



STATE OF WASHINGTON
ENVIRONMENTAL HEARINGS OFFICE

4224 - 6th Avenue SE, Bldg. 2, Rowe Six
P.O. Box 40903, Lacey, WA 98504-0903

March 15, 1999 ⁹⁹ MAR 16 AM 11:19

Robert M. Carosino
Office of Chief Counsel
US Department of Energy
Richland Operations Office
PO Box 550
Richland WA 99352

Leslie R. Seffern
Assistant Attorney General
Department of Ecology
PO Box 40117
Olympia WA 98504-0117

Dale E. Jackson, Attorney
US Department of Energy
Richland Operations Office
PO Box 550 MSIN A5-15
Richland WA 99352

Jennifer T. Curtis, General Counsel
Fluor Daniel Hanford Inc.
2420 Stevens Center Place
MSIN B3-15
PO Box 1000
Richland WA 99352-1000

Steven D. Brumley, General Counsel
Lockheed Martin Hanford Corporation
2430 Stevens Center Place
MSIN H7-07
PO Box 1500
Richland WA 99352

Re: PCHB NOS. 98-249 (98NW-009)
98-250 (98NW-007) - *Penalty*

UNITED STATES DEPARTMENT OF ENERGY, FLUOR DANIEL HANFORD
COMPANY & LOCKHEED MARTIN HANFORD CO. v. ECOLOGY

Counsel:

Enclosed is the Settlement Agreement and Stipulated Order of Dismissal in this matter.
The parties' efforts are appreciated.

Very truly yours,

William A. Harrison

Hon. William A. Harrison
Administrative Appeals Judge

WAH/jg/hanford

Enc.

Cc: Leann Ryser - Ecology

CERTIFICATION

On this day, I forwarded a true and accurate copy of
the documents to which this certificate is affixed via
United States Postal Service postage prepaid to the attorneys
of record herein.

I certify under penalty of perjury under the laws of the
State of Washington that the foregoing is true and correct.

DATED Mar 15, 99, at Lacey, WA.

Tracy Johnson



RECEIVED

MAR - 8 1999

ENVIRONMENTAL
HEARINGS OFFICE

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

1			
2			
3			
4			
5			
6	UNITED STATES DEPARTMENT OF)	
7	ENERGY, RICHLAND OPERATIONS)	
8	OFFICE, FLUOR DANIEL HANFORD,)	PCHB No. 98-249; No. 98-250
9	INC., and LOCKHEED MARTIN)	
10	HANFORD COMPANY,)	SETTLEMENT AGREEMENT
11)	AND STIPULATED ORDER
12	Appellants,)	OF DISMISSAL
13)	
14	v.)	
15)	
16	WASHINGTON STATE DEPARTMENT)	
17	OF ECOLOGY,)	
18)	
19	Respondent)	
20)	

15 The Parties, the United States Department of Energy, Richland Operations Office
16 ("Energy"), Fluor Daniel Hanford, Inc. ("Fluor"), Lockheed Martin Hanford Corporation
17 ("Lockheed") and the Washington State Department of Ecology ("Ecology") enter into the
18 following Stipulation and Settlement Agreement to resolve Appellants' appeal of Ecology's
19 Administrative Order 98NW-009 ("Administrative Order") and Notice of Penalty Incurred and
20 Due 98NW-007 ("Notice of Penalty"). The Parties jointly move for an Order of Dismissal of
21 these appeals.

I. STIPULATION

23 A. On September 24, 1998, Ecology served upon Energy, Fluor, and Lockheed the
24 Administrative Order alleging failure to provide an adequate leak detection system in Hanford's
25 SY Tanks in violation of WAC 173-303.

1 B. On August 7, 1998, Energy, Fluor, and Lockheed formally applied to Ecology for relief
2 in response to the Notice of Penalty dated July 23, 1998. The Notice of Penalty alleged failure
3 to provide adequate leak detection on Tanks SY-101, SY-102, and SY-103 in violation of WAC
4 173-303-400 and 40 CFR 265.193. On September 24, 1998, Ecology served upon Energy,
5 Fluor, and Lockheed a Denial Of Application For Relief From Penalty, thus denying the
6 requested relief.

7 C. Energy, Fluor, and Lockheed filed notices of appeal from the Administrative Order and
8 the Notice Of Penalty with the Pollution Control Hearings Board ("the Board") on October 23,
9 1998.

