

Tom



Department of Energy
Germantown, MD 20874-1290

JAN 28 2000

Davor Z. Pevec, Esq.
Hawaii Tower, Suite 2000
745 Fort Street
Honolulu, Hawaii 96813

Dear Mr. Pevec:

I am in receipt of your letter of January 17, 2000, which responds to the Department of Energy's (DOE) December 27, 1999, proposed revised draft of the Memorandum of Understanding (MOU) among DOE, the Enewetak/Ujelang Local Government Council, and the Government of the Republic of Marshall Islands (RMI).

I appreciate the time and attention you devoted to preparation of your comments. And while we take issue with many of the statements in your 8-page letter, I do not believe a point-by-point rejoinder will move us closer to our goal: a mutually agreeable framework for DOE's human and environmental radiological monitoring activities at Enewetak Atoll. As an alternative, I suggest that we conclude immediately an MOU that addresses those matters on which we currently agree (e.g., whole body counting), and that we modify that agreement in future as information becomes available which will permit informed decisions on additional matters (e.g., monitoring of tracer elements).

Necessity for Concluding an MOU

The fact that DOE conducted human and environmental monitoring activities at Enewetak in the past without a written agreement does not negate the wisdom of having such an agreement as a matter of sound management. DOE's congressionally-mandated responsibilities embrace not only Enewetak, but the atolls of Bikini, Rongelap, and Utrik as well. We believe that our ability to discharge all of these responsibilities, and to allocate available time, personnel, and appropriated funds in an appropriate manner, is enhanced by the advance planning and shared understanding a written agreement affords.

Furthermore, by concluding these written agreements, we are acceding to the request of the RMI Government, which also has elected party status in such arrangements (as in the June 1999 MOU with the Rongelap Atoll Local Government).

The fact that DOE's current MOU proposal (dating from December 1998) differs from the proposed MOU terms discussed in 1995 and 1996 does not constitute a breach of any DOE commitment, as you state. Rather, at the same time, that we remain committed to our human and



environmental monitoring mandate, DOE's medical and environmental programs have evolved over the years as we seek more effective ways to serve the programs' beneficiaries. For example, we are proposing to replace twice-yearly human radiological monitoring missions to Enewetak with a year-round, on-island capability to offer whole body counting (WBC) of the entire Enewetak population.

Perhaps most importantly, we seek to create a lasting infrastructure at Enewetak, by offering WBC training and employment to members of the resident population, thus fostering greater self-sufficiency than previously (or currently) available. To complement DOE's provision of WBC equipment, maintenance, technical expertise, training, and operator salary payments, our MOU proposal contemplates a modest contribution by the Enewetak Council (*e.g.*, air conditioning for the WBC room) to the achievement of substantive improvements in the WBC program.

Need for Expedition in Concluding the MOU

We share your dismay over the delay in concluding the Enewetak MOU, but I am constrained to point out that you bear the principal responsibility therefor:

- o From August 1996, when DOE made a counterproposal to your draft MOU, we heard nothing from you for 6 months, until we urged you, by letter of February 25, 1997, to contact this office. As we pointed out, the continuing failure to make any progress toward execution of a MOU posed a significant impediment to DOE's planning for and execution of its radiological monitoring missions to Enewetak.
- o By letter of March 11, 1997, we advised you that, in light of the number and nature of proposed revisions to DOE's August/September 1996 draft MOU reflected by your February 27, 1997, draft, we did not believe continuing to exchange draft texts would achieve the necessary progress toward a final text. As an alternative, we suggested moving toward conclusion of this matter through discussion, by telephone and, if necessary, in person when you next visited Washington, D.C. You did not accept this invitation or otherwise pursue finalization of the MOU.
- o Following the course we pursued successfully toward an MOU with the RMI Government and the Rongelap Atoll Local Government, we sent to you on December 31, 1998, a new proposed draft MOU for Enewetak. You took 9 months (to October 1999) before commenting briefly on DOE's draft and a full year (December 10, 1999) before providing a revised draft of the agreement.

At this juncture, as noted above, we urge the conclusion of an MOU that embodies the terms on which the parties can agree now. We believe that DOE's revised draft of December 27, 1999, fills that description.

