



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

November 6th, 2018

Mr. Jan Bovier
Office of River Protection
P.O. Box 450, MSIN H6-60
Richland, WA 99354

**RE: *Draft Waste Incidental to Reprocessing Evaluation for
Closure of Waste Management Area C at the Hanford Site***

Dear Mr. Bovier:

The Confederated Tribes and Bands of the Yakama Nation is taking the opportunity to provide comments regarding the above-entitled Department of Energy document dated March 2018 (DOE-ORP-2018-01) and issued for public comment on June 4, 2018 (Draft WIR). The Draft WIR provides the basis for the DOE to issue a determination that wastes generated during the reprocessing of spent nuclear fuel, which are by definition high-level radioactive waste (HLW) under current federal law, may instead be managed as low-level radioactive waste. This is the latest in a continuing effort by your agency, pursuant to DOE Order 435.1, to reclassify HLW being stored at Hanford. We appreciate that the Office of River Protection decided to extend the period for comment for an additional 60 days given the nature and importance of this document.

The Yakama Nation is deeply concerned about being left with the most dangerous wastes of the nuclear age on lands it has used for its subsistence and culture since time immemorial. The Hanford site was established on lands where the Yakama Nation has reserved hunting and gathering rights under the Treaty of June 9, 1855. In addition the Columbia River, which bisects the site, is home to anadromous fish species to which the Yakama people have also reserved treaty rights to harvest. The Federal government maintains a special trust relationship to the Yakama Nation with an enforceable fiduciary responsibility to protect its lands and resources, including those to which treaty rights attach outside the Yakama Reservation.

Since Order 435.1 was approved by the Office of Environmental Management in 1999, DOE has consistently argued that it has discretionary authority under the Atomic Energy Act to reclassify any HLW remaining in the Hanford storage tanks as "waste incidental to reprocessing." The Yakama Nation was a plaintiff in previous litigation regarding this issue and remains convinced that the rulings made in that case, though vacated by the Ninth Circuit Court of Appeals on ripeness grounds, are persuasive legal authority and directly relevant to the current Draft WIR determination. However, aside from this legal question, we are also firmly convinced that leaving such radioactive materials in an unstable shallow land disposal for many generations is simply bad policy. It will inevitably result in serious threats to the health of Yakama enrolled members and the public, both by direct exposure and through consumption of contaminated resources.

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Yakama Nation has reviewed the Draft WIR and is providing its comments regarding six overarching issues:

1. Legal Authority

The WMA C tank residual wastes comprise highly radioactive material resulting from the reprocessing spent/irradiated nuclear fuel, and contain fission products in sufficient quantities to qualify as high-level radioactive waste under definitions in the Nuclear Waste Policy Act (NWPA) or 10 CFR §60.2. DOE is now attempting to reclassify the wastes within the WMA C tanks from HLW to low-level radioactive waste based on purported criteria and authority provided in Order 435.1. These criteria contradict the clear congressional directive for deep geologic disposal of all HLW in the NWPA based on both its highly radioactive nature and its source, reprocessing of nuclear fuel in plutonium production. See *NRDC v. Abraham*, 271 F. Supp. 2d 1260, 1266 (D. Idaho 2003) (“NWPA does not delegate to DOE the authority to establish ‘alternative requirements’” for HLW).

2. Consistency with TCWM EIS/ROD

Implementation of the Draft WIR also circumvents several of the requirements, or their intent, of the 2013 Record of Decision (ROD) for the Final Tank Closure and Waste Management Environmental Impact Statement (TCWM EIS). Preferred Alternative 2B included retrieval of 99 percent of the tank waste by volume, separation of high- and low-activity radioactive waste, and potential soil removal or treatment in the vadose zone. Proposed changes made under the Draft WIR to the total volume of tank waste retrieved, handling of material currently classified as high-level radioactive waste, and future closure decisions will preclude implementation of the Preferred Alternative as described in the ROD.

3. Cumulative Effects

Due to the corrosive nature of the wastes stored, the WMA C tanks are associated with releases to the subsurface of radioactive waste from multiple generations of reprocessing chemistry. In 2016, the DOE estimated that the WMA C tanks had released approximately 201,000 gallons of radioactive waste to the vadose zone. Analysis performed in the Draft WIR and supporting Performance Assessment does not address these confirmed releases or the implications for future cleanup associated with grouting the WMA C tanks. Similarly, the WMA C is surrounded by other waste sites and tank farms; is within the boundary of impacts associated with production-period discharges to the subsurface; and is in the flow-path for several established groundwater plumes that are projected to exceed their applicable cleanup levels for decades or more. Future exposure to a member of the public or an inadvertent intruder is being evaluated on the basis of potential migration and/or exposure to residual tank wastes only, and does not include cumulative effects of these releases.

4. Impacts to Cultural Resources

The Yakama Nation has not been consulted by DOE to determine the effects on historic properties as required by the National Historic Preservation Act (NHPA). ER/WM also has not been provided an opportunity to review and comment on the DOE’s analysis of the anticipated

effects on historic properties. Decisions regarding final closure or remedial actions at each site should account for the impacts to traditional cultural properties. The Draft WIR does not include evaluation of the ultimate effect of general fate and transport of residual tank waste and vadose zone releases on exercise of reserved treaty rights to resources at Hanford.

5. Technical Approach

Based on data provided in the Draft WIR and the supporting Performance Assessment, concentrations of long-lived transuranic radionuclides in residual tank wastes exceed the maximum allowable concentrations identified by the Nuclear Regulatory Commission that are acceptable for near surface disposal. The Draft WIR presents a waste classification approach that includes revision to the classification calculations and sum of fractions evaluation to rely on the WMA C Performance Assessment Inadvertent Intruder Analyses. This modified approach does not address long-term protectiveness as intended under existing requirements for disposal.

6. Future Closure and Decision Making

Future closure relies heavily on implementation of institutional and engineering controls including surface barriers to ensure protection of human health and the environment. While such measures may be effective when properly implemented, a significant commitment of resources is required to ensure their success. The actions proposed by the Draft WIR, while relying on these measures, provide no assurances to ensure their effectiveness such as planning for degraded performance over time; incorporating clear and consistent maintenance and stewardship programs as part of proposed closure actions; and providing consistent, conservative, and advance funding for post-closure stewardship with assurances to maintain engineered barriers and access controls. Implementation of institutional and engineering controls also has significant implications for the Yakama Nation's members and the exercising of Treaty rights on the Hanford Site which should also be addressed.

The Yakama Nation supports clean closure, including maintaining a minimum of 99 percent retrieval for residual tank wastes to the maximum extent practicable. High-level waste and transuranic wastes derived from the reprocessing of spent nuclear fuel, including that which currently remains in the WMA C tanks, should be retrieved, segregated, and disposed of in accordance with current Federal law. Instead of implementing the Draft WIR, DOE should focus on meeting current cleanup requirements under federal law and previous Records of Decision that apply to the WMA C.

Please contact Julie Atwood at (509) 895-4866 if you have any questions or want to discuss these comments.

Sincerely,



Phil Rigdon,
DNR Superintendent, Yakama Nation

cc: Maria Cantwell, United States Senator
Patty Murray, United States Senator
Jay Inslee, Washington Governor
Ron Wyden, United States Senator
Jeff Merkley, United States Senator
Kate Brown, Oregon Governor
Sheryl Bilbrey, Director, Environmental Cleanup Office, U.S. EPA
Maia Bellon, Director, Department of Ecology
Anne White, Assistant Secretary for Environmental Management, U.S. DOE
Janine Benner, Director, Oregon DOE