10 D. All Parties by this Agreement desire to avoid the expense and inconvenience associated
11 with litigation and agree to resolve both the appeal of the Notice of Penalty and the appeal of
12 the Administrative Order on the terms described below.

13 E. The sections titled REPORT, LEAK DETECTION SYSTEM, ANNULUS LEAK
14 DETECTION SYSTEM PROBES, CAMs, and OPERATION AND MAINTENANCE OF DST
15 LEAK DETECTION SYSTEM DEVICES may be modified by a mutual letter of agreement
16 between Ecology and the Parties as an addendum to this Agreement.

17 II. SETTLEMENT AGREEMENT

18 NOW THEREFORE, for and in consideration of the mutual covenants, promises, and
19 undertakings hereinafter set forth and of the acts performed by each Party for the benefit of the
20 other, the Parties agree as follows:

21 A. SCOPE. This Agreement resolves the dispute between the Parties identified as PCHB
22 Nos. 98-249 and 98-250. Ecology agrees to rescind Administrative Order 98NW-009, and
23 deem the Notice of Penalty satisfied.

24 B. DURATION OF AGREEMENT. This Agreement shall be in effect until the Double
25 Shell Tank System is added to the "Hanford Facility Dangerous Waste Permit", Part 3.

1 C. RESOLUTION OF PENALTY. In lieu of and in full satisfaction of the penalty originally
2 assessed by Notice of Penalty 98NW-007, Appellants shall be jointly and severally liable to
3 make a payment in the amount of thirty-five thousand dollars (\$35,000.00). Payment shall be
4 made as follows:

5 1. Innovative Settlement Payments. Appellants shall fund one or more
6 Supplemental Environmental Project(s) ("SEPs"), approved by Ecology, in the
7 cumulative amount of ten thousand dollars (\$10,000.00) no later than thirty (30) days
8 from the date of this Agreement, or Ecology's approval of a recipient whichever occurs
9 later. The recipient(s) of SEP funding shall have no interest in this matter, nor direct
10 affiliation with any of the Appellants. The payment(s) shall be made for one or more of
11 the following purposes deemed beneficial to the protection of human health and the
12 environment:

- 13 a) Pollution Prevention.
- 14 b) Environmental Restoration, Enhancement and Monitoring.
- 15 c) Environmental Auditing, or
- 16 d) Environmental Public Awareness, or Education.

17 2. Payment Suspended. Twenty-five thousand dollars (\$25,000.00) of the sum is
18 suspended during the term of this Agreement and thereafter vacated.

19 D. ENFORCEMENT DURING TERM OF AGREEMENT. Upon discovery by Ecology
20 that Energy, Fluor and/or Lockheed have failed to implement the terms of this Agreement,
21 Ecology may either impose a new penalty under its authority per Chapter 70.105 Revised Code
22 of Washington (RCW) or impose the suspended payment amount of twenty-five thousand
23 dollars (\$25,000.00) or any portion thereof. Ecology may not use both remedies. The
24 reinstated payment, or part of payment, shall be paid in the same manner as the initial payment
25 in Section II, C, 1 above except the date of payment shall accrue from the Appellants' receipt of

1 written notice of a violation or other decision, provided that the validity of the basis for such
2 notice is not disputed by Appellants. In the event that Appellants' exercise the dispute
3 resolution provisions of this Agreement, the date of payment shall accrue from the date of entry
4 of an order by the Board directing such payment be made.

5 E. DISPUTE RESOLUTION. Ecology shall notify Energy, Fluor and Lockheed in writing
6 of its determination that the terms of this Agreement have not been met including a description
7 of the non-compliant conditions. If there is a dispute regarding implementation of the terms of
8 this Agreement, the Parties shall attempt to resolve the dispute in good faith prior to any formal
9 enforcement (penalties and/or orders) by Ecology, and prior to bringing the dispute before the
10 Board.