Current Radiological Conditions at Enewetak

Under this title, your letter (pp. 4-5) sets forth the conclusions of the Enewetak Council's consultants, S. Cohen & Associates, Inc., regarding impediments to and estimated costs of resettlement/rehabilitation of islands in Enewetak Atoll other than Enewetak Island. This discussion has no apparent relevance to an MOU between DOE and the Enewetak Council since DOE has no responsibility for either undertaking such rehabilitation or underwriting its cost. Furthermore, as reflected in our December 1998 (and December 1999) drafts of the MOU, DOE stands ready to provide recommendations for soil remediation and radiological monitoring in the event the Enewetak Council adopts a plan to remediate/resettle Enjebi or other currently non-resettled islands of Enewetak Atoll.

(1) Runit Island

Your discussion of the need for "periodic" environmental surveillance of the Cactus Crater facility and the Fig/Quince Area (pp. 5-7) both addresses a number of matters for which DOE has no responsibility (e.g., the "possible failure of crater entombment") and fails to acknowledge the results of post-1981 environmental surveillance which has occurred and which is cited in my December 27, 1999, letter. *viz.*, the 1982 National Academy of Sciences study, and testing by Lawrence Livermore National Laboratory (LLNL) between 1993 and 1995. For example, an article in the July 1997 Health Physics journal concludes regarding the Cactus Crater facility:

"Any fear that this structure contains amounts of activity whose release would cause damage to the environment that would result in a greater effect on human health is unfounded."

Notwithstanding the foregoing, DOE does not foreclose the potential desirability of conducting environmental surveillance of Runit Island at some future time. But based on the most recent monitoring, which confirmed the results of the 1982 National Academy of Sciences study, we see no present scientific basis to include in the MOU -- which contemplates a 3-year term -- any additional monitoring.

(2) Plutonium Urinalysis

We believe that the need to monitor radiation exposure (from cesium, plutonium, or any other radionuclide) in the resettled Enewetak population should, in the first instance, be assessed in terms of the risk to human health. Radiological assessments based on LLNL environmental monitoring data predict that public exposures to plutonium on Enewetak Island are low and pose no threat to human health. This finding has been confirmed by the DOE's urine bioassay testing conducted among the resettled population. As reported in the July 1997 Health Physics journal (pp. 127-32), the fission track analysis of 24-hour urine sample collection showed most individuals' plutonium concentration in urine is within the range reported for background in the adult U.S. population.

The fact that in March 1999 Dr. Paul Seligman provided, at the Enewetak Council's request, an LLNL report concerning different techniques to measure plutonium and other actinide elements does not "suggest" DOE's acknowledgment of the need to conduct urinalysis, as your letter asserts (p. 7). Moreover, the remedy for the concern you express over cesium intake by Enewetak residents who visit uninhabited islands for food gathering and other reasons is WBC, not plutonium bioassay. As noted above, we are prepared to move expeditiously to work with the Enewetak Council to establish a WBC facility on Enewetak Island which will permit access to WBC by all members of the resettled population at all times.

As with the issue of addressing long-term radiological surveillance on and around Enewetak Atoll, we do not foreclose examining the future need for plutonium urinalysis, particularly under changing or special circumstances. Justification for a urinalysis program might include, for example, resettlement of islands containing elevated levels of plutonium, monitoring of workers engaged in movement of contaminated soils, and/or changing environmental conditions.

(3) Tracer Chemicals

Pursuant to our undertaking at the annual review meeting last October in Honolulu, Hawaii, we are attempting to identify publicly available information concerning the use of tracer materials in connection with the U.S. nuclear testing program in the Marshall Islands. Pending the outcome of our inquiries, I remain of the view that it would be premature to include in the MOU a DOE undertaking to perform the "investigative environmental survey" (p. 8) that you suggest.

Let us not await resolution of all open questions before we take those actions on which we currently agree. I also urge that we substitute direct dialogue for letter writing. My office is eager to continue the human and environmental surveillance work we are doing at Enewetak Island, and we would be pleased to discuss the achievement of that objective with you at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Hawkins", with a large, stylized flourish at the end.

Frank Hawkins
Director
Office of International
Health Programs