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Comments on Proposed Consent Agreement between Washington State and United States Department of Energy, and Proposed Changes to the Hanford Clean-Up Agreement (TPA/Tri-Party Agreement)

When a state sues a major polluter for violations of environmental laws and violations of a consent agreement, any reasonable person would expect a proposed settlement to include the polluter being required to disgorge the proceeds from its violations, and a penalty. Prosecution guidelines for environmental violations typically reflect this standard. Washington State (and Oregon) took the serious step of going to court because of the willful, prolonged nature of the violations of the TPA milestones and the serious impacts from those violations.

That public expectation has not been met in the proposed settlement and consent agreement between Washington State and the U.S. Department of Energy (USDOE).

Washington State gets NOTHING substantive in the proposed settlement towards emptying Single Shell Tanks and preventing additional harm to health and the environment, while USDOE gets the massively delayed schedules it sought and, an implied State blessing to use Hanford as a national radioactive waste dump in ten years.

The current Hanford Clean-Up Agreement (TPA) milestone for emptying all Single Shell Tanks (SSTs) – which now hold 35 million gallons of High-Level Nuclear Waste – is 2018. Only 7 of the 149 SSTs have been emptied. Over a million gallons of waste has leaked from the SSTS, and contamination is moving more rapidly into groundwater and towards the Columbia River than USDOE claimed was possible. Instead of emptying the tanks and cleaning up the contamination, USDOE adopted plans to delay completion of emptying the SSTs until 2040, to not cleanup the leaked contamination, and to add even more waste to be imported and buried at Hanford for decades before the tanks are emptied.

USDOE unilaterally decided to delay emptying Single Shell Tanks from 2004 through 2009 (and now, extending out another thirteen years) saving itself at least $500 million to date – which USDOE chose to spend on other USDOE programs (those funds were not even spent on Hanford Clean-Up). Washington State and the Hanford Advisory Board are on record repeatedly objecting to USDOE breaking a set of commitments to use the funds “saved” by closing other USDOE sites by 2006 for increasing investment in Hanford Clean-Up. Instead of doing so, USDOE continued to violate its TPA obligations for emptying SSTs, reducing the number of staff and funding level for retrieval of SST waste[1] – and, spending those savings on other USDOE programs (particularly weapons production and nuclear energy, which were increased by

[1] USDOE also failed to invest in transfer line upgrades and technology, e.g., eliminating the illegal and dangerous lack of double contained piping through transfer vaults.

roughly the same amount that USDOE requested decreased spending on its Environmental Management (cleanup) account).

The proposal fails to include any requirement that USDOE increase its spending on Single Shell Tank retrieval or pay any penalty for the willful violations of the existing TPA consent agreement. The proposal adopts USDOE's existing budget based schedule, under which USDOE spends hundreds of millions per year less on SST retrieval than it was obligated to under the existing TPA. The proposal fails to include USDOE increasing expenditures on SST retrieval to make up for the $500 million it diverted from this program over the past five years. [2]

USDOE claims it can not retrieve more waste from SSTs before the vitrification plant is fully operational (2022) because it has limited space in the newer, sound Double Shell Tanks. However, the settlement does nothing to require USDOE to invest in new technology or techniques which may be proven within a year to increase capacity of DSTs, which would allow more SST waste to be retrieved.

> E.g., USDOE is spending stimulus funds (ARRA) to investigate and test if "wiped film evaporator" technology can be used to make space in DSTs for waste from SSTs. Results are due within a year. These evaporators would be deployable in the tank farms. If testing is successful, the settlement should require USDOE to spend funds to deploy these and empty more than one or two SSTs per year. Instead, the settlement and consent decree would not even require USDOE to negotiate whether it should use new technologies to empty SSTs until fiscal year 2016!!!

Any settlement of a lawsuit for the willful and serious repeated violations of the TPA must include USDOE being required to invest more funds in emptying SSTS in the next several years than it saved from its violations, and a penalty proportionate to the serious nature of the violations.

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[2] Congress appropriated nearly $2 billion in stimulus funding (American Reinvestment and Recovery Act, ARRA) for Hanford, to be expended between FY 2009 and 2011. Despite the fact that it had violated SST retrieval timelines, and despite the State lawsuit for those violations, USDOE chose not to seek to spend a penny of that $2 billion towards curing the massive violation of its legal obligations under the TPA to empty SSTs, and not use any of the funds for emptying Single Shell Tanks. This, despite the fact that USDOE claims that emptying and treating High-Level Nuclear Waste tanks is its highest environmental priority.

Shamefully, Washington State has not objected to USDOE's choice to spend hundreds of millions of stimulus funds for white elephant projects such as building another canister storage building for vitrified waste (that project was withdrawn from stimulus funding after Heart of America Northwest pointed it out to the Washington Post as a white elephant) – which would not be used until after 2022, and then, only if the vitrification plant operates at full capacity without problems; or, projects that do little to reduce risks but make for great pr photos of building being demolished. Only 7.5% of the stimulus funding is being used for the cleanup of groundwater, which USDOE and Washington State repeatedly pointed to in public hearing presentations in regard to stimulus funding. Less than 18% of stimulus funds appropriated for Hanford are being spent on tank farm programs – mostly to prepare infrastructure for feeding the vitrification plant, with some being spent on researching wiped film evaporators and some on a questionable project to design and upgrade the effluent treatment facility before it is known what the effluents from vitrification processes will be.

We hope that the cynics are wrong, when they commented that the State settled this without insisting on an enforceable commitment to "Clean-Up First" or any changes to the schedule for retrieval of SST wastes because State officials really settled for the $2 billion in stimulus funding (even if not one penny is going towards curing the violation for not emptying SSTs).

Instead of USDOE being required to invest as much as, or more than, it saved from violating the TPA, the proposed consent decree and TPA schedules are based on continuing USDOE's inadequate funding of SST retrieval with no obligation whatsoever to increase funding to empty more SSTs than it was planning to do before Washington and Oregon sued USDOE. This is not in the public interest and fails recognized tests of prosecutorial discretion for environmental enforcement decisions.

The consent decree and TPA must be amended to require that USDOE invest at least $500 million in increased pace of SST retrieval over the next five years. At minimum, if, in the next two years, USDOE does not identify other means to empty more than one to two tanks per year by 2022, it should be required to build new DSTs.

Further, USDOE's formal plan to implement the proposed consent decree and TPA schedule (called a "baseline") relies on a flagrantly illegal assumption that some of the SSTs will be emptied as if USDOE has the right to reclassify the waste from being High-Level Nuclear Waste to being Transuranic waste to be mixed with a cement grout and disposed of in New Mexico's WIPP repository. The permit for that repository forbids this, as does the Nuclear Waste Policy Act.

