



Christine O. Gregoire  
**ATTORNEY GENERAL OF WASHINGTON**

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Ecology Division  
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### FAX COVER SHEET

Date: September 19, 2000

Time: 4:56 PM

Please deliver the following 7 pages:

**TO:**            **T.J. Glauthier**            202-586-4403  
                  **Maryanne Sullivan**       202-586-1499  
                  **Harry Boston**            509-376-8142  
                  **Betty Hollowell**         509-376-4590  
  
                  **Lois Schiffer and**  
                  **John Cruden**            202-514-0551  
  
                  **Michael Zevenbergen**   206-526-6665

### COMMENTS:

Attached for your records is the signed copy of the Consent Decree Amendment. Hard copies will follow by U.S. Mail. We will be working with Ecology on a public comment process concerning the amendment. More on that later. Please call David Mears at (360) 586-6743 or me if you have any questions.

**FROM:**        **Joseph Shorin**

Fax Number:        (360) 586-6760  
Voice Number:     (360) 586-6741

If there is a problem receiving this fax, please call Diana MacDonald at (360) 586-4620.

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 2 Assistant Attorney General  
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 Olympia, WA 98504-0117  
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 7  
 8 **UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF WASHINGTON**

9  
 10 STATE OF WASHINGTON,  
 DEPARTMENT OF ECOLOGY,

NO. CT-99-5076-EFS

11 Plaintiff,

FIRST AMENDMENT TO  
 CONSENT DECREE

12 v.

13 UNITED STATES  
 DEPARTMENT OF ENERGY,

14 Defendant.

15 **I. INTRODUCTION**

16 WHEREAS, on September 29, 1999, the court entered a Consent Decree  
 17 in which Plaintiff State of Washington, Department of Ecology ("State") and  
 18 Defendant United States Department of Energy ("DOE") agreed to resolve  
 19 potential litigation between the State and DOE regarding certain missed  
 20 milestones as well as other remaining milestones in the Hanford Federal  
 21 Facility Agreement and Consent Order ("HFFACO") (entered May 15, 1989) in  
 22

1 the interim stabilization series (M-41) and to establish a judicially enforceable  
2 schedule for pumping liquid radioactive hazardous waste from single-shell  
3 tanks as identified in the schedule in Section IV-A of the Consent Decree;

4 WHEREAS, the HFFACO requires that DOE construct and operate  
5 facilities for the treatment of radioactive waste in the underground single-shell  
6 and double-shell storage tanks, and that by August 31, 2000, DOE authorizes,  
7 among other things, construction of facilities for the pre-treatment and  
8 vitrification of no less than 10 percent of Hanford's tank waste by mass and 25  
9 percent by activity (Phase I Processing);

10 WHEREAS, DOE acknowledges that it did not authorize the construction  
11 of Phase I Processing facilities by August 31, 2000;

12 WHEREAS, the State and DOE have agreed to the terms and conditions  
13 of this First Amendment to Consent Decree to resolve potential litigation  
14 between the parties regarding the schedule for awarding a contract for  
15 construction of the Phase I Hanford Tank Waste Treatment Complex, and to  
16 establish a judicially enforceable schedule for the same;

17 NOW THEREFORE, it is hereby ordered, adjudged, and decreed as  
18 follows:  
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1       **XIV. ADDITIONAL PROVISIONS PERTAINING TO AWARDING A**  
2       **CONTRACT FOR DESIGN AND CONSTRUCTION OF A WASTE**  
3       **TREATMENT AND VITRIFICATION COMPLEX.**

4       As part of DOE's efforts to remediate the Hanford Site, a facility is to be  
5       designed, constructed, and commissioned for the purpose of treating and  
6       vitrifying the single-shell and double-shell tank wastes.

7       A.    Work To Be Performed. The following work shall be performed:

8       By January 15, 2001, DOE shall award a contract authorizing the design,  
9       construction, and commissioning of a facility. This facility shall include all  
10      facilities necessary for the pretreatment and vitrification of no less than 10  
11      percent of Hanford's tank wastes by mass and 25 percent by activity by  
12      February 28, 2018. This facility is referred to hereafter as the "Phase I Hanford  
13      Tank Waste Treatment Complex."

14      B.    Excuse from Obligation to Perform Requirements of Section  
15      XIV-A. DOE's obligations to meet the requirements of Section XIV-A shall be  
16      excused only in the event of impossibility of performance, bid protest, if any of  
17      the conditions set forth in Section VI-E (Force Majeure) occur, or if the Court  
18      determines there is good cause, considering federal procurement law.

