P. O. Box 1600
Richland, Washington 99352

CH2MHILL
Plateau Remediation Company

Fax

Clerk of the Board

To: U.S. Environ. Prot. Agency **Date:** 8/27/09

Fax: 202-233-0121 **From:** Ray Swenson

Phone: 202-233-0122 **Phone:** 509-376-3511

Pages: 8 (including coversheet)

Re:

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

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ENVIR. APPEALS BOARD

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of: CH2M HILL PLATEAU REMEDIATION COMPANY, LLC HANFORD NUCLEAR RESERVATION NPDES Permit No. WA-002591-7	Appeal No. NPDES 09-08 **JOINT MOTION TO STAY PROCEEDINGS**

I. INTRODUCTION

Region 10 of the U.S. Environmental Protection Agency ("Region") and CH2M Hill Plateau Remediation Company, LLC ("CHPRC") respectfully submit this joint motion for a stay of the proceedings in the above-referenced appeal. The basis for this motion is to allow the Parties to resolve the issues raised by CHPRC in its Petition for Review, as discussed below.

II. PROCEDURAL BACKGROUND

The Region reissued NPDES Permit No. WA-002591-7 to the U.S. Department of Energy's contractor CHPRC on June 23, 2009. On July 23, 2009, CHPRC filed a Petition for Review of the reissued Permit with the Environmental Appeals Board. On July 30, 2009, the EAB sent a letter notifying the Region that CHPRC had filed the Petition for Review and that the Region's response was due September 15, 2009.

III. GROUNDS FOR GRANTING STAY

The Region has evaluated CHPRC's arguments and agrees that it may be appropriate to modify the Permit to remove the condition challenged in the Petition for Review. As stated in

the Region's August 20, 2009 letter (Exhibit A), which identified the contested and uncontested Permit conditions, the Region intends to withdraw the contested condition after the Permit goes into effect and to propose a permit modification that would remove the contested condition. CHPRC agrees that such a permit modification would address the concerns raised in its Petition for Review.

The Region intends to propose the permit modification shortly after the Permit takes effect, which will occur on September 22, 2009, pursuant to 40 C.F.R. §§ 124.16(a)(2) and 124.20(d). Following public notice and comment, the Region will finalize the permit modification unless public comment raises significant issues that lead the Region to reconsider the modification. The Region expects to be able to complete the permit modification process by November 30, 2009.

IV. REQUESTED RELIEF

Accordingly, the Parties request that this matter be stayed to allow the Parties to resolve the issue through the permit modification process. To do otherwise would require the Parties to divert their time and effort to the proceeding before this Board when there is a substantial likelihood that the issues raised in the Petition for Review will be addressed through permit modification. In an effort to conserve resources, encourage efficiency, and promote judicial economy, the Parties jointly request that these proceedings be stayed until November 30, 2009. At that time, the Parties would submit a status report on the permit modification and whether it is appropriate to continue the stay, dismiss the Petition for Review, or establish a schedule for EPA's response to the Petition for Review.

U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101
(206) 553-1037

V. CONCLUSION

For the foregoing reasons, the Region and CHPRC respectfully request that the EAB stay the proceedings until November 30, 2009.

Dated this 26th day of August, 2009.

Respectfully submitted,

Attorney for the Region

KIMBERLY A. OWENS
Assistant Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101
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Attorney for CHPRC

RAYMOND TAKASHI SWENSON
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Of Counsel to the Region:

Poojah Parikh
Attorney Advisor
Water Law Office
Office of General Counsel
(202) 564-0839

Exhibit A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

AUG 20 2009

OFFICE OF
WATER AND WATERSHEDS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Moses Jarayis, Vice President
Environmental Programs and Regulatory Management
CH2M Hill Plateau Remediation Company
P.O. Box 1600
Richland, Washington 99352

Re: Notification of Stayed Permit Conditions, CH2M Hill Plateau Remediation Company, LLC, A Contractor of the Department of Energy Hanford Nuclear Reservation, NPDES Permit No. WA-002591-7

Dear Mr. Jarayis:

The above-referenced National Pollutant Discharge Elimination System ("NPDES") permit was reissued to CH2M Hill Plateau Remediation Company, LLC ("CHPRC") on June 23, 2009. On July 30, 2009, the Environmental Appeals Board notified Region 10 that CHPRC had filed a petition for review of the permit (Appeal No. NPDES 09-08). This letter serves as notification pursuant to 40 C.F.R. §124.16(a)(2) of those permit conditions that are stayed as a result of CHPRC's petition for review.

The following contested condition of NPDES Permit No. WA-002591-7 is stayed until final agency action under 40 C.F.R. §124.19(f):

> Part I.B.2: "Discharges of process water such as dust suppression water and stormwater from Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Cleanup actions are prohibited from Outfall 004."

The remainder of the June 23, 2009 NPDES permit conditions are uncontested and severable from the contested condition and, in accordance with 40 C.F.R. §124.16(a)(2) and §124.20(d), will become fully effective and enforceable 33 days after the date this notice is mailed.

Shortly after the reissued permit takes effect, the Region intends to withdraw, pursuant to 40 C.F.R. §124.19(d), the contested condition listed above and to issue for public comment a draft permit modification that would remove the contested condition from the permit. This draft permit modification will address CHPRC's objection to the permit as expressed in the petition for review.

The draft permit modification will proceed through the same process of public comment and opportunity for a public hearing as would apply to any other permit modification subject to

40 C.F.R. Part 124. Those portions of the permit that are not withdrawn shall continue to remain in effect.

Please feel free to contact John Drabek at (206) 553-8257 should you have questions regarding this letter.

Sincerely,

Michael A. Bussell
Director, Office of Water and Watersheds

cc: Clerk of the Board, Environmental Appeals Board
Mr. Raymond Takashi Swenson, CHPRC

CERTIFICATE OF SERVICE

I certify that the foregoing "Joint Motion to Stay Proceedings" and attached supporting materials were sent to the following persons, in the manner specified, on the date below:

Original and five copies, by Federal Express, to:

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board 1103B
Colorado Building
1341 G Street, NW
Suite 600
Washington, D.C. 20005

One copy, by facsimile and Federal Express, to:

KIMBERLY A. OWENS
Assistant Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101
Tel: (206) 553-6052
Fax: (206) 553-0163

Dated: 8/27/2009

Raymond T. Swenson

Raymond Takashi Swenson
CHPRC

U.S. ENVIRONMENTAL PROTECTION AGENCY
1200 Sixth Avenue
Seattle, Washington 98101