balance of hardships in this case is evenly balanced between the parties. Irreparable injury "may be implied from the failure of responsible authorities to evaluate thoroughly the environmental impact of a proposed federal action." *American Motorcyclist Ass'n. v. Watt*, 714 F.2d 962, 966 (9<sup>th</sup> Cir. 1983) (citing *Friends of the Earth, Inc. v. Coleman*, 518 F.2d 323, 330 (9<sup>th</sup> Cir. 1975)).

The Supreme Court has stated that, "Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at

least of long duration, i.e., irreparable. If such injury is sufficiently likely, therefore, the balance of harms will usually favor the issuance of an injunction to protect the environment.” *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 545, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987).<sup>5</sup> In this case, irreparable injury is established by the irreversible nature of DOE’s proposed action, which in the absence of an injunction, would be to place the FFTF’s green fuel in a physically and environmentally less secure facility, and to subject this special nuclear material to transport, handling, and storage without proper environmental review of those actions.

c. The Public Interest Would Be Best Served by Extending the Injunction.

The District Court erred in holding that the public interest would not be served by the grant of an injunction pending appeal in this case.

The Ninth Circuit has repeatedly recognized the District Court’s heightened duty to fashion equitable relief in defense of the public interest involving environmental concerns. *Northern Cheyenne Tribe v. Hodel*, 851 F.2d 1152, 1157 (9<sup>th</sup> Cir. 1988).

Because the drainage of liquid sodium performed at deactivation of the FFTF, and the resulting green fuel, create environmental problems both in terms of handling and storage, the public interest is best served by maintaining the status quo at the FFTF, pending Benton County’s appeal.

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<sup>5</sup> Although an injunction pending appeal is not automatic whenever the court identifies a NEPA violation, the Ninth Circuit has recognized that an injunction is the appropriate remedy absent unusual circumstances. *City of South Pasadena v. Slater*, 56 F.Supp.2d 1106, 1143 (C.D. Cal. 1999).

2. An Extension of the Injunction Without Bond Is Appropriate In This Case.

At the District Court, DOE asked for a \$9,000,000 bond during the County's appeal to this Court.<sup>6</sup> Courts do not typically require a significant bond in NEPA cases.<sup>7</sup> In *Natural Resource Defense Council v. Morton*, 337 F.Supp. 167 (D.D.C. 1971), the court rejected a bond of \$75,000 (escalating up to 2.5 million dollars per month) to cover the government's potential lost revenue from the sale of an oil/gas lease. The Court set bond at \$100 because requiring a larger bond would "stifle the intent of the act" and "gravely damage" the public interest.

This Court reached a similar conclusion in *Friends of the Earth v. Brinegar*, 518 F.2d 322 (9<sup>th</sup> Cir. 1975). In that case, the City of San Francisco argued that a bond was required to protect it from increased construction costs and lost rental income that might occur as a result of delay in completing an airport expansion. This Court overturned the District Court's decision to impose a \$4,500,000 bond pending appeal and reduced the bond to \$1,000.<sup>8</sup>

As set forth in the attached Declaration of David A. Sparks ("Sparks Decl.") ¶ 3, the County has \$1 million in a true cash reserve that is used to finance

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<sup>6</sup> Although not binding on this Court, at the March 27, 2003 hearing on Benton County's Motion For Extension Of Injunction Without Bond Pending Appeal, U.S. District Court Judge Edward F. Shea stated that, if he were going to require a bond, it would be "nothing resembling nine million dollars," but instead, "it would certainly be something in the area of a hundred thousand dollars."

<sup>7</sup> "[D]espite language in [FRCP 65(c)] which emphasizes the 'costs and damages' that may be incurred by defendants, the NEPA cases have usually not required a bond at all or a nominal bond of a dollar." § 4.53 *NEPA Law and Litigation*; see also *City of South Pasadena v. Slater*, 56 F.Supp.2d 1106, 1148 (C.D. CA 1999) ("Courts routinely impose either no bond or a minimal bond in public interest environmental cases.").

<sup>8</sup> The Ninth Circuit has held that both the **requirement** of a bond and the **amount** of that bond under Rule 65(c) are left to the District Court's discretion. *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9<sup>th</sup> Cir. 1999) ("Our sister circuits have construed [CR 65(c)] as investing the district court with discretion as to the amount of security required, if any. We agree with this rationale.") (Citations omitted.)

unexpected costs. *Id.* This \$1 million reserve is routinely tapped to meet unbudgeted, but necessary, expenditures for basic County services. *Id.*

DOE projects the quarterly cost of keeping the FFTF in safe-standby condition at \$9 million. Sparks Decl. at ¶ 6. This cost is very low in comparison to the burden that would be placed on Benton County if it is required to post a \$9 million bond pending appeal. *Id.* \$9 million represents approximately 0.04% of the total DOE budget of over \$20 billion, approximately 0.1% of the DOE Cleanup budget of \$7.9 billion, or approximately 0.5% of the FY 2003 Hanford Budget. *Id.* In comparison, the \$9 million represents **25%** of Benton County's Current Expense Budget, and is *nine times* greater than what may be considered the County's discretionary reserve fund. *Id.*

For all of these reasons, waiver of the bond requirement is both appropriate and necessary in this case.