11 Dispute resolution shall occur as follows:

- 12 1. Upon receipt of Ecology's initial determination that the terms of this Agreement have
13 not been met (Ecology's initial determination), Energy, Fluor, and Lockheed shall
14 have fourteen (14) calendar days to dispute Ecology's findings in writing. The
15 Parties shall then confer to review Ecology's written findings and the Appellants'
16 written response in an effort to resolve the dispute.
- 17 2. If the dispute cannot be resolved within fourteen (14) days of Ecology's receipt of
18 Appellants' dispute, Appellants may request in writing that the issue be immediately
19 referred to Ecology's Nuclear Waste Program ("NWP") Manager.
- 20 3. The NWP Manager, after consultation with the respective TWRS Project managers
21 for Appellants, shall issue a final written decision within twenty-one (21) days of
22 Ecology's referral to the NWP.
- 23 4. If Ecology's NWP Manager's final determination is not acceptable to Appellants, the
24 Parties shall have the right to submit the dispute to the Board for hearing and
25 resolution in accordance with RCW 43.21B.110, Chapter 371-08 WAC.

1 5. The Parties agree to use the dispute resolution process in good faith and to expedite,
2 to the extent practical, the dispute resolution process whenever it is used.

3 F. REPORT. Within thirty (30) days from the date of this Agreement, Energy shall submit
4 a report to Ecology listing the current operational status of all Leak Detection System devices as
5 described within this Agreement. This report must also include a schedule for installation
6 and/or repair of all Leak Detection System devices that comprise the Leak Detection System as
7 described within this Agreement such that each Double Shell Tank ("DST") on the Hanford site
8 will be equipped and operated with a complete Leak Detection System by December 31, 1999.

9 G. LEAK DETECTION SYSTEM. A continuous Leak Detection System for each of the
10 twenty-eight (28) DSTs on the Hanford site shall be composed of the following leak detection
11 devices:

12 1. Three annulus leak detector probes within the annulus of each DST operated to
13 the terms of this Agreement, and

14 2. At least one in-tank surface level monitor installed within the primary tank of
15 each DST on the Hanford site.

16 H. ANNULUS LEAK DETECTION SYSTEM PROBES. Each DST on the Hanford site
17 shall be equipped with three (3) operating leak detector probes placed as equidistantly as
18 possible within the annulus of each DST. Each adjustable annulus leak detector probe shall be
19 set within 1/4 inch from the annulus floor with allowance for normal engineering tolerances. An
20 alarm of an annulus Leak Detection System probe at its set point, which Energy and/or its
21 contractors have determined is not attributable to operational activities, must be reported to
22 Ecology within twenty-four (24) hours of the determination. An annulus leak detector probe
23 shall be a conductivity type probe, or equal or better device.

24 I. CAMs. The Leak Detection System will be supplemented by operation of annulus
25 ventilation system continuous air monitors (CAMs) operated to the terms of this Agreement,

1 and as follows: All DSTs equipped with operating annulus CAMs will be monitored daily for
2 airborne releases into the annulus that could give an indication of a leak from the primary tank
3 structure into the annulus. These CAMs will be set to alarm at set points no greater than 3,000
4 counts per minute. Annulus CAM readings exceeding their alarm set point, and which Energy
5 and/or its contractors have determined are not attributable to atmospheric radon or operational
6 activities (e.g., annulus contamination due to vacuum imbalance between annulus and primary
7 tank ventilation system, or other operational activities), must be reported to Ecology within
8 twenty-four (24) hours of the time that this determination has been made.

9 J. OPERATION AND MAINTENANCE OF DST LEAK DETECTION SYSTEM

10 DEVICES. All Leak Detection System devices comprising the Leak Detection System and
11 subject to this Agreement shall be maintained and operated continuously with the following
12 exceptions:

13 1. Downtime for preventative maintenance and periodic functional testing shall not
14 exceed twenty-four (24) hours.

15 2. Downtime for repair of a Leak Detection System device discovered to be
16 inoperable or requiring repair shall not normally exceed ninety (90) days. Ecology must
17 be notified of any leak detection device out of service for more than ninety (90) days.

18 This notification must include a schedule for repair and return to service of the device as
19 soon as possible.

20 3. All maintenance, repair, and functional testing activities of the Leak Detection
21 System shall be documented in Hanford's operating record.

22 K. PRESS RELEASES. Any sum paid to a third party, not a party to this Agreement, as a
23 result of this Settlement shall be designated a settlement with Ecology in any public statement.

