



Comments to the

U.S. Nuclear Waste Technical Review Board
Richland, Washington

by Russell Jim, Manager
Environmental Restoration / Waste Management Program
Yakama Nation

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Thank you for the opportunity to speak to the Review Board today.

Today, the Board is considering DOE activities concerning vitrification of high-level radioactive waste at Hanford, for eventual disposal in a repository.

The Yakama Nation has concerns at Hanford which include this matter, and which encompass issues far beyond this matter as well. Yakama concerns arise from our contract with the United States, the Treaty of 1855, which guarantees perpetual rights to fish, hunt and gather our traditional foods and medicine on open and unclaimed land, including land at the Hanford Site. The Yakama land at Hanford was ceded to the United States in the Treaty, with the provision that such rights would remain forever. The Treaty involved a grant of land and rights to the United States by the Yakama Nation, not the reverse.

For those of you who may question whether a Treaty issue is properly in the domain of your review activities, I offer the following: The Board was created under the 1987 amendments to the Nuclear Waste Policy Act, and is part of the statutory framework for dealing with spent fuel and high level nuclear waste. The Treaty, ratified by Congress and signed by the President, is part of the statutory framework for relations between sovereigns, and is considered the Supreme Law of the Land.

Absent an express Act of Congress to the contrary, Treaty rights at Hanford are fully intact and have a direct bearing on the issues addressed today. Only the Yakama government has the authority to express its unique concerns regarding NWPA implementation and effects on its rights – we ask that you understand and support full compliance with these Treaty rights. Notably, the Yakama Nation contributed to the parent language of the Nuclear Waste Policy Act of 1982, which led to the inclusion of affected Tribal governments in the high level waste disposal review process.

A distinct area of concern for the Yakama government is potential reclassification of high level radioactive waste at Hanford. Eleven years ago, the Yakama Nation joined a Federal lawsuit to prevent the Department of Energy from reclassifying high level waste. The District Court sided with the Yakama, Washington State and others. On appeal, it was ruled that the matter was not ripe for a decision.

Despite this legal uncertainty, I request that the Board consider all relevant factors which will affect future disposal of this extremely toxic waste.

During the high level waste legal challenge, DOE requested that Congress 'clarify' the NWPA. This led to an unusual situation, to say the least, in which Congress has provided the Secretary of Energy with authority to reclassify high level waste in South Carolina and Idaho, but not at Hanford. The Yakama Nation, Washington, and others opposed reclassification – Senator Maria Cantwell's efforts prevented such re-definition authority at Hanford in the 2005 Defense Authorization Act.

At the time, these concerns were articulated by former Governor Christine Gregoire, then Attorney General, in a letter to Senator Cantwell, on June 1, 2004:

“The problems associated with the storage and disposition of high level waste however, require real solutions, not avoidance through re-definition.”

If this waste is “reclassified”, I am concerned that DOE will attempt to dispose of significant volumes of high level nuclear waste at Hanford – near the Columbia River – rather than at a geologic repository as currently required.”

For the Yakama Nation, these concerns are undiminished today.

In an August 7, 2012 letter to the EPA Regional Administrator, the Yakama Nation cited possible violations of the Nuclear Waste Policy Act at Hanford. Specifically, it was documented that high level radioactive waste was historically stored at the 618-10 and 618-11 burial grounds, and that such retrieved waste is to be disposed of in a landfill at Hanford. The waste acceptance criteria for this landfill forbids emplacement of high level waste. Of course, the NWPA forbids disposal of any HLW in any landfill.

I request that the Review Board examine this situation in detail. A decision process in which high level waste exists only if the Department of Energy says it exists is neither credible nor viable. Any violation of the Nuclear Waste Policy Act will result in mistrust by the citizens of this Region, will undermine Congressional intent, and will pose a grave risk to human health and environmental protection.

The situation cited here is of acute concern.

On the horizon is possible redefinition of additional high level waste: waste which was discharged or leaked from the single shell tanks, waste left in tanks as 'residuals', and waste separated into so-called 'low activity waste', a term which has no legal basis. The Review Board would do this Region, the Nation's taxpayers, and Congress a great service by highlighting the consequences of this ad-hoc high level waste strategy, which defers to DOE on classification questions, and leaves the most important question unanswered: how much of this high level radioactive waste is planned to be left at Hanford?

I would like to bring forth another matter to the Board, which involves the consequence of not cleaning up and properly disposing of this toxic material.

In 2002, the Yakama Nation initiated a CERCLA natural resource damage assessment for the Hanford Site, by bringing a claim for injury to resources in the 1100 Area. Damages under CERCLA arise from injury to natural resources caused by the release of hazardous substances. The suit was later expanded to include hazardous releases from the entire Hanford Site, and was joined by Washington, Oregon, and the Umatilla and Nez Perce Tribes. A recently completed Preliminary Estimate of Damages calculated primary restoration costs in excess of \$20 billion – this estimate excludes injury arising from any high level waste left in tanks, leaked from tanks, or which may be otherwise left at Hanford.

The Yakama Nation would like its Treaty resources at Hanford to be restored – compliance with the Treaty of 1855 requires such restoration. The Treaty signatories did not contemplate the exercise of Treaty rights which cause extraordinary health effects and fatal cancers. Since I believe that your charter is ultimately to protect humans and the environment, I ask that you document for the record the potential impacts to our Tribal members and to our Treaty rights from any high level waste which could be left at Hanford.

The Yakama government has embarked on an effort to research the spectrum of effects of exposure to these dangerous toxins. I request that the Board consider the unique pathways, exposure and effects from high level waste to our genetically and culturally distinct people when you are deliberating the disposition of this material, and document the impacts accordingly.

I thank you for your time, and would be glad to answer any questions.