The proposed consent decree is not in the public interest, and needs to be renegotiated - otherwise, the U.S. District Court should reject this settlement[3], and will be requested to do so:

- The proposed consent decree and settlement would adopt schedules for delaying emptying (retrieval) Single Shell High-Level Nuclear Waste Tanks (SSTs, Single Shell Tanks) by 22 years (extending the schedule to 2040), and only emptying 19 of the 140 tanks with waste remaining in them by 2022, *which is the same schedule which Governor Gregoire called "unacceptable" and "unconscionable" when this lawsuit was filed.*
    - Over a million gallons of deadly liquid High-Level Nuclear Wastes have leaked from the Single Shell Tanks (SSTs). Contamination is spreading far more rapidly to groundwater and towards the Columbia River than USDOE claimed was possible.
    - It is not feasible to cleanup the contamination under the tanks while waste remains in tanks. The draft Tank Closure and Waste Management EIS fails to disclose and consider what the risks and impacts will be from delay in emptying SSTs – making it improper for the State to agree to such delay under hazardous waste laws. The State has also failed to take into account (and both USDOE and Washington State failed in their duty to disclose) that USDOE has now formally proposed that its "preferred alternative" / formal plan is to never clean up the contamination which has leaked from tanks – despite high impacts to groundwater , the River and public health from the released contamination. The agencies have failed in their duty to mitigate and reduce those impacts by

[3] The TPA has been determined to be a contract, under which the public is a "third party beneficiary", giving the public new rights for being heard by a court and, an additional duty for the State to consider as the regulator (the U.S.' duty is arguably also to consider public beneficiary impacts, rather than its own interests, despite being the "liable party" or "responsible party" as the violator of environmental laws subject to the consent order (the TPA is a consent order to bring USDOE into compliance with hazardous waste laws).

emptying tanks as fast as possible (e.g., to build new DSTs, if other means to provide space for waste from emptying SSTs are not implemented).

- **The settlement fails to take any enforceable measure to protect the environment and public health from USDOE's formal plan ("preferred alternative")[4] to designate and use Hanford as a national radioactive and mixed radioactive hazardous waste dump.**
    - USDOE designates a specific landfill at Hanford to be a national waste dump for off-site generated waste for decades to come in USDOE's "preferred alternative" in the draft Tank Closure Waste Management Environmental Impact Statement (TCWMEIS).
    - The settlement fails to include any enforceable measure reflecting the principle of "Clean-Up First," under which USDOE should be required to bring existing contamination into compliance and to be cleaned up before considering adding more waste.
        - In the draft TCWMEIS, USDOE itself calculates that the impacts from adding the off-site waste considered in the TCWMEIS to Hanford will increase the cancer risk from use of groundwater at Hanford ten-fold to one hundred times the State's cancer risk standard for cleanup.
        - USDOE fails to include the highly radioactive Greater Than Class C (GTCC) wastes, which it also proposes to send to Hanford for burial, in that estimate of impacts. The GTCC wastes which USDOE is seeking to bury in shallow landfills or boreholes contains 75% of the radioactivity in Hanford's High-Level Nuclear Waste tanks. So, while we fight to get USDOE to empty those tanks by 2050, USDOE would be free to add waste with three quarters as much radioactivity as is in the tanks to shallow landfills, which will leak.
        - Washington State did NOTHING to prevent USDOE from adding these wastes to landfills at Hanford, when given the opportunity to insist that it would not agree to any consent decree or TPA changes unless adding wastes was barred until existing wastes are brought into compliance and cleaned up as promised. The State has full authority to insist on this as a term of settlement.
    - Instead, USDOE and Washington agreed to a meaningless and misleading promise of a "moratorium" on importing the waste for burial at Hanford to be part of the "preferred alternative" in the draft TCWMEIS. USDOE is free to disregard this in the final EIS, or at any time in the future (see discussion below).
        - This "moratorium" does not meet the principle of "Clean-Up First", even if it was enforceable – despite the Governor's repeated statements of support for the principle of Clean-Up First and promises by Ecology and the Governor to adopt it in permits and actions.
            - Even if USDOE honors the "moratorium" it would last only until the Vitrification plant is "operational" – a term which is undefined in the settlement agreement letter in which the US promised to include the moratorium in the preferred alternative in the draft EIS. Under

[4] The "preferred alternative" is presented in the USDOE's draft Tank Closure and Waste Management EIS issued in October. The Department of Ecology knew this was the formal proposal coming from USDOE when it signed the draft TPA settlement on August 11th, since Washington Ecology is a "cooperating agency" for the EIS and the draft was fully shared with Ecology (but not with the public at that time).

this, USDOE would start adding and burying more waste – despite the impacts and harm – before existing wastes are brought into compliance, before the SSTs are even emptied, before it is known how much waste is in the forty miles of unlined burial grounds and the extent of contamination from tank leaks, and before it is known if USDOE will, or can, cleanup contamination. This is NOT "Clean-Up First."

        - Unenforceable promises from USDOE to not add more waste to Hanford for ten years are worthless. The Governor and Department of Ecology are being rubes asking the pubic to trust USDOE at its word. After all, the settlement is prompted by USDOE's repeated willful violations of its formal obligations in a consent decree, the TPA.

- The TPA schedule proposed for completing treatment of High-Level Nuclear wastes and closing Double Shell Tanks is actually *slower* than USDOE's newly adopted budget baseline schedule
    - USDOE's formal "baseline" schedule is faster than proposed key TPA milestones. This illustrates that the State failed to negotiate based on the principle of "action forcing" schedules designed to get USDOE to act faster than it already planned to; and, or that the State was negligent or incompetent in agreeing to schedules for the TPA without knowing that USDOE was adopting a baseline schedule and budget plan that was faster than the proposed TPA schedule negotiated by Ecology.

Key elements of the draft consent decree and milestone include:

- Extending the TPA milestone for emptying all SSTs from 2018 to 2040 (M-45-70);
- Emptying only 19 Single Shell Tanks between now and the end of 2022 (Consent Decree);
- Setting a milestone for Hot Commissioning of the Vitrification Plant in 2019 (changing from 2011) and fully operational in 2022 (Consent Decree);
- Placing the key schedules for tank waste retrieval and vitrification plant operation in a judicially enforceable consent decree, as well as in the TPA;
- Agreeing that the consent decree will not be entered until DOE includes extension of a moratorium on adding some offsite wastes to Hanford as part of the "preferred alternative" in the Draft Tank Closure and Waste Management Environmental Impact Statement (TC&WM EIS);
- Descriptions and schedules for DOE-Office of River Protection to prepare a system plan with updates every three years (M-62-40) – while only agreeing to negotiate potential accelerations of the TPA schedules every six years starting in 2015 (M-62-45); and
- Describing a "Life Cycle Cost and Schedule Report" for all cleanup projects to be prepared and updated (M-36-01A).

