

# Hanford Communities

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*Richland \* Kennewick \* Pasco \* West Richland \* Benton County \* Port of Benton*

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Keith Klein, Manager  
US Department of Energy, Richland Operations  
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Nick Ceto, Program Manager  
EPA Hanford Office  
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Dear Messrs. Klein and Ceto:

In a recent decision, the United States District Court for the Eastern District of Washington recognized the right of local officials to participate in the development and selection of remedies at cleanups conducted at federal facilities. The Court's decision was made in the case of *City of Moses Lake v. United States of America, et al.*, E.D. Wa. Case No. 04-376 AAM. A copy of the decision is attached to this letter for your reference.

In its decision, the Court recognized the right of "relevant State and local officials" to "participate in the planning and selection of the remedial action" at federal facilities relying on Section 120 (f) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 U.S.C. § 120 (f). In our view, the rights of local governments to participate in the planning and selection of remedial actions at federal facilities include Department of Energy (DOE) facilities. Significantly, the Court's decision in the Moses Lake case, recognized that local governments' statutory right to participate in the cleanup decision making process go beyond the "public participation" rights that are normally available pursuant to CERCLA Section 117.

In the past, Hanford has not provided local officials with a formal role in the development of remedies. The current 5-year review process being undertaken by the DOE is of significant concern to the local government jurisdictions that comprise the Hanford Communities. Of particular interest is the cleanup plan of the 300 Area which lies directly north of the city limits of Richland and is included within Richland's Urban Growth Boundary and the 618-10 and 11 waste burial grounds.

The interim Record of Decision for the 300 Area called for remedial actions that would clean up the area for future industrial use. The uranium plume near to and entering the Columbia River was not addressed by an active remediation. Monitored natural attenuation was chosen rather than any affirmative cleanup action apparently under the presumption that contaminants contained within the plume would be flushed away by the Columbia River.

Whether or not this was the operating assumption that underlays the "natural attenuation" cleanup plan, DOE and regulators have acknowledged in public meetings that the uranium plume is not in fact attenuating. As a result, a significant amount of uranium remains in the

groundwater and the vadose zone with the result that this uranium could ultimately enter the Columbia River. While that prospect is distressing enough, the plume sits just a few miles upstream from the intake station on the Columbia River from which the City of Richland draws drinking water for the entire community. For these reasons, the development and selection of the final remedy that will be selected to remove or remediate the uranium is of great concern to the City of Richland, Benton County and other communities in the area.

In 2005, the City of Richland completed a market analysis, with funding from the Department of Energy and the Environmental Protection Agency (EPA). That analysis concluded that there is no private sector interest in industrial reuse of the 300 Area. Even the Pacific Northwest National Laboratory will not consider rebuilding in the current industrial area. Based on the conclusion that industry would not locate in the area, the City of Richland's Planning Commission and City Council revised the land use plan to accommodate a mix of uses similar to other land along the Columbia River within the City limits. As you are aware, the Department of Energy was notified of all public meetings held by the City in the process of reviewing and changing the land use plan in accordance with Washington State law.

Since the market analysis concluded that no industry is interested in locating in the 300 Area and DOE is pursuing no new missions, future use of the land if it is ever reused, will be something other than industrial. Accordingly, the remedy previously selected for cleanup of that area (which assumed an industrial use) must be re-examined, as land uses in the area other than industrial use will require a more robust cleanup effort in order to protect individuals from an unacceptable risk of contamination.

The Federal District Court's decision in Moses Lake made clear that the duty to afford local officials the opportunity to participate in the planning and selection of remedial action is not discretionary. At cleanups undertaken at federal facilities, EPA and the lead federal agency in this instance, DOE, must involve local governments in the planning and selection of the remedial action. The statute requires not only the participation of local public officials in the selection of the remedial action, but also includes the right to review "all applicable data as it becomes available and the development of studies, reports and action plans" developed in connection with the cleanup.

The process that is required in Moses Lake is different from the current process being followed by EPA and DOE at Hanford. Accordingly, on behalf of the City of Richland and the other members of the Hanford Communities, we are requesting that you meet with local officials to discuss implementation of a formal role for local governments at Hanford in the decision-making process in instances where local government desires to be involved. The Hanford Communities are requesting notice of meetings, data and reports as they are produced, and opportunity to participate in decisions directly effecting local governments.

This process was very successful at Rocky Flats in Colorado. There, DOE discussed remedies with local governments at that site prior to the release of the information to the public. The result was a working relationship that was constructive and facilitated the goal of accelerated cleanup.

Along with a copy of the *Moses Lake* decision, we are also attaching a memorandum sent from the Energy Communities Alliance (ECA) to members of our organization providing a summary

of the Moses Lake case. This court decision is of interest to many communities which are located near DOE facilities.

We look forward to working with DOE and the EPA. Please contact our Executive Director, Pam Larsen, at 942-7348 with any questions.

Sincerely,

Bob Thompson, Chairman  
Hanford Communities Governing Board

CC: Kevin Phillips, ECA Chairman  
Seth Kirshenberg, Executive Director ECA  
Jane Hedges, Nuclear Waste Program Manager – WA Dept. of Ecology