19      Any excuse from performance afforded pursuant to this subsection shall  
20      be only to the extent of the circumstances that gave rise to the excuse. Unless  
21      the parties agree that the basis for excuse is met and agree to its extent, DOE  
22      must seek a determination from the Court to be excused from performance. If  
23      DOE seeks relief under this subsection, it will submit a written request to the

1 State within ten (10) days of learning that such relief is necessary. If the parties  
2 are unable to agree on a resolution within ten (10) days of DOE's submission or  
3 its request, DOE will submit the matter to the Court no later than 20 days after  
4 DOE's submission of its request. DOE's submission of a written request does  
5 not automatically stay DOE's obligation to perform, but DOE may seek a stay  
6 of its obligation from the Court at any time.

7 C. Application Of The Other Provisions Of The Consent Decree  
8 To Section XIV. Except as otherwise indicated, the provisions of Sections I  
9 through XIII of this Consent Decree apply to the provisions in Section XIV.

10 1. Sections I, IV-A, VI, and XII of this Consent Decree do not  
11 apply to the provisions in Section XIV.

12 2. The reporting requirements of Section IV-B of this Consent  
13 Decree shall apply to activities required to be taken pursuant to Section  
14 XIV of this Consent Decree.

15 3. For purposes of construing Section XIV only, the references  
16 in Section V to "interim stabilization" shall be deemed to refer to the  
17 activities required to be taken pursuant to Section XIV-A of this Consent  
18 Decree, except that nothing in the Consent Decree shall be deemed to  
19 authorize access to procurement sensitive documents.  
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1           4. For purposes of construing the provisions of Section XIV  
2 only, the reference to Section IV-A in Section VIII-C shall be deemed to  
3 refer to Section XIV-A.

4           5. For purposes of construing the provisions of Section XIV  
5 only, the "matters covered" in the Covenant Not To Sue in Section IX  
6 shall be deemed to include the work in Section XIV-A.

7           6. For purposes of construing the provisions of Section XIV.  
8 only, DOE's waiver of appeal rights under the HFFACO shall be  
9 construed as including the HFFACO M-62-05 milestone.

10          D. Upon entry of this Decree, the State covenants not to enforce the  
11 M-62-05 milestone in the HFFACO. After entry of this Decree, the parties will  
12 amend the HFFACO to delete the M-62-05 milestone. Nothing in Section XIV  
13 of the Consent Decree shall give the Court jurisdiction over any of the  
14 HFFACO milestones. In addition, except as expressly provided in the Consent  
15 Decree, nothing in the Consent Decree shall modify DOE's obligation under the  
16 HFFACO.

17          E. Limitations On The Applicability And Effect Of This Section  
18 To Other Sections Of The Consent Decree. The provisions in Section XIV  
19 pertain exclusively to matters set forth in Sections XIV-A and XIV-B. Nothing  
20 in Section XIV alters, amends, or modifies in any way the operation of the  
21 provisions in Sections I through XIII (including the attachments to this Consent  
22

1 Decree referenced in those Sections) with respect to the work specified in  
2 Section IV of the Consent Decree.


3 XV. EFFECTIVE DATE OF AMENDMENT

4 This First Amendment to Consent Decree shall be effective upon the date  
5 of its entry by the Court.

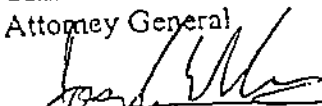
6  
7 DATED this 19 day of SEPTEMBER, 2000.

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9 \_\_\_\_\_  
United States District Judge

10 FOR THE STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

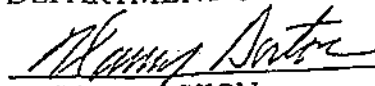
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15 Attorney General

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FOR THE UNITED STATES  
DEPARTMENT OF ENERGY

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*Betty Hollowell / mas*

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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SEP 30 1999

JAMES R. LARSEN, CLERK  
RICHLAND DEPUTY

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF WASHINGTON

10 STATE OF WASHINGTON,  
11 DEPARTMENT OF ECOLOGY,

12 Plaintiff,

13 v.

14 UNITED STATES  
15 DEPARTMENT OF ENERGY,

16 Defendant.

NO. CT-99-5076-EFS

CONSENT DECREE

17 I. INTRODUCTION

18 WHEREAS, Plaintiff State of Washington, Department of Ecology ("State")  
19 has alleged violations of the Hanford Federal Facility Agreement and Consent  
20 Order by Defendant United States Department of Energy ("DOE"); and

21 WHEREAS, on May 15, 1989, DOE and the Washington Department of  
22 Ecology entered into the Hanford Federal Facility Agreement and Consent Order  
23 ("HFFACO"). One of the requirements of the HFFACO is that DOE remove  
24 liquid waste from several large underground single-shell storage tanks located at  
25 DOE's Hanford site. Pumping high-level radioactive waste from single-shell  
26 tanks into double-shell tanks poses many technical and safety challenges. A

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SEP 29 1999

CONSENT DECREE - 1

ATTORNEY GENERAL OF WASHINGTON  
Ecology Division  
PO Box 40117  
Olympia, WA 98504-0117  
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ORIGINAL