What's missing? The Clean-Up First Principle.

The number one public concern voiced at public meetings regarding the USDOE's violations of the TPA over the last three years has been the need to include in the TPA the "Clean-Up First" Principle -- an enforceable ban on USDOE adding more off-site waste to Hanford until existing wastes are brought into compliance and cleaned up. When Hanford Public Interest groups met with Ecology regarding the potential for the State litigating over the proposed delays to the TPA, we said that any agreement must include an enforceable provision reflecting the Clean-Up first principle in the TPA as well as making new schedules enforceable via a consent decree in any settlement. We have been consistent in our criteria, but the State has not been.

This ban on offsite waste should be in the TPA and the Consent Decree as part of the settlement between Washington State and USDOE. Washington State must now insist it will not sign any agreement and enter into a consent decree without the Clean-Up First principle for offsite waste being an enforceable part of the TPA.

Governor Gregoire and Ecology assured the public and citizen groups that "Clean-Up First" would be part of the negotiations and settlement, but it is not included. Instead, the State proposes to settle for USDOE having included a "moratorium" on offsite waste until the vitrification plant is operational as part of the same preferred alternative in the TCWMEIS under which USDOE formally proposes to designate and use Hanford as a national radioactive and mixed radioactive hazardous waste dump. The ban on adding waste to Hanford must cover all wastes.

In Advice #203, and again this November, in advice regarding the proposed settlement, the Hanford Advisory Board advised that the TPA and/or consent decree include "provisions to prevent disposal of additional off-site wastes before existing Hanford wastes are cleaned up and brought into compliance or before the impacts from the wastes that will be left in the soil, or will go into landfills, are understood."

This concern is only addressed in a settlement letter from US Department of Justice to Washington. In the letter, DOE agrees to include as an element of the preferred alternative in the Draft TC&WM EIS, extending a moratorium on off-site waste until the WTP (vitrification plant) is "operational".

The State of Washington and DOE insist this letter is not part of the public comment process – despite the large number of public comments urging incorporation of the Clean-Up First principle in the TPA. It is inappropriate and a serious violation of the public's trust and expectations for the USDOE and State to have tried to insist that the issues of adding more waste to Hanford are not part of the comment process – when preventing USDOE from adding more waste to Hanford's contamination problems is vitally necessary as mitigation for the delays and risks from USDOE's plans, including taking until 2040 to empty the SSTs.

The so-called "moratorium" is not an enforceable commitment, and it must be.

The consent decree must include an enforceable ban on USDOE dumping more waste at Hanford based on the "Clean-Up First" principle.

Washington's voters overwhelmingly voted in 2004 to require that the massive amount of existing radioactive hazardous wastes should be brought into compliance and cleaned up before USDOE is allowed to dump more waste at Hanford. The meager *promise* to *consider* a *partial* moratorium on off-site waste importation to Hanford through 2019 or 2022 does not acknowledge what Washington's voters have urged, and what almost every member of the public at the hearings on this proposed settlement have urged, which is that the TPA and settlement include the Clean-Up first principle.

Both the States of Washington and Oregon say that they oppose use of Hanford as a national radioactive or radioactive-hazardous waste dump.[5] Washington State says in a foreword to the TCWMEIS:

> "DOE is decades behind its legal schedule in retrieving tank waste from SSTs…Massive areas of Hanford's soil and groundwater are contaminated, and many of these areas will likely remain contaminated for generations to come, even after final cleanup remedies have been instituted.
> "(B)ased on the current state of Hanford's cleanup and the analysis in this Draft TC & WM EIS, the State of Washington object to the disposal at Hanford of additional wastes that have been generated from beyond Hanford.
>
> "As this Draft TC & WM EIS shows, disposal of the proposed offsite waste would significantly increase groundwater impacts to beyond acceptable levels. Such disposal would add to the risk term at Hanford today, at a time when progress on reducing the bulk of Hanford's existing risk term has yet to be realized…
>
> "The State of Washington supports a 'no offsite waste' alternative… to be adopted in a Record of Decision. DOE should forego offsite waste disposal at Hanford (subject to the exceptions in the current State of Washington v. Bodman settlement Agreement), at least until such time as it has made significant progress on SST waste retrieval and the tank waste treatment process. If DOE wishes to use Hanford as an offsite waste

[5] See, e.g., letter on behalf of Governor Kulongoski in regard to the settlement sent to us on December 2, 2009.

repository after that point, DOE should then re-evaluate the potential impacts of any proposed offsite waste disposal in light of the then-existing Hanford risk term."

Washington Department of Ecology; "Foreword to the Draft Tank Closure and Waste Management EIS", October, 2009; pages 7 and 8.

Talk is cheap. *This settlement is the opportunity for Washington State to live up to those words and insist that any settlement delaying schedules for retrieval of SST waste include in the TPA an enforceable bar preventing USDOE from adding more waste to Hanford 'at least until such time as (USDOE) has made significant progress on SST waste retrieval,' and, 'reducing the bulk of Hanford's existing risk term.'"*

Washington must now live up to its own words and insist on action to prevent USDOE from proceeding with its preferred alternative to use Hanford for disposal of offsite waste when the vitrification plant is operational, and to prevent USDOE from adopting any decision to start importing waste sooner than that time.

Washington State itself has provided, in the quoted language from its Foreword to the TCWMEIS, the rationale for why it is appropriate to include in this settlement, prompted by USDOE's illegal delays in emptying SSTs, an enforceable bar on USDOE adding more waste to Hanford. The State's Foreword ties the acceptability for offsite waste to significant progress emptying SSTs. Yet, in public meeting after public meeting, State officials have said that they didn't believe that this settlement over USDOE's delays in emptying SSTs was an appropriate vehicle for protecting our State's environment from the risks inherent in USDOE's formal proposal to add more waste to Hanford. The State's own Foreword belies such a claim. This is the right document and the necessary time to include the bar on offsite waste in the TPA, if the State is going to agree to delays of 22 years in emptying those Single Shell Tanks.

That bar must be tied to reducing the risk term at Hanford, which starts with emptying far more than just 19 of the remaining 140 SSTs with wastes before it can be said that the risks from SST wastes has been reduced, Indeed, reducing the risk term must be demonstrated by emptying the SSTs and cleaning up the contamination spreading into groundwater beneath every SST tank farm before the state's own criteria for consideration of more offsite waste could begin to be satisfied.

