

Department of Energy
Washington, DC 20585

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MAY 20 1997

May 16, 1997

Ms. Marilyn Reeves
Chair, Hanford Advisory Board
c/o Technical Resources International, Inc.
723 The Parkway, Suite 200
Richland, Washington 99352

Dear Ms. Reeves:

I am writing in response to your letter dated April 4, 1997, regarding the Hanford Advisory Board (HAB) consensus advice number 69 - New Funding Principle. With respect to the HAB's concern regarding "unfunded mandates," we make every attempt to minimize the imposition of additional funding requirements upon the EM sites and seek to assure that such requirements are related to the site and the mission. However, funding levels and requirements change over the course of the fiscal year.

Most recently, Headquarters advised the Richland Operations Office to fund a number of additional requirements within the fiscal year 1997 budget allocation. These requirements are either important initiatives which benefit the Richland program or are necessary for day-to-day operations. Examples of these requirements include funding for Hanford's Site Specific Advisory Boards, the Hanford Natural Resources Survey, and the Hanford Thyroid Study. The Richland Operations Office has been advised to budget for these requirements within its target for FY 1999 and beyond. If you have concerns regarding the funding for these activities in the future, please let us know as you continue to review the proposed FY 1999 budget request.

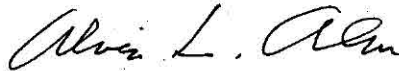
We agree that Environmental Management funds should not be used for non-Environmental Management activities. However, we would like to clarify the situation regarding the examples that were provided in your letter. With respect to the transfer of the Fast Flux Test Facility to the Office of Nuclear Energy, the only activities which utilize Environmental Management funding during the transition are cleanup-type activities that will need to be completed regardless of any decision concerning restart. As a result, we do not feel that the activities currently being conducted are an inappropriate use of Environmental Management funds.

For medical monitoring, based on the discussions at the April HAB meeting, we understand that the HAB is referring to the recent proposal by the Agency for Toxic Substances and Disease Registry (ATSDR) for conducting medical monitoring of Hanford "downwinders". I have enclosed a memorandum addressed to me on this subject from Mr. John Wagoner, Manager of the Richland Operations Office, providing the Richland Operations Office's views on the proposed funding of this ATSDR effort from the Richland budget. We are currently considering the issues raised in this memorandum.

Additionally, a fact sheet is enclosed explaining why it is necessary to use Environmental Management funds to support ongoing litigation over damages allegedly arising from the past operations of the Hanford Site.

Should you have further concerns, please do not hesitate to contact me or Mr. Lloyd Piper, Acting Manager of the Richland Operations Office, at (509) 376-4216.

Sincerely,



Alvin L. Alm
Assistant Secretary for
Environmental Management

Enclosures

Attachment I

RL-F-1325.6# DEFO12
(04/93)

United States Government

Department of Energy

memorandum

Richland Operations Office

DATE: APR 18 1997
REPLY TO:
ATTN OF: EAP:DCW 97-EAP-357

SUBJECT: FUNDING OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980 COMPLIANCE ACTIVITIES PERFORMED BY THE AGENCY FOR TOXIC SUBSTANCE AND DISEASE REGISTRY (ATSDR)

to: Alvin L. Alm, Assistant Secretary
for Environmental Management
EM-1, HQ

By your memorandum to Distribution, dated February 27, 1997, "Transition of Program Activities of the Agency for Toxic Substances and Disease Registry, you directed the field offices to assume program execution and funding of activities performed by ATSDR. To date, these ATSDR activities which include, but are not limited to, health assessments, exposure registry, and medical monitoring, have been funded by DOE-HQ Environmental Management (EM). But, as stated in your memorandum of February 27, 1997, DOE-HQ support of ATSDR is no longer possible due to Congressional budget reductions in the EM Program Direction Account. EM's proposed response is transfer of this responsibility to field offices. Field offices are expected to partially fund these activities in Fiscal Years (FYs) 1997 and 1998, with full funding burden commencing in FY 1999.