CLERK, U.S. DISTRICT COURT  
RICHLAND, WASHINGTON

1 number of these challenges have arisen since the HFFACO was signed. DOE has  
2 previously requested and the State has agreed to a number of schedule extensions  
3 using procedures specified in the HFFACO. The original schedule in the  
4 agreement called for pumping the liquid radioactive hazardous waste out of the  
5 tanks by 1995. Thereafter, the schedule has been extended several times. The  
6 most recent schedule called for the completion of tank pumping by September 30,  
7 2000; and

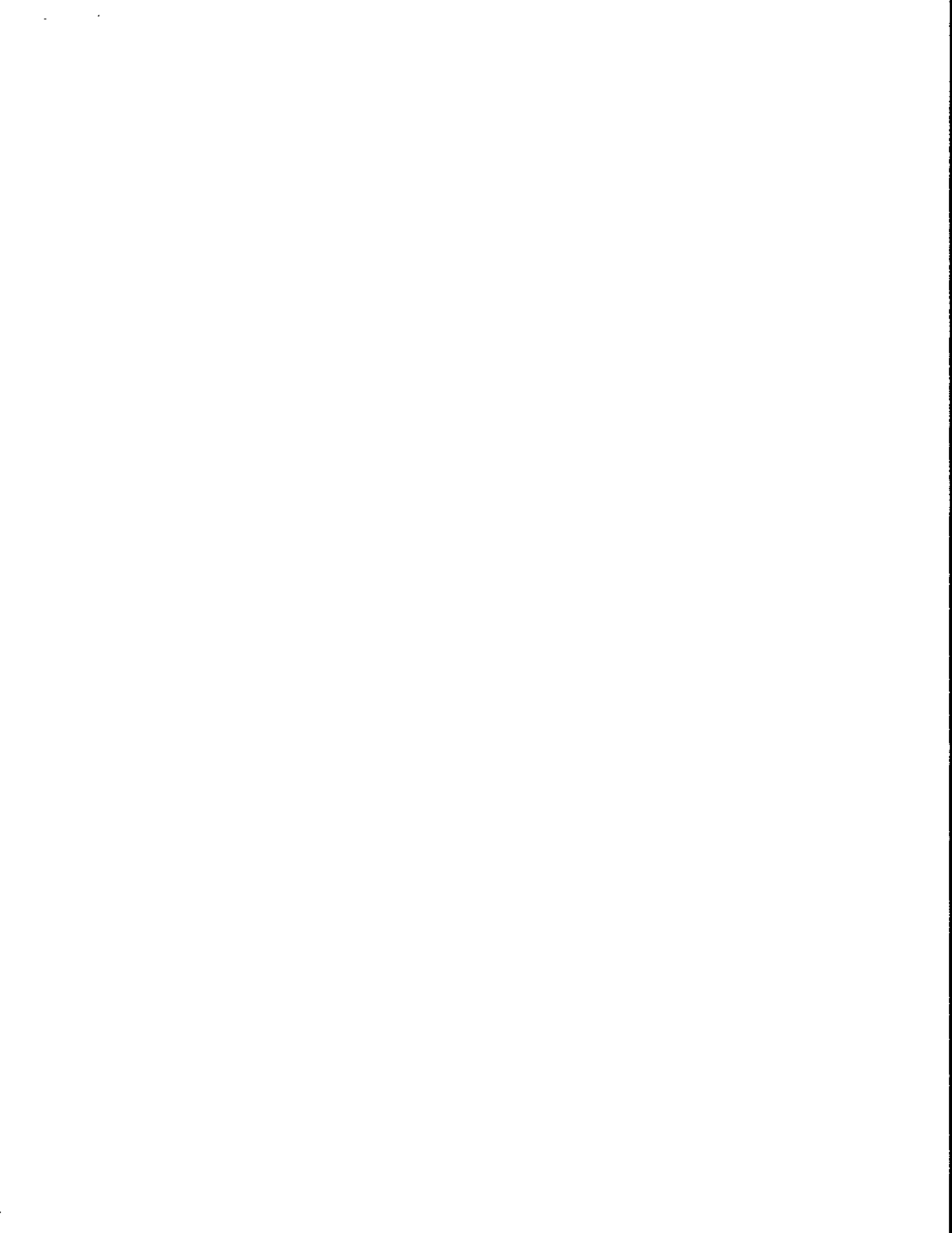
8       WHEREAS, to date, approximately 45% of the liquid wastes originally  
9 stored in single-shell tanks have been pumped into double-shell tanks since the  
10 tank pumping program began in 1976. The HFFACO contains milestones for  
11 transferring the remaining liquid wastes from single-shell tanks into double-shell  
12 tanks. Interim milestones M-41-22 and M-41-23 required that pumping be  
13 initiated for 6 tanks by September 30, 1997, and for 8 more tanks by March 31,  
14 1998. DOE did not meet either of these two milestones, and believes that it will  
15 not meet the remainder of the tank pumping milestones; and

16       WHEREAS, the parties wish to resolve this action without litigation and  
17 have, therefore, agreed to entry of this Consent Decree without adjudication of the  
18 issues contained herein. This Decree is filed to resolve potential litigation between  
19 the State and DOE regarding the missed milestones as well as all other remaining  
20 milestones in the HFFACO in the interim stabilization series (M-41) and to  
21 establish a judicially enforceable schedule for pumping liquid radioactive  
22 hazardous waste from single-shell tanks as identified in the schedule in  
23 Section IV-A.