As we discuss below, USDOE is unlikely to meet the proposed new relaxed schedule to empty 19 SSTs by 2022, since its formal "baseline" plan for emptying tanks relies on the currently illegal re-designation of wastes in some of the SSTs from High-Level Nuclear Waste to Transuranic and the disposal of those wastes in the WIPP repository in New Mexico, which New Mexico's permits forbid.

Inclusion in the draft TCWMEIS' "preferred alternative" of a "moratorium" on offsite waste until the vitrification plant is operational is not a substitute for an enforceable commitment not to add waste. Indeed, it is ludicrous that Washington State accepted this and presented it to the public as if it was a meaningful commitment (particularly ironic since the lawsuit is due to USDOE breaking its formal commitments).

- A brief perusal of the TCWMEIS reveals that the "preferred alternative" is in fact to use Hanford as a national mixed radioactive hazardous and low level waste dump as soon as the vitrification plant is "operational".
- Nothing prevents USDOE from breaking this promise on the moratorium.
- USDOE is free to drop the moratorium from the preferred alternative in the Final EIS.

  - Washington State could have insisted on a formal Record of Decision to not add waste to Hanford – to be enforceable by adopting a TPA provision requiring USDOE to issue that Record of Decision following adoption of the Final TCWMEIS.
- USDOE is free to adopt a new Record of Decision at any time to start importing and burying offsite waste at Hanford under this proposed settlement, even if it adopts the moratorium in a Record of Decision following the issuance of the Final TCWMEIS.
- Adding offsite waste increases groundwater contamination cancer risk tenfold over thousands of years according to USDOE's own draft TCWMEIS analysis, to levels 100 times Washington State's allowable cancer risk standard (in MTCA).[6]

Throughout the comment period on the proposed settlement and consent decree, it was unclear to the public exactly when the promised moratorium will end. The date was posed as "when the Waste Treatment Plant is operational," but that implies one of two dates. The WTP "hot-start" date is proposed to be 2019, while full operations are now not scheduled to begin until 2022.

At public hearings on the proposed settlement, Washington State representatives (from the Attorney General's office) stated that they believed USDOE may have to undertake further processes under the National Environmental Policy Act (NEPA) before importing more waste to Hanford, if USDOE honors its current promise to adopt a Record of Decision on the TCWMEIS with a moratorium on importing waste to Hanford. USDOE, notably, refused to answer or commit to such an interpretation.

The State's representatives were wrong to imply that there would be any significant public process under NEPA before USDOE decided either to end the waste import moratorium early, or to start use of Hanford as a national waste dump when the vitrification plant is "operational."

The Draft EIS includes consideration of Hanford as a national waste dump and proposes a preferred alternative to start importing and burying waste at Hanford when the vitrification plant is operational.

Because the impacts of, and alternatives to, importing more waste—whether in 2022 or sooner—have been studied in the TCWMEIS, no further NEPA analysis will be required when USDOE decides it's time to bring more waste to Hanford.[7] The Supreme Court has found that a Supplemental EIS is necessary to support the action-forcing purpose of NEPA only when (1) an agency makes substantial changes to its proposed action relevant to environmental concerns, or (2) significant new circumstances or information arise that are relevant to environmental concerns.[8] Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 109 S.Ct. 1851 (1989).

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[6] E.g., see Figure S-21. Other portions of the Draft TCWMEIS show considerably higher impacts and risks from offsite waste. Without offsite waste, Figure S-21 shows peak risk of cancer (to adults) from well water at the IDF barrier as 1.5E-5, which increases to 1E-4 (one fatal adult cancer for every ten thousand persons drinking the water) solely for radionuclide (not including chemical) releases when offsite waste is added. State cancer risk standards are set at 1E-5 for all combined release sources, and 1E-6 for individual carcinogens, for cleanups under RCW Chapter 70.105D (MTCA). The calculation in Figure S-21 excludes USDOE's proposal to bury highly radioactive GTCC waste from offsite at Hanford. The risks are much greater if USDOE uses a West area landfill (S-21 is calculated for an East area landfill).

[7] That is, unless the Final TCWMEIS is challenged as legally inadequate in it analyses of impacts or alternative. The draft appears inadequate in both respects, but it appears that the State has already decided not to challenge the adequacy of the EIS.

[8] (40 CFR 1502.9(c))

Unless one of these conditions occurs, the TCWMEIS will be the final NEPA analysis regarding adding waste to Hanford, and the public will not have the opportunity to comment again. Requirements for the USDOE to review the scope of the consideration and new information relevant to the EIS every five years or when making a new decision are not likely to lead to a Supplemental EIS. Further, the State has failed to join us in insisting that USDOE must provide notices of such supplemental NEPA reviews to the Hanford Clean-Up notice list, making it unlikely that the public would even know that USDOE had conducted such a NEPA analysis and decided that it did not need to supplement the EIS before issuing a new Record of Decision to start importing waste. Of course, no additional Record of Decision would be needed to start importing waste once USDOE finds that the vitrification plant is "operational", since that is the proposed decision to be issued based on the preferred alternative at this time.

The State of Washington cannot rely on NEPA to prevent waste importation at Hanford because NEPA does not dictate the best environmental result. Under NEPA, USDOE is free to import LLW and mixed waste to Hanford, including GTCC waste, without regard to

- how much clean-up has been accomplished;
- the remaining risk from existing wastes; or,
- how severe are the environmental and health impacts from adding waste.

Initially, Washington State agreed with USDOE that this moratorium on importing and burying waste at Hanford would not include the most highly radioactive wastes which USDOE proposes to ship to, and bury at, Hanford (Greater Than Class C, or "GTCC" and "GTCC – like" wastes). Neither USDOE nor Washington Ecology disclosed that the proposed moratorium did not include GTCC wastes – which include 75% as much radioactivity as in all of Hanford's High-Level Nuclear Waste tanks. *This was an enormous betrayal of public trust by Washington State officials, as well as by USDOE (for which we have lower expectations)*. It was up to Heart of America Northwest to discover this and provide notice of it to the media and public at the initial hearings.

Only after we discovered and raised this issue, did Washington State officials acknowledge that they had agreed with USDOE officials in private that they did not expect the moratorium to include GTCC wastes. Yet, the press reports and statement issued by the Governor of Oregon justifying his participation in the settlement were based on assumptions that all wastes were included in the moratorium (with the exception of very narrow categories previously listed in the initial 2005 legal document which first delineated the moratorium on waste import to Hanford).

Only after an outpouring of criticism and adverse press did USDOE announce that its (unenforceable) moratorium would include GTCC wastes. Because USDOE and Washington refused to have the question and answer period and presentations on the record for the public meetings, there will be no formal record of USDOE agreeing to include the GTCC wastes in the moratorium, unless that commitment is made in the response to comments.