DOE Richland Operations Office (RL) understands DOE-HQ obligation to support ATSDR, but we are very concerned about the direct impacts to RL's budget and the burden on staff time in program execution. Both concerns are driven by projected deltas in funding versus what is required to remain in compliance for legally mandated programs. These gaps in the first draft of the RL Budget Integrated Priority List are currently projected to be \$74M for FY 1998, and \$99M for FY 1999. We are working to close those gaps, but it is uncertain if this will be possible in our baseline. Adding to these projected shortfalls the estimated ATSDR funding requirements for Hanford related activities of \$11.5M FY 1997, \$13.5M FY 1998, and \$13.1M FY 1999 exacerbates matters significantly. These potential ATSDR activities have not been validated for required scope or cost estimates.

RL strongly recommends these activities be funded through a separate Congressional appropriation. To require RL to allocate funds for ATSDR activities under the current downward budget process without additional appropriations by Congress will seriously impact legally mandated programs and could force RL further into potential noncompliance.

Alvin L. Alm
97-EAP-357

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APR 18 1997

At the Hanford Advisory Board's (HAB) meeting of April 4, 1997, advice was directed to both your office and the Manager, RL. This advice recommends that ATSDR's proposed activities NOT be funded by EM. Furthermore, the HAB approves of the inclusion of some level of medical monitoring activities in the overall RL budget.

Within the Environmental Restoration Project, funding for ATSDR activities would compete on a dollar-for-dollar basis with existing remediation workscope. This would result in a deferment of remediation workscope, necessitate the renegotiation of significant milestones with the State of Washington Department of Ecology and U.S. Environmental Protection Agency, and possibly force additional reductions in the Environmental Restoration contractor's staff.

Directing RL to fund existing or future ATSDR activities will have grave consequences on programs at Hanford including remediation work. I urge you to seek additional Congressional appropriations in an effort to eliminate this budgetary burden to the field offices.

If there are any questions, please contact me or your staff may contact James E. Rasmussen, Director, Environmental Assurance, Permits and Policy Division, on (509) 376-5441.


John D. Wagoner
Manager

cc: J. Owendoff, EM-40
T. Jones, EM-47

DOWNWINDER LITIGATION FACT SHEET

QUESTION: What workscope is reflected in the Hanford Integrated Priority List entitled, "Downwinder Litigation?"

ANSWER: This covers the costs for:

1. Reimbursement of litigation costs, in accordance with contract provisions for the five former Hanford operating contractors, in responding to the lawsuits which have been consolidated and are now referred to as the "In Re Hanford" case. The plaintiffs in these cases seek damages for personal injury and property damages which are alleged to have resulted from past Hanford releases.
2. Responses by DOE to discovery requests by the litigants:
 - reproduction of over 2.4 million requested records.
 - participation in the discovery phase of the continuing proceeding.

QUESTION: Why must Environmental Management (EM) dollars be used for this purpose?

ANSWER: Two points need to be addressed to answer this question:

1. The contracts between the U.S. Government and the five former contractors included the provisions of the since modified Price-Anderson Act. This Act provided that the government would indemnify and hold the contractors harmless against any liability resulting from their activities. [The provisions of the Price-Anderson Act have since been modified so that the government will no longer indemnify contractors found to be negligent. However, this modification to the Price-Anderson Act did not include a provision that would allow for changing contracts executed prior to the modification.]
2. EM funds are used because EM is the Hanford Site "landlord" and the landlord is responsible for such ongoing litigation. When the EM organization was formed, other DOE activities, such as Defense Programs, gave up a portion of their funding to support the new organization.

QUESTION: Should the courts rule that the contractors are liable for damages, where will the funds needed to pay such damages come from?

ANSWER: In the event that the contractors are found liable, the government, under the terms of the contract(s), will have an indemnification obligation to the contractors. Dependent upon the size of any such judgement against the contractors, DOE may seek a separate appropriation to pay such damages.

QUESTION: When can we expect these legal proceedings to be completed?

ANSWER: It is hoped that the actual trials will commence some time in FY 1998. It is impossible for us to project when these large and complex cases will be complete. However, our present budget planning assumption is that these costs will be no longer necessary after FY 2006.