24       NOW THEREFORE, it is hereby ordered, adjudged, and decreed as follows:  
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1. A brief description and project issues encountered during the next six months;
2. A definitive schedule for not DOE remains in compliance with the schedule A;
3. Where applicable, initiated or otherwise taken to recover;
4. Budget/cost schedule;
5. Copies of written agreement to the contractor(s) for work required by this Decree.

In the event DOE determines that the schedule as required in Section IV-A, it shall notify Ecology within 15 days.

Without limitation on any other law, Ecology shall have authority to enter the Hanford Site for the purposes of, among other things: (1) inspecting contracts and other documents relevant to the implementation of Article XLV of the HFFACO; (2) reviewing the implementation of this Decree; (3) conducting such tests as Ecology deems necessary for the interim stabilization project (provided that such tests are consistent with DOE's ability to meet the schedule); and (4) verifying the interim stabilization project submitted to Ecology by DOE. DOE shall provide access by Ecology's representatives, conditions, and such status, and conformance with Hanford Site safety requirements. Ecology's representatives shall minimize interference while on the Hanford Site.



1 Site. DOE reserves the right to require Ecology's representatives to be  
2 accompanied by an escort while on the Hanford Site. DOE shall provide escorts in  
3 a timely manner.

## 4 VI. AMENDMENT OF DECREE

### 5 A. Amendment Process.

6 1. This Decree may be amended by mutual agreement of the State  
7 and DOE upon approval by the Court. The party proposing the amendment  
8 shall provide the proposal in writing to the other party, along with a  
9 justification for the amendment. Proposals to amend the schedule shall be  
10 submitted in accordance with, and shall be evaluated under the criteria  
11 described in, paragraphs B through G, below. Within ten (10) working days  
12 of receipt (except as provided in Section VI-F), the other party shall notify  
13 the party proposing the amendment whether or not the amendment is  
14 acceptable.

15 a. If the amendment is acceptable, then the State shall  
16 determine, in its sole discretion, whether the amendment constitutes a  
17 significant modification to the Consent Decree. If the amendment is  
18 significant, then the State and DOE shall take public comment on the  
19 amendment. Unless public comments disclose facts or considerations  
20 which indicate the amendment is inappropriate, the parties shall  
21 submit the amendment to the Court for its approval. If, in the view of  
22 either party, public comments disclose facts or considerations which  
23 indicate that the amendment is inappropriate, and if the parties are  
24 unable to agree on revisions to the proposed amendment to address  
25  
26

1 the concerns raised during the public comment period, then the  
2 provisions of Section VI-A-1-b shall apply.

3 b. If the amendment is not acceptable to the other party, the  
4 other party shall explain in writing its reasons for disapproving the  
5 amendment. In such an event, the party proposing the amendment  
6 may invoke the dispute resolution procedures of this Decree.

7 2. The time periods in Section VI may be extended by mutual  
8 agreement of the parties.

9 B. Amendment of Schedule. The schedule in Section IV-A shall be  
10 amended only if (1) a request for amendment is timely, and (2) good cause exists  
11 for the amendment.

12 C. Timeliness. To be timely, a request must be submitted to the other  
13 party either (1) when it is DOE requesting the schedule amendment, within ten  
14 (10) working days of a determination by DOE that it is unable to meet the deadline  
15 for which the amendment is sought; and (2) when it is the State requesting the  
16 schedule amendment, within ten (10) working days of a determination that an  
17 amendment is necessary.

18 D. Good Cause. "Good cause" for schedule amendment exists when the  
19 schedule cannot be met due to circumstances or events either (1) unanticipated in  
20 the development of the schedule in Section IV-A of this Consent Decree, or (2)  
21 anticipated in the development of the schedule, but which have a greater impact on  
22 the schedule than was predicted at the time the schedule was developed (hereafter  
23 referred to as "circumstances and events"). However, in any case, good cause  
24 does not exist if DOE can nonetheless meet the existing schedule by responding  
25 with reasonable diligence to such circumstances or events. Likewise, good cause  
26 does not exist if DOE could have met the existing schedule if it had responded

1 with reasonable diligence to the circumstance(s) or event(s) when it occurred.  
2 Budget requests, funding levels and efficient management practices are  
3 appropriate considerations in determining whether reasonable diligence exists.  
4 The exercise of reasonable diligence is not expected to normally require an  
5 expenditure of funds beyond those set out in Attachment B to this Decree  
6 (Projected Fiscal Year Funding Requirements for Work Required Under this  
7 Decree), unless additional expenditures are necessitated by inefficient  
8 management practices.