Even if it was an enforceable and meaningful commitment to a moratorium on importing waste to Hanford, it would fall far short of the principle of "Clean-Up First." The moratorium expires with WTP operation. WTP operation has no rational relationship to the criteria which should be applied to whether it is appropriate to accept and bury more offsite waste, as the Clean-Up First principle is described in HAB advice.

The failure of the parties to even define what "operational" means, shows how little attention was paid by the parties to the issue that is of utmost concern to the public.

Initially (at the October workshop on the settlement) USDOE would not agree that the term "operational" referred to operating at full capacity, per the proposed 2022 milestone for the TPA and consent decree. A plain language reading of the settlement letter could lead to interpreting the moratorium as expiring when the WTP simply begins to operate – a term the TPA and consent decree utilize for the 2019 milestone. Allowing such vagueness leaves it up to USDOE to interpret, because Washington State did not ask for, or receive, any commitment in writing as to when the moratorium would expire. (Because USDOE and WA State refused our request to have the question and answer periods at the hearings on the record, there is no record of any commitment by USDOE to agree with Washington's interpretation of "operational" referring to the milestone for fully operational, rather than initial operations in 2019). The response to these comments will be the definition of the promise that the public and State will have to rely upon a decade from now (if USDOE hasn't broken its word before then and begun to use Hanford as a national waste dump prior to 2019 or 2022).

How to incorporate a bar on adding waste to Hanford into the TPA and settlement:

The TPA and settlement should include:

1) a provision specifically recognizing that the Hanford hazardous waste (RCRA) permit will incorporate the "Clean-Up First" principle for all the landfills on the site; and,

2) an enforceable commitment in the settlement filed with the court and a TPA milestone obligating USDOE to issue a Record of Decision on the TCWMEIS, under which offsite wastes would not be added to Hanford until SSTs are emptied; significant progress is made in reducing the risk term; and, it is demonstrated that adding offsite waste will not cause any State or federal standard to be violated.

Reject taking until 2040 to empty Single Shell Tanks:

All of the leak-prone, outdated and inadequate single shell tanks (SST) at Hanford are supposed to be emptied by 2018 under the existing TPA provisions. While over one million gallons of high-level nuclear wastes have already leaked from the SST, this settlement and consent decree delays emptying them for 22 years, until 2040. USDOE should be required to adopt efforts which would result in emptying 50 to 60 of the remaining SST by 2019, instead of only 19 as proposed in this settlement.

The proposed pace of SST waste retrieval remains unacceptably slow with only one or two tanks a year to be emptied by 2022 (for a total of 19 out of the remaining 140), and all tanks by 2040. This pace is not acceptable – it is feasible to empty fifty to sixty tanks by 2022. Washington must insist that USDOE agree to schedules in the Consent Decree and TPA that drive DOE to incorporate capacity improvements for retrieval and vitrification when results of studies or tests are available, rather than waiting until 2015 or every six thereafter to negotiate (proposed M-62-45).[9]

[9] When the results of technology testing are in, why won't USDOE agree to negotiate to add new milestones to use the technology? M-62-40 is only a study (system plan). M-62-45 is the milestone that

Washington should not have settled for a rate of emptying tanks at only one or two per year, considering that this is the pace which caused the State to sue USDOE in the first place. The schedule to empty Hanford's High-Level Nuclear Waste tanks must not be based on USDOE's budget. For the past three years, since USDOE first proposed to delay tank retrieval, hundreds of citizens and public interest groups have objected to the proposed delays and urged specific steps to move faster on the tanks, to no avail. To use Governor Gregoire's own words from the announcement of the lawsuit in November 2008, it is "absurd" and "unconscionable" to allow waste to remain in the leaky SSTs until 2040. It is doubly unconscionable for the State of Washington to allow USDOE to add more waste to Hanford while these tanks have not been emptied!

To protect the environment and the Columbia River, USDOE must accelerate retrieval of SST wastes beyond the one or two tanks per year envisioned. Because the major cause of slow retrieval from the SSTs is the lack of space in the double shell tanks (DST), more room must be made in the DSTs. Hanford's current evaporator technology is old and inefficient, and USDOE must consider updating the technology with wiped film evaporators as soon as is feasibly possible.

We have documented, and Hanford Advisory Board advice has urged, that USDOE can empty at least five tanks per year between now and 2022 through a combination of early startup of the Low Activity Waste Vitrification plant ("LAW", which would actually create cost savings for USDOE after the up-front expenditure, which is far less than $500 million), use of wiped film evaporators, increasing capacity of the LAW plant[10], and other efforts. If those, or other means to empty at least 55-60 tanks by 2022 (instead of just 19) are not adopted by the start of FY 2012, USDOE should be required by any consent decree or settlement to build new DSTS, which, if built at the front end of the Vitrification Plant (smaller than one million gallons), would increase their utility to feeding the plant.

USDOE is spending American Recovery and Reinvestment Act (ARRA) dollars on testing the wiped film evaporator technology in 2010. However, the terms of the consent decree and TPA changes under this proposed settlement do not require USDOE to consider actually using the technology until 2015. This is even if the wiped film evaporator technology is proven to work. The settlement should instead include terms that require USDOE to implement proven technologies to accelerate cleanup, not to let it languish in delays. USDOE should be required to produce a study showing what can be done faster *before the State agrees to the proposed delays.*

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governs reopening negotiations on the results. And, in 62-45, USDOE only agreed to negotiate every six years, starting in 2015 – regardless of what new benefits each revision in the system plan might offer sooner than that. Bottom line: the agreement must be revised to require USDOE to utilize any new technology proven to assist in emptying tanks, within a reasonable time period after new studies are completed, instead of waiting for years just to negotiate over whether the new technology will be used.

[10] The HAB has advised for years that USDOE install a third and more efficient melter in the LAW plant. The cost of doing so is under $125 million. USDOE agreed to build the plant with physical space for the third melter, but has not taken any other steps to implement this cost and time saving step. Adding a third melter also increases reliability of the LAW plant, and reduces the overall time to process tank wastes.

Early startup of the Low Activity Waste portion of the Waste Treatment Plant must be considered

Early startup of the Low Activity Waste (LAW) portion of the Waste Treatment Plant (WTP) at Hanford will accelerate SST retrieval by providing another outlet to create more room in the DSTs. In addition to shortening the timeline for treating tank wastes, this early startup would provide invaluable startup and commissioning experience for the other portions of the WTP that are not yet ready for use. Unfortunately, this potential was overlooked in the settlement. USDOE promises to issue studies on increasing capacity of LAW and supplemental treatment by 2012, but refuses to include a commitment to negotiate implementation until after 2015. USDOE should be required to do everything in USDOE's power to empty the SSTs faster, including advance startup of the LAW portion of the WTP.

