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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.

NOTE: THIS FAX TRANSMISSION IS INTENDED ONLY FOR THE ADDRESSEE SHOWN ABOVE. IT MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, OR OTHERWISE PROTECTED FROM DISCLOSURE. ANY REVIEW, DISSEMINATION, OR USE OF THIS TRANSMISSION OR ITS CONTENTS BY PERSONS OTHER THAN THE ADDRESSEE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND MAIL THE ORIGINAL TO US AT THE ABOVE ADDRESS. THANK YOU.

THE ATTORNEY GENERAL'S OFFICE DOES NOT ACCEPT SERVICE BY FAX.

JOSEPH E. SHORIN III, WSBA #19705
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Plaintiff, v. UNITED STATES DEPARTMENT OF ENERGY, Defendant.	NO. CT-99-5076-EFS FIRST AMENDMENT TO CONSENT DECREE

I. INTRODUCTION

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

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

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

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

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

NOW THEREFORE, it is hereby ordered, adjudged, and decreed as follows:

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XIV. ADDITIONAL PROVISIONS PERTAINING TO AWARDING A CONTRACT FOR DESIGN AND CONSTRUCTION OF A WASTE TREATMENT AND VITRIFICATION COMPLEX.

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

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

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

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

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

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

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

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

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

3. For purposes of construing Section XIV only, the references in Section V to "interim stabilization" shall be deemed to refer to the activities required to be taken pursuant to Section XIV-A of this Consent Decree, except that nothing in the Consent Decree shall be deemed to authorize access to procurement sensitive documents.

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4. For purposes of construing the provisions of Section XIV only, the reference to Section IV-A in Section VIII-C shall be deemed to refer to Section XIV-A.

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

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

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

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

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

XV. EFFECTIVE DATE OF AMENDMENT

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

DATED this 19 day of September, 2000.

United States District Judge

FOR THE STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

TOM FITZSIMMONS
Director
Washington Department of Ecology
300 Desmond Drive
Lacey, WA 98503

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Attorney General

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FOR THE UNITED STATES
DEPARTMENT OF ENERGY

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9/15/00

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

SEP 30 1999

JAMES R. LARSEN, CLERK
DEPUTY
RICHLAND

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

UNITED STATES
DEPARTMENT OF ENERGY,

Defendant.

NO. CT-99-5076-EFS

CONSENT DECREE

I. INTRODUCTION

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

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

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SEP 29 1999
CLERK, US DISTRICT COURT
RICHLAND, WASHINGTON

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

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

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

NOW THEREFORE, it is hereby ordered, adjudged, and decreed as follows:

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II. JURISDICTION

The Court has jurisdiction over the subject matter and the parties to this Decree. Venue is proper in the United States District Court for the Eastern District of Washington.

The State of Washington, Department of Ecology enters into this Decree pursuant to Chapter 70.105 RCW and the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.

The United States Department of Energy enters into this Decree pursuant to 42 U.S.C. §§ 6901 et seq.

III. PARTIES BOUND

This Decree applies to and is binding upon the United States Department of Energy, the State of Washington, Department of Ecology, and their successors. DOE remains obligated by this Decree regardless of whether it carries out the terms through agents, contractors, and/or consultants.

IV. WORK TO BE PERFORMED AND SCHEDULE

A. Liquid waste in Hanford's single-shell tanks shall be removed from the single-shell tanks and stored in double-shell tanks according to the schedule set forth in Attachment A to this Decree. The schedule in Attachment A is hereby incorporated by reference into this Decree and is an integral and, with the exception of the projected pumping completion dates, enforceable part of the Decree.

B. **Reporting**: DOE shall, on a quarterly basis, submit to Ecology a written report documenting tank stabilization activities that occurred during the period covered by the report. This written report shall provide the status of progress made during the reporting period and shall include:

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1. A brief description of project accomplishments and project issues encountered during the reporting period and/or expected in the next six months;

2. A definitive statement describing whether or not DOE remains in compliance with the schedule set forth in Section IV-A;

3. Where applicable, a description of actions initiated or otherwise taken to recover any schedule slippage;

4. Budget/cost status; and

5. Copies of written directives given by DOE to the contractor(s) for work required by this Decree.

In the event DOE determines that it is unable to meet the schedule as required in Section IV-A, it shall notify Ecology as set forth in Section VI.

