



STATE OF WASHINGTON

August 29, 2012

The Honorable Stephen Chu, Secretary
United States Department of Energy
1000 Independence Avenue
Washington, DC 20585

Dear Secretary Chu:

As you know, we reached a significant agreement on the parameters for Hanford cleanup in a Consent Decree signed in federal court in October 2010. In November 2011, just 13 months later, DOE informed us that a number of unspecified Consent Decree requirements were at risk. Nearly six more months passed before DOE provided the State with additional details identifying the specific requirements at risk, the reasons DOE believes certain deadlines are at risk, and DOE's efforts to address these developments.

As explained in more detail below, we are writing to ask for your commitment to respond with reasonable diligence to the circumstances you believe have put the Consent Decree schedule at risk, including taking all reasonable steps to avoid or minimize any possible delays from the current schedule.

In May 2012, DOE identified the following Consent Decree requirements as at risk: A-1, A-2, A-3, A-4, A-13, A-14, A-15, A-16, A-17, and A-19. Also in May, the Department informed us that it had directed its primary Waste Treatment Plant contractor, BNI, to develop a new baseline for the WTP project that would provide for the resolution of various technical issues, while maintaining the current schedule for only some of the WTP facilities - the Low Activity Waste melter (LAW), the Laboratory (LAB), and the Balance of Facilities (BOF), all at a presumed flat annual funding rate of \$690 million for the project.

We believe the CD requires the Department to do everything in its power to implement and meet the current CD schedule, as an order of the court. This includes both addressing technical concerns and aggressively pursuing funding from Congress, internal department resources and any other federal sources. DOE, however, appears to have already decided it will not comply with the Consent Decree based upon the self-imposed limitations of (1) annual funding caps and (2) a judgment that resolution of technical issues related to the PTF and HLW is only possible if the schedule for those facilities is extended. It has done so without evaluating whether maintaining compliance remains technically possible, and, if such an evaluation shows that meeting all Consent Decree requirements is not technically possible, without evaluating scenarios geared to still come as close as possible to meeting the current schedule.

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We believe this approach is inconsistent with the Decree, which requires DOE to demonstrate “good cause” for requesting any schedule extension and, by implication, for not meeting a schedule requirement. Such “good cause” will not exist if DOE could have met an existing schedule by responding with reasonable diligence to a challenge, nor will it exist if DOE could have met an existing schedule if it had responded with reasonable diligence to circumstances and events as they occurred.

It is our view that, at a minimum, a reasonably diligent response to a possible schedule delay must involve DOE promptly obtaining all information necessary to inform DOE, the State and the Court of the full range of possible responses to the technical issues giving rise to DOE’s schedule concerns. Such information should include DOE obtaining (and sharing with the State) a baseline from your contractor that does not assume funding limitations and is designed to either meet all Consent Decree requirements, or if meeting such requirements is determined to be impossible, then still meeting all of them as closely as possible. We have already requested that DOE produce such a baseline, in addition to the baseline you have already tasked your contractor with producing. See letter dated May 17, 2012, to David Kaplan, USDOJ. DOE has declined our request. See letter dated June 22, 2012, from David Kaplan, USDOJ.

As your long-term and vested partner, the State expects full consultation on decisions that affect the future of Hanford. The cleanup of the Hanford site is a matter of great urgency to the citizens of Washington State. Waste held in unfit underground single-shell tanks, many of which have already leaked, threatens the ground water, the river and our public health.

We have considered invoking the Dispute Resolution Process specified in section IX of the Consent Decree as a means to address the issues described above. However, we have delayed that decision pending your response to this letter.

Given the urgency of this matter, we ask for your response by September 26, 2012. Thank you in advance for your attention to this matter.

Sincerely,



Christine O. Gregoire
Governor



Rob McKenna
Attorney General