

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

September 23, 2005

Bob Schwarz
Oregon DEQ
400 E. Scenic Drive #307
The Dalles, OR 97058

Re: White King/Lucky Lass Superfund Site

Dear Bob:

Enclosed is a fully-executed original of the Oversight Agreement with the State of Oregon for this site.

Sincerely,

Kurt Burkholder
Assistant Attorney General
Natural Resources Section

KBB:lal/GENN9042

Enclosure

RECEIVED
SEP 26 2005

State of Oregon
Dept. of Environmental Quality
Eastern Region - The Dalles

OVERSIGHT AGREEMENT
REGARDING
WHITE KING/LUCKY LASS
SUPERFUND SITE

This Oversight Agreement (Agreement) is entered into by Kerr-McGee Chemical Worldwide LLC (Kerr-McGee), Western Nuclear, Inc. (Western Nuclear), and the State of Oregon, by and through the Oregon Department of Environmental Quality (ODEQ) and the Oregon Department of Energy (ODOE).

1. Purpose and Authority

A. Kerr-McGee and Western Nuclear have executed a consent decree with the United States Environmental Protection Agency (EPA) and other parties in the matter of *United States of America v. Kerr-McGee Chemical Worldwide LLC, Fremont Lumber Company, and Western Nuclear Incorporated*, Civil Action No. CV 040032 (D.Or.) (Consent Decree). The Parties expect the Consent Decree to be approved and entered by the U.S. District Court for the District of Oregon on or about September, 2005. The Consent Decree provides for the performance of remedial measures at the White King/Lucky Lass Superfund Site in Lake County, Oregon (White King Site), pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC § 9601 et seq.

B. The purposes of this Agreement are to: (1) enable oversight by the State of Oregon of the performance of remedial measures pursuant to the Consent Decree at the White King Site; and (2) provide Kerr-McGee and Western Nuclear with a release of liability, except as specifically enumerated herein, from the State of Oregon in return for the performance of the remedial measures.

C. ODEQ enters this Agreement pursuant to Oregon Revised Statutes (ORS) 465.210(2), which authorizes ODEQ to participate in remedial activities undertaken pursuant to CERCLA. ODOE enters this Agreement pursuant to ORS 469.110 and 469.559, which authorize ODOE to represent its interests in federal matters including CERCLA cleanups of uranium mine wastes.

2. State Oversight

The Consent Decree includes provisions by which ODEQ and ODOE have the opportunity to review and comment on various plans and deliverables and otherwise participate in oversight of implementation of remedial design and remedial action activities at the White King Site (Oversight), including, among other things, review and comment on: Remedial Design plans and deliverables, Remedial Action Work Plan and related plans and deliverables; proposed modifications to the Scope of Work and related work plans; and requested certification of completion of work. ODEQ and ODOE shall provide such Oversight, as they respectively deem appropriate, in accordance with the

Consent Decree's schedules and procedures.

3. State Oversight Costs

A. ODEQ shall submit to Kerr-McGee and Western Nuclear, through the Kerr-McGee contact specified in Section 3.G below, a monthly invoice of reasonable Oversight Costs incurred by ODEQ after August 31, 2005. ODEQ Oversight Costs payable by Kerr-McGee and Western Nuclear will include both direct and indirect costs. Direct costs include site-specific expenses and ODEQ legal costs associated with Oversight at the White King Site. Indirect costs include those general management and support costs of ODEQ and of the ODEQ Land Quality Division that are allocable to ODEQ Oversight at the White King Site and not charged as direct, site-specific costs. Indirect costs will be based on a percentage of direct personal services costs. For direct costs, ODEQ's invoice shall include a direct labor summary showing the persons charging time, the amount of time, and the nature of the work performed. Each ODEQ invoice shall also include a summary of costs billed to date. ODEQ Oversight Costs shall not include ODEQ contractor costs. Upon request to ODEQ, Kerr-McGee and Western Nuclear may review underlying cost documentation, including, but not limited to, ODEQ personnel time sheets, travel authorizations and vouchers, and any applicable laboratory invoices.