9           1.     a.     Both parties to this Consent Decree understand that to  
10           develop this schedule, assumptions had to be made in the Interim  
11           Stabilization Project Plan about events or unforeseen circumstances  
12           that might arise which could affect the schedule. As part of this  
13           process, further assumptions had to be made about the likelihood of  
14           such events or unforeseen circumstances occurring, and if they did  
15           occur, what effect that might have on the schedule.

16                 b.     The schedule assumes that, to some extent, unforeseen  
17           events will occur, or unforeseen circumstances will be discovered. A  
18           certain amount of "allowance" is built into the interim stabilization  
19           project plan underlying the schedule to allow DOE to respond to such  
20           events and circumstances and still meet the schedule. However, it is  
21           possible that unexpected events and/or circumstances will arise  
22           whose effect on the schedule exceeds this allowance.

23                 c.     If events or circumstances occur that will delay the  
24           completion of work beyond the deadlines in the schedule, and the  
25           delay cannot be or could not have been avoided by DOE responding  
26           to the event or circumstance with reasonable diligence, then "good

1 cause" exists for extending the schedule. Although such events or  
2 circumstances cannot, by their nature, be fully anticipated and  
3 controlled, the parties can identify in advance three general types of  
4 such events and/or circumstances:

5 (1) *Safety concerns.* In the past, unforeseen safety  
6 concerns have arisen that have required extending the schedule.  
7 Depending on the nature of unforeseen safety concerns and the  
8 time required to address those concerns, such safety concerns  
9 may constitute "good cause."

10 (2) *Unknown technical obstacles.* The wastes  
11 contained within each tank or group of tanks have their own  
12 unique characteristics. Sometimes, previously unknown waste  
13 characteristics present technical obstacles to pumping the  
14 tanks. Depending on the nature of the technical problem and  
15 the time required to address the problem, such unknown  
16 obstacles may constitute "good cause."

17 (3) *Equipment failures.* The assumptions underlying  
18 the schedule anticipate that some failures of certain kinds of  
19 equipment will occur. DOE has built time into the schedule to  
20 respond to some level of equipment failures. However, it is  
21 possible that equipment failures will take place beyond what is  
22 anticipated in the assumptions underlying the schedule.  
23 Depending on the frequency and type of equipment failures,  
24 such failures may constitute "good cause."

25 2. In any request for amendment, DOE shall identify the good  
26 cause that, in its view, justifies amendment. If the State agrees that good

1 -cause exists, the parties shall agree to an appropriate amendment. If the  
2 State does not agree that good cause exists, DOE may invoke the dispute  
3 resolution process set forth in Section VIII of this Decree.

4 E. Force Majeure. The parties agree that some events are of such a  
5 magnitude that they will be presumed to justify amendment. Extensions of the  
6 schedule shall be equal to the number of days during which work is interrupted  
7 due to *force majeure* events. These events include, but are not limited to:

8 1. Acts of God, fire, war, insurrection, civil disturbance, or  
9 explosion;

10 2. Significant adverse weather conditions that could not have  
11 been reasonably anticipated;

12 3. Restraint by court order;

13 4. Inability to obtain, at reasonable cost and after exercise of  
14 reasonable diligence, any necessary authorizations, approvals, permits or  
15 licenses due to action or inaction of any governmental agency or authority  
16 other than DOE or its authorized contractors;

17 5. Any strike or similar work stoppage resulting from labor  
18 dispute; and

19 6. Unavailability or insufficiency of funds due to a shut-down of  
20 the federal government or to the absence of an approved budget for DOE by  
21 the beginning of a fiscal year.

22 Any amendment requested on the grounds that one of the events listed  
23 above has occurred will be granted unless the State does not agree that a *force*  
24 *majeure* event has occurred. DOE may pursue dispute resolution regarding this  
25 determination under Section VIII of this Decree. If the dispute is not resolved by  
26 mutual agreement of the parties, DOE may seek court review, and if the Court

1 determines that, under the pertinent facts and circumstances, the event does  
2 constitute a *force majeure* event, the Court shall approve the requested extension.

3 Whenever a *force majeure* event occurs, DOE shall exercise its best efforts  
4 to complete the affected work in accordance with the original schedule.

5 F. **Unforeseen Safety Concerns.** If a previously unknown safety  
6 concern raised as an unreviewed safety question arises that affects or will likely  
7 affect the schedule in Section IV-A, DOE shall take the following steps:

8 1. Within three (3) working days of the declaration of an  
9 unreviewed safety question, notify Ecology that an issue exists, the nature  
10 of the issue, and any actions taken in accordance with the facility  
11 authorization procedures.