V. ACCESS

Without limitation on any authority conferred on it by law, Ecology shall have authority to enter the Hanford Site at all reasonable times for the purposes of, among other things: (1) inspecting records, operating logs, contracts and other documents relevant to the implementation of this Decree, subject to Article XLV of the HFFACO; (2) reviewing the progress of DOE in implementing this Decree; (3) conducting such tests as Ecology deems necessary regarding the interim stabilization project (provided that such tests do not interfere with DOE's ability to meet the schedule); and (4) verifying data relating to interim stabilization submitted to Ecology by DOE. DOE shall honor all requests for access by Ecology's representatives, conditioned only upon proof of such status, and conformance with Hanford Site safety and security requirements. Ecology's representatives shall minimize interference with operations while on the Hanford

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1. A brief desc ents and project issues encountered durin xpected in the next six months;

2. A definitive or not DOE remains in compliance with the sc -A;

3. Where applic initiated or otherwise taken to recove

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V

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

VI. AMENDMENT OF DECREE

A. **Amendment Process**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Restraint by court order;

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

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

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

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

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

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

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

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

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

a. the issue and its technical basis, its probability of occurrence, consequences of occurrence, and any threat to human health and the environment that would result if DOE adhered to the schedule in Section IV-A in light of the safety issue;

b. the impacts that the safety issue will have on the schedule in Section IV-A;

c. required administrative, procedural, technical, and operational issues that must be resolved in order for work to continue;

d. a schedule and necessary resources to resolve the safety issue in order to allow the resumption of work in the event that work was stopped because of the safety issue;

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e. the management process to be used to resolve the safety issue;

f. any pertinent information not already provided to Ecology; and

g. a request for a schedule amendment as set forth in Section VI-G below. In the event that the impact on the schedule cannot be adequately determined until the analysis of the unreviewed safety question is completed, DOE will advise Ecology of its initial estimate of schedule impact and a date by which it will submit the required request for schedule amendment.

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

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

1. The particular deadline(s) for which the amendment is sought;

2. The length of the extension(s) sought;

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3. The good cause or *force majeure* event that is the basis for the amendment; and

4. Any other requirement of this Consent Decree or of the HFFACO that would be affected if the proposal to amend the schedule were accepted.

Any proposal to amend any other provision of this Consent Decree shall be in writing and shall identify:

1. Those portions of the Consent Decree to be amended;

2. The proposed new language to be included in the Consent Decree; and

3. The reason for the proposed amendment.

VII. FUNDING

A. **Funding relating to implementing the schedule.**

DOE agrees to advise the State of its efforts to obtain the appropriated funding necessary to implement this Decree. If DOE asserts that appropriated funds necessary to fulfill an obligation under this Decree are not available, the parties agree to utilize the dispute resolution procedures of Section VIII to discuss whether the State will, in its sole discretion, agree to make appropriate adjustments to the deadlines for obligations that require the payment or obligation of such funds. If no agreement is reached, the Parties agree that in any judicial proceeding to enforce the terms of this Decree and/or to find DOE in contempt for failure to comply or for delay in compliance with such terms, DOE may raise as a defense that its failure or delay was caused by the unavailability of appropriated funds. The State disagrees that lack of appropriations or funding is a valid defense. However, DOE and the State agree and stipulate that it is premature at this time to

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raise and adjudicate the existence of such a defense. This provision does not constitute a waiver by DOE that its obligations under this Decree are subject to the provisions of the Anti-Deficiency Act, 31 U.S.C. § 1341, nor does it constitute a waiver by the State that DOE's obligations under this Decree are not subject to the Anti-Deficiency Act.

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

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

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

VIII. RESOLUTION OF DISPUTES

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

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

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

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

IX. COVENANT NOT TO SUE

A. The State hereby covenants not to bring any civil, judicial, or administrative action against DOE, its officials or employees, or its contractors or their subcontractors, their officials, or employees, with respect to matters covered by this Decree. "Matters covered" by this Decree are requirements for interim stabilizing, or removing pumpable liquid from, 29 single-shell tanks at the Hanford Site. This covenant not to sue is conditioned upon DOE's complete performance of its obligations under this Decree.

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B. This Decree in no way affects or relieves DOE of responsibility to comply with any other State, Federal, or local law or regulation. Both parties retain all of their rights and defenses with respect to matters not covered in this Decree. The State expressly reserves for further action or enforcement and its execution of this Decree does not discharge, release, or in any way affect any right, demand, claim, or cause of action that it has, or may have, regarding DOE's environmental liabilities at the Hanford Site other than the interim stabilization program, including, without limitation, any other alleged noncompliance with the HFFACO, and any other environmental liability caused by or resulting from leaks, releases, or discharges from the single-shell tanks at the Hanford Site.

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

X. RETENTION OF JURISDICTION

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

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XI. CONSTRUCTION AND USE OF CONSENT DECREE

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

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

XII. EFFECT OF DECREE ON HFFACO MILESTONES

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

Nothing in this Consent Decree shall give the Court jurisdiction over any of 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 29th day of September, 1999.

Edward F. Shea
United States District Judge

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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.

	Tank Designation	Pumping Initiated	Projected Pumping Completion Date
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

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	Tank Designation	Pumping Initiated	Projected Pumping Completion Date
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:

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- 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.

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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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