B. Within 30 days of receiving an ODEQ invoice, Kerr-McGee and Western Nuclear, through Kerr-McGee, shall pay the reasonable costs billed, by check made payable to the "State of Oregon, Hazardous Substance Remedial Action Fund", and addressed to: Oregon DEQ Business Office, 811 SW Sixth Ave., Portland, OR-97204. Kerr-McGee and Western Nuclear, through Kerr-McGee, shall pay simple interest of 9% per annum on the unpaid balance of any Oversight Costs, which interest shall begin to accrue at the end of the 30-day payment period. Any unpaid amounts are a liquidated debt collectible under ORS 293.250 and other applicable law.

C. ODOE shall submit to Kerr-McGee and Western Nuclear, through the Kerr-McGee contact specified in Section 3.G below, a monthly invoice of reasonable Oversight Costs incurred by ODOE after August 31, 2005. ODOE Oversight Costs payable by Kerr-McGee and Western Nuclear will include both direct and indirect costs. ODOE's invoice shall include a direct labor summary showing the persons charging time, the amount of time, and the nature of the work performed. Indirect costs will include those general management and support costs of ODOE that are allocable to ODOE oversight at the White King Site and not charged as direct, site-specific costs. Each ODOE invoice shall also include a summary of costs billed to date. ODOE Oversight Costs shall not include ODOE contractor costs. Upon request to ODOE, Kerr-McGee and Western Nuclear may review underlying cost documentation, including but not limited to ODOE personnel time sheets, travel authorizations and vouchers, and any applicable laboratory invoices.

D. Within 30 days of receiving an ODOE invoice, Kerr-McGee and Western Nuclear, through Kerr-McGee, shall pay the reasonable costs billed, by check made

payable to the "State of Oregon Department of Energy", and addressed to: Oregon Department of Energy, Budget & Finance, 625 Marion St. NE, Salem, OR 97301. Kerr-McGee and Western Nuclear, through Kerr-McGee, shall pay simple interest of 9% per annum on the unpaid balance of any Oversight Costs, which interest shall begin to accrue at the end of the 30-day payment period. Any unpaid amounts are a liquidated debt collectible under ORS 293.250 and other applicable law.

E. In addition to the above payments, Kerr-McGee and Western Nuclear shall pay outstanding past costs incurred by ODEQ in relation to the White King Site through August 31, 2005, in the amount of \$ 20,714.00. Kerr-McGee and Western Nuclear, through Kerr-McGee, shall pay this amount within 30 days of entry of the Consent Decree by the U.S. District Court of Oregon, by check made payable to the "State of Oregon, Hazardous Substance Remedial Action Fund", and addressed to: Oregon DEQ Business Office, 811 SW Sixth Ave., Portland, OR 97204. Kerr-McGee and Western Nuclear, through Kerr-McGee, shall pay simple interest of 9% per annum on the unpaid balance of this amount, which interest shall begin to accrue at the end of the 30-day payment period. Any unpaid amounts are a liquidated debt collectible under ORS 293.250 and other applicable law.

F. In addition to the above payments, Kerr-McGee and Western Nuclear shall pay outstanding past costs incurred by ODOE in relation to the White King Site through August 31, 2005, in the amount of \$ 4,000.00. Kerr-McGee and Western Nuclear, through Kerr-McGee, shall pay this amount within 30 days of entry of the Consent Decree by the U.S. District Court of Oregon, by check made payable to the "State of Oregon Department of Energy", and addressed to: Oregon Department of Energy, Budget & Finance, 625 Marion St. NE, Salem, OR 97301. Kerr-McGee and Western Nuclear, through Kerr-McGee, shall pay simple interest of 9% per annum on the unpaid balance of this amount, which interest shall begin to accrue at the end of the 30-day payment period. Any unpaid amounts are a liquidated debt collectible under ORS 293.250 and other applicable law.

G. Invoices for Oversight Costs shall be sent to the following addresses:

Mr. Russell Jones
Kerr-McGee Shared Services
P.O. Box 25861
Oklahoma City, Oklahoma 73125

With copies to:

James M. Schurz, Esq.
Morrison & Foerster
425 Market Street
San Francisco, California 94105

Ms. Barbara Nielsen
Manager, Remediation Projects
Western Nuclear, Inc.
One North Central Avenue
17th Floor
Phoenix, Arizona 85004

David J. Armstrong, Esq.
Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016

4. Liability Release

A. Subject to Sections 4.B, C, and D below, ODEQ and ODOE release Kerr-McGee and Western Nuclear, and each of their parents, subsidiaries, predecessors, successors, and assigns from any and all liability to the State of Oregon (including ODEQ and ODOE), under CERCLA §§ 107(a) and 113, 42 U.S.C. § 6973, and ORS chapters 465 and 469 regarding hazardous substances and uranium mine wastes at the White King Site.