The WTP project has a long history of mismanagement of funds and resources and is already over budget by $8 billion.[11] Project accountability must be increased to finish on time, even with the delays, and to finish without wasting more taxpayer dollars.

USDOE claims it can not retrieve more waste from SSTs before the vitrification plant is fully operational (2022) because it has limited space in the newer, sound Double Shell Tanks. However, the settlement does nothing to require USDOE to invest in new technology or techniques which may be proven within a year to increase capacity of DSTs, which would allow more SST waste to be retrieved.

> E.g., USDOE is spending stimulus funds (ARRA) to investigate and test if "wiped film evaporator" technology can be used to make space in DSTs for waste from SSTs. Results are due within a year. These evaporators would be deployable in the tank farms. If testing is successful, the settlement should require USDOE to spend funds to deploy these and empty more than one or two SSTs per year. Instead, the settlement and consent decree would not even require USDOE to negotiate whether it should use new technologies to empty SSTs until fiscal year 2016!!!

Any settlement of a lawsuit for the willful and serious repeated violations of the TPA must include USDOE being required to invest more funds in emptying SSTS in the next several years than it saved from its violations, and a penalty proportionate to the serious nature of the violations.

Instead of USDOE being required to invest as much as, or more than, it saved from violating the TPA, the proposed consent decree and TPA schedules are based on continuing USDOE's inadequate funding of SST retrieval with no obligation whatsoever to increase funding to empty more SSTs than it was planning to do before Washington and Oregon sued USDOE. This is not in the public interest and fails recognized tests of prosecutorial discretion for environmental enforcement decisions.

The consent decree and TPA must be amended to require that USDOE invest at least $500 million in increased pace of SST retrieval over the next five years. At minimum, if, in the next two years, USDOE does not identify other means to empty more than one to two tanks per year by 2022, it should be required to build new DSTs.

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[11] Cornwall, Warren. *High Costs, 4 year delay projected for Hanford* .Seattle Times. 1 December 2005. (Ironically, that four year delay is now an eight year delay to 2019, per USDOE's baseline and System Plan Revision 4. The 2019 date would be the new milestone for hot start of WTP operations under this settlement.

USDOE's formal plan to implement the proposed consent decree and TPA schedule (called a "baseline") relies on a flagrantly illegal assumption that some of the SSTs will be emptied as if USDOE has the right to reclassify the waste from being High-Level Nuclear Waste to being Transuranic waste to be mixed with a cement grout and disposed of in New Mexico's WIPP repository. The permit for that repository forbids this, as does the Nuclear Waste Policy Act.

USDOE now projects that it will be out of DST space for SST transfers before the Vitrification Plant operates, even if it opens as currently scheduled in 2019, and again out of DST space for SST transfer in the 2021 – 2024 period.[12] Those projections are based on USDOE opening the Vitrification Plant on its current schedule – which is seriously in doubt – and, without adopting use of wiped film evaporators or early startup of LAW vitrification.

Further, USDOE's projections for meeting the new proposed TPA schedule and consent decree schedule for emptying SSTs is based on the assumption that USDOE will be able to empty tanks as if they are Transuranic waste (TRU), not High-Level Nuclear Waste, for disposal in WIPP.[13] **This is illegal and permits for WIPP are not likely to be changed to allow this.**

It is improper for the State to enter into a proposed consent decree and TPA schedule based on a schedule that assumes USDOE will illegally grout High-Level Nuclear Wastes from SSTs as if they were classified as TRU. If removed and grouted, the wastes would immediately be in violation of RCRA requirements for storage and disposal, since there is no likelihood that USDOE would be allowed to ship those drums to WIPP. Since grouting is not an approved land disposal restriction technology for the waste from the tanks – only vitrification is a legally approved treatment technology at this time – USDOE's plan would lead to an immediate major violation of hazardous waste laws.

USDOE's baseline – now approved by USDOE Headquarters – is clear: it intends to meet the TPA and consent decree schedules for emptying SSTs by declaring waste from up to eleven SSTs to be TRU, and grouting that waste. But, those wastes will not be allowed to be shipped to WIPP in New Mexico. They will not be disposable in a landfill at Hanford, and they will not be vitrifiable after grouting. USDOE should be required to empty the SSTs by either deploying early startup of LAW vitrification, use of wiped film evaporators or another legally approvable technology, or being required to build new DSTs to hold waste from SSTs until the wastes are vitrified.

Therefore, the consent decree and TPA schedule need to be changed to require that USDOE build new DSTs if it does not choose other means – that are currently permissible – to make DST space available for USDOE to retrieve waste from SSTs. As currently proposed, the consent decree and TPA schedule for emptying tanks is neither in the public interest nor based on LEGAL compliance. Because the USDOE formal baseline for emptying the SSTs, per the timeline of the proposed consent decree and TPA schedules, is based on use of techniques and disposal which are currently barred by RCRA and the WIPP permit issued by New Mexico, it ***can not be accepted by a court***, and Washington State must insist on it being revised.

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[12] See System Plan, Revision 4 (USDOE-ORP) and the adopted "baseline. This was adopted

[13] See both formal adopted "baseline" plan and System Plan, Revision 4. USDOE plans for 11 SSTs to be retrieved on the basis that they are CH-TRU shippable to WIPP, not High-Level Nuclear Waste requiring vitrification. Thus, USDOE plans to retrieve and grout, rather than retrieve and place into DSTs pending vitrification.

Before 2012, a decision is necessary on how supplemental treatment capacity for tank wastes will be provided (similar to M-62-30, which calls for completed negotiations on enhancing the initial Low Activity Waste treatment plant within twelve months). The proposed agreement would delay any decision on supplemental treatment until April 30, 2015 (See draft M-62-45(3)). This is too late to be effective in providing the capacity needed to reduce the overall timeline for treating LAW wastes.

We are astonished that the proposed TPA changes encourage DOE to review bulk vitrification technology, instead of moving ahead on proven means to increase capacity for Low Activity Waste Vitrification. There is little to show for the more than one hundred million funds spent on bulk vitrification to date, other than demonstrating that this technology is never likely to meet standards for vitrified waste that will be buried at Hanford.

Early startup of the LAW portion of the WTP, and enhancements to the size and number of its melters, can accelerate waste retrieval, reduce the overall timeline for treating tank wastes and provide invaluable startup and commissioning experience for the High Activity and Pre-Treatment portions of WTP. The LAW portion of the vitrification plant is largely complete, and it does not suffer from the serious design and safety questions which still dog the pre-treatment and HAW portions of the plant. Yes, it will take some redesign of feed to send waste directly to the LAW plant. However, this is accomplishable within a reasonable cost and with new smaller feed capable DSTs. New DSTs are clearly warranted and needed, as discussed above and below.