12 2. No more than 45 days after the notification in Section VI-F-1,  
13 DOE shall develop and submit to Ecology a Safety Issue Resolution Plan  
14 (SIRP) that identifies the following:

- 15 a. the issue and its technical basis, its probability of  
16 occurrence, consequences of occurrence, and any threat to human  
17 health and the environment that would result if DOE adhered to the  
18 schedule in Section IV-A in light of the safety issue;
- 19 b. the impacts that the safety issue will have on the  
20 schedule in Section IV-A;
- 21 c. required administrative, procedural, technical, and  
22 operational issues that must be resolved in order for work to continue;
- 23 d. a schedule and necessary resources to resolve the safety  
24 issue in order to allow the resumption of work in the event that work  
25 was stopped because of the safety issue;
- 26

- 1 e. the management process to be used to resolve the safety  
2 issue;
- 3 f. any pertinent information not already provided to  
4 Ecology; and
- 5 g. a request for a schedule amendment as set forth in  
6 Section VI-G below. In the event that the impact on the schedule  
7 cannot be adequately determined until the analysis of the unreviewed  
8 safety question is completed, DOE will advise Ecology of its initial  
9 estimate of schedule impact and a date by which it will submit the  
10 required request for schedule amendment.

11 3. If Ecology agrees, based on the information provided in the  
12 SIRP and any other information, whether oral or written, provided by DOE,  
13 that good cause exists for a schedule amendment, then the State shall  
14 determine, in its sole discretion, whether the amendment constitutes a  
15 significant modification to the Consent Decree. If the amendment is  
16 significant, then the State and DOE shall take public comment on the  
17 amendment. Unless public comments disclose facts or considerations which  
18 indicate that the amendment is inappropriate, the parties shall submit the  
19 amendment to the Court for its approval. In the event that Ecology does not  
20 agree, either before or after any public comment period, that good cause  
21 exists, DOE may invoke the dispute resolution procedures in Section VIII.

22 G. Proposals to Amend. Any proposal to amend the schedule shall be  
23 submitted in writing to the other party and shall specify the following:

- 24 1. The particular deadline(s) for which the amendment is sought;
- 25 2. The length of the extension(s) sought;
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1 raise and adjudicate the existence of such a defense. This provision does not  
2 constitute a waiver by DOE that its obligations under this Decree are subject to the  
3 provisions of the Anti-Deficiency Act, 31 U.S.C. § 1341, nor does it constitute a  
4 waiver by the State that DOE's obligations under this Decree are not subject to the  
5 Anti-Deficiency Act.

6 **B. Funding relating to milestones in the HFFACO.**

7 If DOE does not have adequate funding to comply with this Decree and all  
8 of the requirements of the HFFACO, DOE will likely request extensions of some  
9 current HFFACO milestones for work that it believes is of a lower priority than  
10 the work to be performed under this Decree. The State will review such requests  
11 in good faith and will grant such requests when it deems it appropriate to do so  
12 under the terms of the HFFACO, and, when required, EPA concurs.

13 Nothing in the above paragraph shall be used to constrict in any way  
14 DOE's, EPA's, or Ecology's rights under the HFFACO. In particular, nothing in  
15 the above paragraph shall supersede or amend the procedures set forth in  
16 paragraphs 148 and 149 of the HFFACO.

17 **VIII. RESOLUTION OF DISPUTES**

18 **A.** The parties recognize that a dispute may arise regarding the proper  
19 interpretation of this Decree or whether or how the Decree should be amended. If  
20 such a dispute arises, the parties will endeavor to settle it by good faith  
21 negotiations among themselves. The party invoking dispute resolution shall send  
22 to the other party a written demand for immediate commencement of good faith  
23 negotiations to endeavor to settle the dispute. If the parties cannot resolve the  
24 issue within a reasonable time, not to exceed forty (40) calendar days from the  
25 date of the written demand for good faith negotiations, then either party may seek  
26 appropriate relief from the Court as set out hereinafter in paragraph B. Either

1 party may request a meeting among technical and/or management representatives  
2 from their respective organizations, including the Interagency Management  
3 Integration Team at any time during the dispute resolution.

4 B. If the dispute does not resolve within 40 days from the date of the  
5 written demand for good faith negotiations of the dispute, either party may petition  
6 the Court for relief. A petition seeking appropriate relief from the Court shall be  
7 filed within thirty (30) calendar days of the end of the 40-day period provided for  
8 in Section VIII-A.

9 C. **Applicability Of Deadlines During Dispute Resolution.** Deadlines  
10 established in the schedule in Section IV-A shall continue in force unless and until  
11 changed by the Court. Notwithstanding the foregoing sentence, if DOE has  
12 requested an extension of a deadline, DOE shall not be deemed to be in violation  
13 of that deadline while DOE's request is being evaluated. This period shall run  
14 from the time that DOE submits a request for schedule amendment as provided in  
15 Section VI-A or Section VI-F through the date on which the Court acts on the  
16 request.