24 L. NO ADMISSION OF FAULT OR LIABILITY. By stipulating to this Agreement,
25 Energy, Fluor and Lockheed deny liability or fault for the matters alleged in Ecology's Notice


1 of Penalty and Ecology's Administrative Order, as well as any obligations or liability to comply
2 with the requirements, terms, and conditions set forth in the Administrative Order.

3 M. SIGNATORIES AUTHORIZED. The undersigned representatives for the parties certify
4 that they are authorized by the Party whom they represent to enter into the terms and conditions
5 of this Agreement and to legally bind the Parties hereto.

6 N. ENTIRE AGREEMENT. This Agreement and Order of Dismissal constitutes the entire
7 agreement, and settles all issues raised by the Notice of Penalty and Administrative Order. This
8 Agreement describes a leak detection system for the twenty-eight (28) DSTs on the Hanford site
9 deemed compliant with the Interim Status requirements for detection of leaks as set forth in
10 WAC Chapter 173-303 incorporating 40 CFR Part 265 by reference.

11 O. BOARD APPROVAL. Each Party consents to the submission of this Agreement and
12 Order of Dismissal to the Board for approval and entry, and to the Board maintaining
13 jurisdiction during the term of this Agreement to hear and resolve any dispute that may arise
14 under the Agreement's terms. The Parties agree and stipulate that Ecology's voluntary stay of
15 its Administrative Order granted Appellants by letter dated January 13, 1999, has been, and
16 shall continue in full effect until such time as this Agreement and Order of Dismissal is entered
17 by the Board.

18 RESPECTFULLY SUBMITTED this 26TH day of February, 1999.

19
20
21 
22 Dale E. Jackson, Attorney
23 United States Department of Energy
24 Richland Operations Office
25 825 Jadwin Avenue
P.O. Box 550, MSIN A5-15
Richland, WA 99352
(509) 376-4851

1
2
3 Jennifer T. Curtis
4 Jennifer T. Curtis
5 Managing General Counsel
6 Fluor Daniel Hanford, Inc.
7 MSIN B3-15
8 2420 Stevens Center Place
9 P.O. Box 1000,
10 Richland, WA 99352-1000
11 (509) 372-8220

8 Steven D. Brumley
9
10 Steven D. Brumley, General Counsel
11 Lockheed Martin Hanford Corporation
12 2430 Stevens Center Place, MSIN H7-07
13 P.O. Box 1500
14 Richland, WA 99352-1500
15 (509) 737-1978

13
14 CHRISTINE O. GREGOIRE
15 State Attorney General

16 Leslie R. Seffern 3/8/99
17 Leslie R. Seffern, WSEA #19503
18 Assistant Attorney General
19 Attorneys for Respondent
20 State of Washington
21 Department of Ecology
22 Post Office Box 40117
23 Olympia, WA 98504-0017

1 ORDER

2 I

3 WHEREAS the Parties have entered into a Settlement Agreement, consent to the entry
4 of an Order of Dismissal, and have requested the Board's approval and entry thereof, and

5 II

6 WHEREAS this Board finds the Settlement Agreement and Order of Dismissal to be (a)
7 fair, adequate, and reasonable; (b) consistent with applicable law, and (c) protective of the
8 public interest; and

9 III

10 WHEREAS good cause appears therefore,

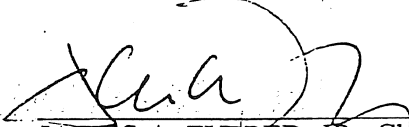
11 The Parties' Settlement Agreement is hereby approved and entered by the Board, and

12 NOW, THEREFORE,


13 IT IS ORDERED that, Administrative Order 98NW-009 is VACATED, and appeals
14 thereof pending before the Board as PCHB Nos. 95-249 and 98-250 are DISMISSED by the
15 Board on this date, with each Party to bear its own costs and attorney's fees. The Notice of
16 Penalty 98NW-007 is satisfied. The Board retains jurisdiction to hear and resolve any dispute
17 arising under the terms of the Parties Settlement Agreement in this matter.

18 DATED this 15th day of March 1999.

19 POLLUTION CONTROL HEARINGS BOARD

20
21 
22 JAMES A. TUPPER, JR., Chair

23 
24 ROBERT V. JENSEN, Member

25 
ANN DALEY, Member

SETTLEMENT AGREEMENT
AND STIPULATED ORDER
OF DISMISSAL