We urge adoption of a set of milestones for early startup (prior to 2019) for LAW, and incorporation of capacity enhancements to allow it to process more waste.

It is quite feasible to increase the retrieval of waste from SSTs to empty 50 to 60 tanks by 2022, instead of settling for USDOE's proposal to empty only 19 more tanks by 2022. If early LAW is utilized, the entire system cost for treating wastes will be reduced along with reducing the overall decades long schedule. Deployment of wiped film evaporators, if demonstrated over the next year, would also save long-term costs, decrease risks, increase system reliability, and help meet the unresolved problem of inadequate DST capacity after 2019. The cost for retrieving 50 to 60 SSTs by 2022 is less than the amount of funding USDOE saved and diverted from SST retrieval over the past five years. USDOE should be required to spend at least that amount on accelerating SST retrieval.

USDOE plans to meet the new proposed SST retrieval requirement of 19 tanks by 2022 by relying on re-designating tank waste as TRU for shipment to WIPP. This will not go forward. Washington State will be saving USDOE's neck by requiring it to start planning to build new DSTs now, rather than the proposal to consider if new DSTs are needed in negotiations after April, 2015 (which will be far too late to provide DST capacity before retrieval will have to halt).

"Life Cycle Cost and Schedule Report" provisions and schedule for adopting potential accelerations to TPA or consent decree schedules are woefully inadequate, and the Consent decree fails to include an "action forcing" provision to accelerate SST retrieval:

The Hanford Advisory Board (HAB) urged the TPA agencies not to negotiate any delays to cleanup milestones prior to preparing a Life-Cycle Cost and Schedule Report (Advice # 203).

"The Board believes that the Tri-Parties should not agree to significant delays in existing TPA milestones until the proposed Hanford Lifecycle report is issued."

The Lifecycle Cost and Schedule Report was proposed to provide a mechanism to allow the regulators, the tribes and the public to evaluate if DOE can complete cleanup projects faster than planned in DOE's baselines or proposed TPA milestones, and to allow evaluation of the assumptions on which DOE has based its planning. The Board urged DOE to develop and issue this report without delay, to allow all parties to understand how fast work could be accomplished if not artificially constrained by DOE target budgets and fiscal plans; and, to ensure that the planned work would meet public values for cleanup.

The report was not undertaken in advance of continuing negotiations, which have resulted in proposals to significantly relax TPA milestones. Rather, the draft consent decree and TPA milestone package propose that the report be completed a year after the TPA is changed, and updated regularly. This approach is illogical to what the HAB advised in 2007.

This advice was ignored in the proposed settlement and consent decree. Why agree to delays before doing study of how fast work could be done if not artificially limited by USDOE budgets?

The description of the Report in the proposed Consent Decree and TPA milestone package would require USDOE to only present project specific cost, assumptions and information on alternatives for those projects in a two to five year window. Longer term projects in the report would reflect only the current USDOE baseline, making it impossible to scrutinize plans for retrieving SSTs, closing tank farms, characterization and cleanup of unlined trenches…This would not allow the Board, regulators or the pubic to review assumptions for projects of high concern, and examine the potential to accelerate major milestones for those projects.

Heart of America Northwest urges that the proposed Life Cycle Cost and Schedule Report should be adequately described in the Consent Decree and TPA to accomplish the following purposes:

- Provide adequate information for the public and regulators to review the long-term costs, schedule, and the assumptions on which these are based, for each project and milestone for Hanford Clean-Up. E.g.:
    - whether the project includes retrieving Plutonium or Transuranic wastes disposed in the soil prior to 1970 for units which are not slated to have cleanup begin in the next five years; and, the costs for doing that work if not included in the baseline, and whether that work can be significantly accelerated if target budgets were not constraining work schedules; or,
    - whether tank closure includes cleanup of contamination from leaks and discharges in tanks farms (rather than capping), what the costs of alternatives would be, and whether the work or portions of it may be accelerated to be completed faster than proposed.
- Allow for public review of whether proposed delays to TPA milestones could be avoided or reduced if budgets were not artificially constrained or if work were re-prioritized;
- Provide for public review of whether assumptions in USDOE's baselines reflect public values for accomplishing cleanup, e.g., the degree of cleanup, whether wastes are retrieved instead of capped in place, whether structures are removed; and allowing the

public, regulators or Tribes to offer informed alternatives with estimates of the costs and potential schedules.

- Provide information on alternatives and assumptions for all cleanup projects beyond the full project cost and annual budget projected for projects, which is required to be reported by USDOE to Congress pursuant to the federal Superfund law, (CERCLA).

The Consent Decree includes a provision for USDOE to prepare a "Systems Plan" for tank wastes, with potential accelerations of schedules. The System Plan is a good idea which the HAB[14] and our organization have urged for several years.

However, the proposed consent decree and settlement turn this into a hollow promise with a ridiculous timeline:

- USDOE-ORP is to prepare a systems plan with updates every three years; **but**, USDOE only agrees to negotiate potential accelerations of the TPA schedules every six years beginning **after 2015**;[15]

- USDOE agrees to prepare the "Life Cycle Cost and Schedule Report" for all cleanup projects with regular updates; **but**, USDOE is not obligated to negotiate to speed up schedules before 2015 regardless of how studies show getting more waste out of tanks sooner is possible, or that other accelerations are possible!

The State must insist that the consent decree include action forcing timelines: schedules by which USDOE must accelerate retrieval of SST waste from its existing schedule, or be required to build new DSTs. With new DSTs, USDOE will be able to retrieve more waste from SSTs by 2022, and to keep retrieving waste after 2022, when USDOE faces another critical shortage of DST space under its current baseline plan. If USDOE does not want to be required to build new DSTs starting in 2012, it should be required to show in the systems plan due before 2012 that it has another alternative that will accelerate SST retrieval and adopt that plan with State approval.

Instead of waiting until six months after the report due in April, 2015 to begin negotiations over potential accelerations for retrieval of SSTs, the TPA and consent decree need to be revised to require use of proven technologies that will accelerate retrieval, with negotiations to begin within months of each report.

DOE has committed American Reinvest and Recovery Act (stimulus) funds to examine if wiped film evaporator technology would allow DOE to make significantly more space available in Double Shell Tanks (DSTs). This would allow more waste retrieved from SSTs, since the major cause of slowing retrieval has been the lack of DST space.

