



U.S. Department of Energy

Grand Junction Office
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MAR 15 2000

Stanley Speaks, Director
Northwest Region, Bureau of Indian Affairs
U.S. Department of the Interior
911 N.E. 11th Avenue
Portland, OR 97232

Subject: Custody and Access Agreement for the Sherwood, Washington, Former Uranium Processing Site

Dear Mr. Speaks:

This letter serves as a revision to our original letter dated February 25, 2000. On page 1 of 3 of the enclosed agreement, we have revised Item I, Long-Term Surveillance and Maintenance, Section A. The new language reads as follows:

A. The Department of Energy (the Department) is required to perform long-term surveillance and maintenance of the Sherwood Disposal Cell as deemed necessary and proper by the Department to protect public health, safety, and the environment pursuant to its mandate under the general license issued by the Nuclear Regulatory Commission. The Department will consult with the Spokane Tribe of Indians (the Tribe) on significant issues in recognition of the federal trust responsibility to the Tribe.

On page 2 of 3, a new Item IV has been added as follows.

IV. Disputes

Should any disputes arise between the Department and the Tribe, attempts to resolve these matters will be undertaken through negotiation in good faith at the field level. If resolution is not successful at the field level, the Department and the Tribe will jointly consider other means to settle any dispute.

The former Item IV, Signatories, is now Item V; and Item VI is Effective Date.

We apologize for any inconvenience this may have caused you, but these items were brought to our attention, and we felt it necessary to make these revisions.

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To reiterate the language from the first transmittal letter, the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) and subsequent implementing federal regulations assigned certain responsibilities to the U.S. Department of Energy (DOE) regarding former uranium processing sites. Under UMTRCA, the DOE becomes the long-term custodian for the reclaimed processing sites. Additionally, DOE, as the long-term custodian, becomes a licensee to the U.S. Nuclear Regulatory Commission (NRC), and the NRC exercises regulatory jurisdiction over the long-term custodian. This license is found in 10 CFR 40.28.

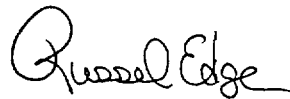
In most cases, the DOE takes title to the real property that is used as the final disposal site. However, in the case of disposal sites located on tribal lands, there is no transfer of title to the DOE. Rather, the tribe retains ownership over the disposal site property. Consequently, it was necessary for the DOE and the Spokane Tribe of Indians to enter into an agreement that provided the DOE with the access to the Sherwood Site property necessary for the DOE to fulfill its responsibilities as the long-term custodian for the site.

Enclosed for BIA review is the *Long-Term Surveillance and Maintenance Agreement and Right of Access to the Sherwood Site*. This document has been developed in accordance with the provisions of Section 83(b)(8) of the Atomic Energy Act, as amended. This agreement will provide the DOE with the necessary rights of access to carry out its custodial responsibilities for the Sherwood Site as stipulated by the NRC general license found in 10 CFR 40.28. The language for this document has been developed in collaboration with Mr. Shannon D. Work of Givens, Funke & Work, legal counsel for the Spokane Tribe of Indians.

As you will notice, the BIA is a signatory to this agreement. A similar agreement currently exists between the DOE and the Navajo Nation for DOE access to the former uranium processing sites on Navajo Nation lands. In that case, the Navajo Area Office of the BIA was a signatory to the agreement with the Navajo Nation.

If you have any questions, please call me at (970) 248-6037. We look forward to working with you.

Sincerely,



Russel Edge
LTSM Program Manager

Enclosure

cc w/o enclosure:

T. Essig, NRC

M. Verner, Spokane Tribe of Indians

M. Plessinger, MACTEC-ERS

cc w/enclosure:

Project File LSHE 12.00 (H. Salter)

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