#### G. CONCLUSION

Based on the foregoing, Benton County requests that the Court enter an injunction pending a decision on the merits of the County's NEPA challenge to DOE's decision to deactivate the FFTF reactor. The County also requests that the Court enter the injunction without requiring the County to post a bond.

RESPECTFULLY SUBMITTED this \_\_\_\_ day of March 2003.

FOSTER PEPPER & SHEFELMAN PLLC

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P. Stephen DiJulio, WSBA # 7139  
Marco J. Magnano, Jr. WSBA # 1293  
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General Accounting Office  
 Office Screening Needed Investigations  
 Office Covering Discrepancies in the Dept. of Energy  
 Areas Involving Environmental and Federal Procurements

Dear Sir or Madam:

This letter is addressed to your office and as such will be included in my comments in response to a request for citizen input to the proposed scope for an EIS entitled "Notice of Intent To Prepare an EIS for the Decommissioning of the FFTF at the Hanford Site Richland Wa." (CFR , Vol. 69, No. 156, Friday August 13, 2004/Notices.

I am a registered professional engineer and do not take to things lightly, and my experience and training strongly emphasizes a thorough research before any conclusions can be drawn. My limited knowledge of this situation strongly supports a need for a comprehensive investigation. Specifically,

**I, as a citizen, request that an investigation be conducted into the following DOE practices/activities (and others as needed) :**

- a) **DOE management, controls, and administration of how the federal requirements of NEPA compliance are being met in regard to the closure, surplussing, disposal, and/or re-use**
- b) **The use of federal funds to attempt a closure of an operational nuclear research reactor via the regulations of CERCLA which was not applicable**
- c) **Non-compliance with DOE Policy Rules of Procurement (likely stem from Federal Procurement Regulations) that relate to environmental requirements, specifically Rule 216, and other apparent violations brought forth by objections from unsuccessful bidders and worker organizations**
- d) **DOE contracting and administrative procedures that appear to foretell the outcome of the NEPA process. Generally, minus complete public review and thorough coverage of the suitable alternatives: all directly contrary to the express intent and purpose of NEPA**
- e) **DOE proceeding with the destruction of the FFTF re-use potential without public review and comment**
- f) **Disregard of NEPA Supplementation requirements when presented with Cabinet level and National Policy and Advisory requests (NERAC, DOE-IG on Pu 238, etc.)**
- g) **DOE apparent disregard for the rulings of Judge Shea in regard to a lawsuit by Benton County as plaintiff (see attachment of legal proceedings 9<sup>th</sup> District Federal Court of Appeals)**
- h) **Possible conflict of interest in the contracting and administration of the Hanford Program for surplussing and disposal of public property**

I am far from being alone in this request. Validation of other individuals and organizations can be obtained if needed. Attention to my Congressman is transmitted via cc of this letter.

I, and my peers, are very willing to cooperate in your investigations.

Sincerely,

 10/8/14  
 Ralph E. Johnson, P.E.

Attachment (addressee only)

Cc: Congressman Doc Hastings  
 Director FBI  
 Andy Miller, Benton County Prosecuting Attorney  
 Hanford Atomic Metal Trades Council  
 Vice President Cheney

Office of Inspector General, Department of Energy  
 Office Screening Needed Investigations  
 Office Covering Discrepancies in the D.O.E. Policies  
 Areas Involving Environmental and Federal Procurements

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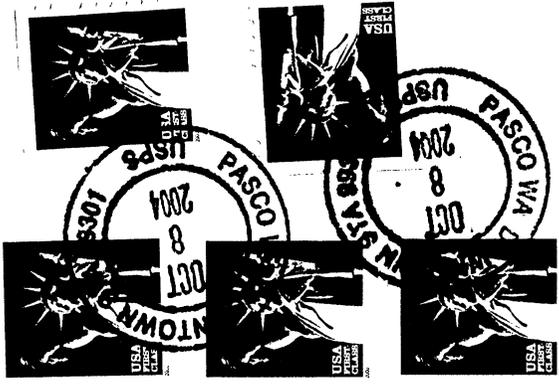
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Attachment (addressee only)

Cc: Congressman Doc Hastings  
 Director FBI  
 Andy Miller, Benton County Prosecuting Attorney  
 Hanford Atomic Metal Trades Council  
 Vice President Cheney

P.O. Box 6255  
Kennewick WA  
99336



Mr. Douglas Chapin

NEPA FIFTE DOCIT MGR

- P.O. Box 550 MS: A3-04

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