The Consent Decree and TPA changes should incorporate a review of the evaluation of Wiped Film Evaporator technology and commit to negotiate new milestones for use of the technology and increased retrieval within a year of the review. Instead, under the proposed TPA changes and consent decree, USDOE is not obligated to negotiate potential accelerations of work until

[14] See Advice 209.
[15] M-62-45 (proposed).

after April 2015. It is hard to fathom why the federal government is spending stimulus dollars on a project to evaluate this promising technology in the next two years, without being willing to commit to negotiate a schedule for use of the technology to accelerate tank waste retrieval until after 2015.[16]

The consent decree and TPA changes should explicitly require that USDOE adopt technologies or other avenues which Ecology finds that current research or the systems plan demonstrate to be capable of accelerating SST retrieval – instead of the lame provision that the parties will consider and negotiate such efforts beginning in FY 2016 (six months after the April, 2015 report is due). 2016 is too late to begin implementing steps to accelerate SST retrieval and to have additional DST capacity available by 2019 or 2022. Likewise, the system plan should include review of early LAW and the TPA and consent decree should include a provision requiring early startup of the LAW vitrification plant unless USDOE adopts other means to empty fifty to sixty tanks by 2022.

The settlement does not address Plutonium & TRU waste retrieval:

The TPA does not currently include enforceable requirements to remove the large quantities of highly radioactive or long-lived radioactive wastes, such as Plutonium, other transuranic wastes, and chemical wastes from soil sites. This includes the over 40 miles of unlined trenches at Hanford. The State of Idaho reached a legal settlement with USDOE including such provisions in the cleanup agreement for the Idaho National Laboratory, but Washington has not procured similar enforceability with USDOE for Hanford. USDOES's baselines and contracts do not include characterization and retrieval of the waste in over forty miles of unlined trenches, miles of crib discharges and the waste from tank leaks. It is time to require investigation and cleanup to a practical extent in an enforceable manner.

To reiterate, we call to the agencies' attention advice from the Hanford Advisory Board in 2007: "The agencies need to include in the scope of their negotiations those issued raised by the public, Tribes and Board members for inclusion in the TPA, rather than limiting discussion. Those include provisions requiring removal, rather than capping, of wastes in soil (especially pre-1970 transuranic [TRU] and similar long-lived or highly radioactive and untreated chemical hazardous wastes); and, provisions to prevent disposal of additional off-site wastes before existing Hanford wastes are cleaned up and brought into compliance, or before the impacts from the wastes that will be left in the soil, or will go into landfills, are understood."

Nothing prevents Washington State from insisting that these negotiations for TPA changes include enforceable provisions for characterization and retrieval of wastes. Failure to include a resolution of this issue via a TPA provision leads to a fight over the degree of characterization and retrieval for every operable unit work plan. USDOE's own assessment showing unacceptably high impacts from USDOE's baseline plans to leave these wastes is now available in the draft TCWMEIS. USDOE's own assessment (which may prove to be understated) provides ample support for insisting that trenches, cribs and tank farm releases must be remediated, rather than allowing USDOE to rely on "landfill closure" using caps without characterization of wastes or retrieval and remediation, as it plans for in its baselines.

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[16] Page 4 of the description in the proposed M-62-40, only states that the plan should discuss new technology which may help, e.g., evaporators.

Public Involvement & the hearing process need to be improved:

The TPA's public involvement attempts for the five hearings held in the NW on the proposed settlement and consent decree were hardly noticeable. The agencies need to put more effort into generating turnout for these hearings, and that does not include having up to 14 staff persons attend the hearings for no apparent purpose. The agencies' advertisements (e.g. in Seattle's *The Stranger*) failed to disclose why a member of the public would care about the hearings. Notice means "effective notice" – informing a person why a proposed decision may affect their concerns or values - and the advertisements failed on that front.

For the Seattle hearing, held at the Quality Inn near Seattle Center on November 12, there were many obstacles. The location was horrendous considering rush hour traffic and inadequate parking at the Quality Inn. Heart of America Northwest had researched and proposed options for hearing locations in the U-District, where parking & traffic would have been less of an issue and the hearing would have been more accessible to students, but those suggestions were declined. Additionally, the actual room where the hearing was held was too small, very loud and had bad lighting – the lights had to be basically turned off in the front of the room in order to see the PowerPoint, leaving the agency representatives to speak in the semi-darkness.

The agencies should offer free parking at all of the hearing locations and that fact should be better advertised for the next round of hearings. Instead, for Spokane, the public had to pay (at high rates) to park to attend a public hearing – street parking was a considerable distance away.

In regards to USDOE's announcement on including GTCC wastes in the moratorium, starting at the Portland hearing on October 27, 2009, it was inappropriate to have the meeting moderator read it to the public. Not only did the moderator not know what she was reading, and thus stumbled over words, having the moderator read the announcement diminished its importance and confused the public. The appropriate action would have been to have a representative of USDOE read the announcement with a clear declaration of the subject of the announcement. Because the agencies refused to have the presentations and question and answer period on the record, the public (and State in the future) has no record of any commitments made by USDOE in regard to the proposed settlement, nor any record of agreements by USDOE and Washington interpreting the many vagaries of the proposal. In the future, all of the public meeting should be recorded, nit just the testimony.

We expect Washington State to answer all comments on the Consent Decree separately from USDOE. It is inappropriate to have the public submit comments on the proposed consent decree to the polluter and violator of an existing consent agreement. It is doubly inappropriate to have the State negotiate with the polluter what the responses will be to public comment and criticisms of its settlement and failure to take enforcement action.

Most of the comments at public hearings were offered specifically to Washington State urging Washington to renegotiate because the proposed settlement and consent decree did not serve the State' interests and the interests of Washington's residents.

The State owes it to the public to respond to these concerns about the State's actions as prosecutor and enforcer of environmental laws – rather than the State negotiating answers to comments with the polluter, USDOE.

USDOE has formal proposals to use Hanford as a national radioactive and mixed radioactive hazardous waste dump. Almost all public comments at the hearings urged Washington State to refuse to enter into any agreement or settlement which does not have an enforceable commitment to the principle of "Clean-Up First" (requiring USDOE to bring existing wastes into compliance and be cleaned up before any further wastes are added to Hanford). It is up to Washington State to respond to these comments – and to make commitments for Washington State. The public expects that the State will respond to these public concerns – hopefully, by agreeing that it will not settle with USDOE without enforceable provisions in the TPA that reflect the Clean-Up First principle.

References

1. Learn, Scott. *"Hot" nuclear waste could still be shipped to Hanford under proposed settlement.* The Oregonian. 24 October 2009.
2. Carey, Annette. *Moratorium on shipping radioactive waste to Hanford broadened.* Tri-City Herald. 28 October 2009.