B. The liability release set forth in Section 4.A above shall take effect upon:

(1) Issuance of a certification of completion of the remedial action by EPA pursuant to the Consent Decree;

(2) Determination by ODEQ and ODOE that implementation of the remedial action at the White King Site has attained all legally applicable or relevant and appropriate standards, requirements, criteria, or limitations of state law (ARARs), in accordance with CERCLA § 121(d); and

(3) Payment of all Oversight Costs and past ODEQ and ODOE costs in accordance with Section 3 above.

C. The liability release set forth in Section 4.A above does not apply:

(1) To any claim for damages to natural resources;

(2) To any criminal liability;

(3) To any claim for indemnification or insurance pursuant to Section XVII of the Consent Decree; or

(4) In the event ODEQ and ODOE become aware of information, which was unknown to ODEQ and ODOE at the time of EPA's certification of completion, indicating that the remedial action is not protective of human health or the environment.

D. Any determination by ODEQ and ODOE that implementation of the remedial action at the White King Site has failed to attain a state ARAR must be preceded by:

(1) Timely identification by ODEQ and ODOE during Oversight under the Consent Decree that the remedial action may fail or has failed to attain a state ARAR; and

(2) A reasonable opportunity afforded Kerr-McGee and Western Nuclear to resolve the ARAR issue through discussions with upper-level decisionmakers at ODEQ and ODOE.

E. In the event ODEQ and ODOE withhold the liability release set forth under Section 4.A above, based on any of the conditions set forth in Section 4.B above, Kerr-McGee, Western Nuclear, ODEQ, and ODOE each reserve any and all rights and defenses under applicable federal and state law.

5. Admissibility of Agreement; Non-Admission

A. This Agreement is admissible by Kerr-McGee, Western Nuclear, ODEQ, or ODOE in any federal or state judicial or administrative proceeding. This Agreement is not admissible in any federal or state judicial or administrative proceeding by any person who is not a party to this Agreement.

B. Kerr-McGee and Western Nuclear admit no fact, liability, or violation of law by virtue of entering this Agreement.

6. Condition Precedent.

The obligations of Kerr-McGee and Western Nuclear under this Agreement shall take effect only upon entry of the Consent Decree by the U.S. District Court of Oregon.

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7. Signatures

The undersigned representative of each party certifies that he or she is fully authorized to execute this Agreement and bind such party to this Agreement:

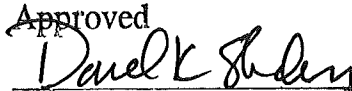
KERR-MCGEE CHEMICAL
WORLDWIDE LLC

By: 
(Signature)

Date: 9/20/2005

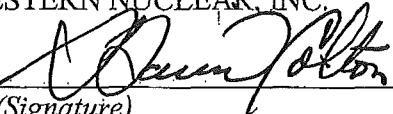
George Christiansen
(Typed Name)

Vice President
(Title)

Approved

DONALD K. SHANDY

The undersigned representative of each party certifies that he or she is fully authorized to execute this Agreement and bind such party to this Agreement:

WESTERN NUCLEAR, INC.

By: 
(Signature)

Date: September 16, 2005

S. David Colton

(Typed Name)

Senior VP and General Counsel

(Title)

The undersigned representative of each party certifies that he or she is fully authorized to execute this Agreement and bind such party to this Agreement:

OREGON DEPARTMENT
OF ENVIRONMENTAL QUALITY

By: Jon Hammond
(Signature)


Date: 9/21/2005

JOHN I. HAMMOND
(Typed Name)

Eastern Region Administrator
(Title)

The undersigned representative of each party certifies that he or she is fully authorized to execute this Agreement and bind such party to this Agreement:

OREGON DEPARTMENT
OF ENERGY

By: 
(Signature)

Date: 9-19-05

BRUCE WESTERBERG
(Typed Name)

ASSISTANT DIRECTOR, CENTRAL SERVICES DIV.
(Title)