## 17 IX. COVENANT NOT TO SUE

18 A. The State hereby covenants not to bring any civil, judicial, or  
19 administrative action against DOE, its officials or employees, or its contractors or  
20 their subcontractors, their officials, or employees, with respect to matters covered  
21 by this Decree. "Matters covered" by this Decree are requirements for interim  
22 stabilizing, or removing pumpable liquid from, 29 single-shell tanks at the  
23 Hanford Site. This covenant not to sue is conditioned upon DOE's complete  
24 performance of its obligations under this Decree.  
25  
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1 -B. This Decree in no way affects or relieves DOE of responsibility to  
2 comply with any other State, Federal, or local law or regulation. Both parties  
3 retain all of their rights and defenses with respect to matters not covered in this  
4 Decree. The State expressly reserves for further action or enforcement and its  
5 execution of this Decree does not discharge, release, or in any way affect any  
6 right, demand, claim, or cause of action that it has, or may have, regarding DOE's  
7 environmental liabilities at the Hanford Site other than the interim stabilization  
8 program, including, without limitation, any other alleged noncompliance with the  
9 HFFACO, and any other environmental liability caused by or resulting from leaks,  
10 releases, or discharges from the single-shell tanks at the Hanford Site.

11 C. Notwithstanding any other provision of this Decree, the State reserves  
12 the right to seek amendment of this Decree, or to take action outside of this  
13 Decree, if previously unknown information is received, or previously undetected  
14 conditions are discovered, and these previously unknown conditions or  
15 information together with any other relevant information indicates that the work to  
16 be performed and schedule under this Decree are not protective of human health or  
17 the environment.

## 18 X. RETENTION OF JURISDICTION

19 This Court retains jurisdiction over both the subject matter of this Decree  
20 and the parties for the duration of the performance of the terms and conditions of  
21 this Decree for the purpose of enabling any of the parties to apply to the Court at  
22 any time for such further order, direction, sanction or other relief as may be  
23 necessary or appropriate for the construction or modification of this Decree, or to  
24 effectuate or enforce compliance with its terms, or to resolve disputes in  
25 accordance with Section VIII, Resolution of Disputes.  
26

1           **XI.     CONSTRUCTION AND USE OF CONSENT DECREE**

2           A.     Construction of Consent Decree. This Consent Decree is the  
3 product of negotiation by the parties. Both parties contributed to its drafting. In  
4 any dispute over the meaning of any provision of this Consent Decree, the parties  
5 shall be treated as having contributed equally to the drafting of that provision.

6           B.     Restrictions On Use In Other Proceedings. It is DOE's position  
7 that, until waiver or exhaustion of its appeal rights regarding a particular milestone  
8 under the HFFACO, the State may not bring a judicial action regarding that  
9 milestone. The State disagrees with this position. In order to reach agreement on  
10 this Consent Decree with the State, without adjudicating this issue, DOE hereby  
11 waives its appeal rights under the HFFACO to the Pollution Control Hearings  
12 Board with respect to the remaining M-41 milestones for interim stabilization of  
13 the single-shell tanks. Moreover, the parties agree that neither this Consent  
14 Decree, nor any of its provisions, may be used in any future proceeding by DOE,  
15 the State, or any other party to determine or resolve this issue.

16                           **XII.    EFFECT OF DECREE ON HFFACO MILESTONES**

17           Upon entry of this Decree, the State covenants not to enforce the series M-  
18 41 Single-Shell Tank Interim Stabilization Milestones and Milestone M-40-07 in  
19 the HFFACO. After entry of this Decree, the parties, with EPA's concurrence,  
20 will amend the HFFACO to delete the M-41 milestones in their entirety and to  
21 delete Milestone M-40-07.

22           Nothing in this Consent Decree shall give the Court jurisdiction over any of  
23 the HFFACO milestones.

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**XIII. EFFECTIVE AND TERMINATION DATES**

A. This Consent Decree shall be effective upon the date of its entry by the Court.

B. This Consent Decree shall terminate when all work to be performed under the Decree has been completed. The parties will notify the Court of this event by a motion to terminate the Consent Decree.

DATED this 29<sup>th</sup> day of September, 19 99.

Edward J. Shea  
United States District Judge

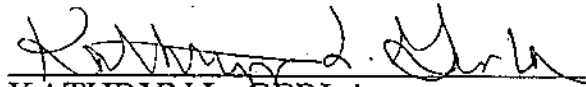
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2 DEPARTMENT OF ECOLOGY

3 

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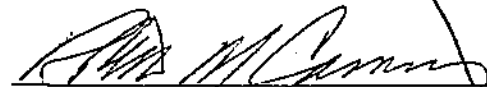
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26 \...Interim fed suit consent decree final

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**CONSENT DECREE  
ATTACHMENT A**

Following is the schedule for pumping liquid waste from the remaining twenty-nine (29) single-shell tanks. This schedule is enforceable pursuant to the terms of the Decree except for the "Projected Pumping Completion Dates" which are estimates only and not enforceable.

	<b>Tank Designation</b>	<b>Pumping Initiated</b>	<b>Projected Pumping Completion Date</b>
1.	T-104	Already initiated	May 30, 1999
2.	T-110	Already initiated	May 30, 1999
3.	SX-104	Already initiated	December 30, 2000
4.	SX-106	Already initiated	December 30, 2000
5.	S-102	July 31, 1999	March 30, 2001
6.	S-106	July 31, 1999	March 30, 2001
7.	S-103	July 31, 1999	March 30, 2001
8.	U-103*	June 15, 2000	April 15, 2002
9.	U-105*	June 15, 2000	April 15, 2002
10.	U-102*	June 15, 2000	April 15, 2002
11.	U-109*	June 15, 2000	April 15, 2002
12.	A-101	October 30, 2000	September 30, 2003
13.	AX-101	October 30, 2000	September 30, 2003
14.	SX-105	March 15, 2001	February 28, 2003
15.	SX-103	March 15, 2001	February 28, 2003
16.	SX-101	March 15, 2001	February 28, 2003
17.	U-106*	March 15, 2001	February 28, 2003
18.	BY-106	July 15, 2001	June 30, 2003
19.	BY-105	July 15, 2001	June 30, 2003
20.	U-108	December 30, 2001	August 30, 2003
21.	U-107	December 30, 2001	August 30, 2003
22.	S-111	December 30, 2001	August 30, 2003
23.	SX-102	December 30, 2001	August 30, 2003

	<b>Tank Designation</b>	<b>Pumping Initiated</b>	<b>Projected Pumping Completion Date</b>
24.	U-111	November 30, 2002	September 30, 2003
25.	S-109	November 30, 2002	September 30, 2003
26.	S-112	November 30, 2002	September 30, 2003
27.	S-101	November 30, 2002	September 30, 2003
28.	S-107	November 30, 2002	September 30, 2003

29. C-103 No later than December 30, 2000, DOE will determine whether the organic layer and pumpable liquids will be pumped from Tank C-103 together or separately, and will establish a deadline for initiating pumping of this tank. The parties will incorporate the initiation deadline into this schedule as provided in Section VI of the Decree.

\*Tanks containing organic complexants.

**Completion of Interim Stabilization.** DOE will complete interim stabilization of all 29 single-shell tanks listed above by September 30, 2004.

**Percentage of Pumpable Liquid Remaining to be Removed.**

93% of Total Liquid	9/30/1999
38% of Organic Complexed Pumpable Liquids	9/30/2000
5% of Organic Complexed Pumpable Liquids	9/30/2001
18% of Total Liquid	9/30/2002
2% of Total Liquid	9/30/2003

The "percentage of pumpable liquid remaining to be removed" is calculated by dividing the volume of pumpable liquid remaining to be removed from tanks not yet interim stabilized by the sum of the total amount of liquid that has been pumped and the pumpable liquid that remains to be pumped from all tanks.

The parties to this Decree recognize that the "remaining pumpable liquids" volume is a best projection and may vary. By October 31, 1999 and each year thereafter until the work is completed, the DOE will include in its final quarterly report for the fiscal year the following information:



- The volume of pumpable liquid actually removed for the previous year;
- Cumulative volume to date.

This information will be utilized to assess compliance with the milestones above. Also included in this quarterly report will be an updated projection of the pumpable liquids remaining in the tanks addressed by this Decree. This updated projection will be used to assess future compliance with these milestones. The current projection is that the tanks contain approximately 6.2 million gallons of "remaining pumpable liquid." The addition of dilution water to tanks shall not be counted towards the pumpable liquid volume or the liquid volume remaining to be removed.

DOE currently estimates approximately 900,000 gallons of organic complexed pumpable liquids are contained in tanks U-103, U-105, U-102, U-109, and U-106.

**Definition of "Initiate."** For purposes of this Decree, tank pumping is "initiated" when actual pump operation has commenced, and the pumping achieves a 60% operating efficiency over a 72-hour consecutive period, and transfers a total of not less than 500 gallons.

**Definition of "Interim Stabilized."** For purposes of this Decree, a single-shell tank has been "interim stabilized" and tank pumping may be discontinued when the tank contains less than 50,000 gallons of drainable interstitial liquid and less than 5,000 gallons of supernatant liquid. In addition, if jet pumping is used, the pump flow must be at 0.05 gpm or less before pumping may be discontinued. If a major equipment failure occurs at a tank that contains less than 50,000 gallons of drainable interstitial liquid and less than 5,000 gallons of supernatant, then DOE may, after consulting with Ecology, consider the tank interim stabilized.

**CONSENT DECREE  
ATTACHMENT B**

**PROJECTED FISCAL YEAR FUNDING REQUIREMENT  
FOR WORK REQUIRED UNDER THIS DECREE**

FY99	\$29,471,000
FY00	35,052,000
FY01	32,841,000
FY02	30,176,000
FY03	23,254,000
FY04	9,372,000

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