



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

June 30, 2010

Shirley Olinger, Manager
U.S. Department of Energy, Office of River Protection
P.O. Box 450 (H6-60)
Richland, Washington 99352

David A. Brockman, Manager
U.S. Department of Energy, Richland Operations Office
P.O. Box 550 (A7-75)
Richland, Washington 99352

Dennis Faulk, Manager
U.S. Environmental Protection Agency, Region 10
309 Bradley Blvd., Suite 115
Richland, Washington 99352

Jane Hedges, Program Manager
State of Washington Department of Ecology, Nuclear Waste Program
3100 Port of Benton
Richland, Washington 99354

Re: Review of Proposed Changes to the Hanford Federal Facility Agreement
and Consent Order for Central Plateau Cleanup, and for Mixed Low-Level Waste
and Transuranic Mixed Waste

Dear Ms. Olinger, Messrs. Brockman, Faulk and Ms. Hedges,

The Yakama Nation ERWM Program appreciates the opportunity to review and provide comments on the Proposed Changes to the Tri-Party Agreement (TPA) for the Central Plateau Cleanup Work, and for the Mixed Low-Level Waste and Transuranic Mixed Waste (TPA Change Packages).

The Confederated Tribes and Bands of the Yakama Nation is a federally recognized sovereign pursuant of the Treaty of June 9, 1855 made with the United States of America (12Stat. 951). The U.S. Department of Energy's Hanford site was developed on land ceded by the Yakama Nation under the 1855 Treaty with the United States. The Yakama Nation retains reserved rights to this land under the Treaty.

There is no issue of greater importance to the Yakama Nation than protection of, and respect for the treaty-reserved rights. The Hanford Site lies within ceded area of the

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Confederated Tribes & Bands of the Yakama Nation. Within this ceded area, the Yakama Nation retains the rights to natural and cultural resources including but not limited to areas of ancestral use, archaeological sites and burial grounds. These resources are sacred and sensitive to the Yakama Nation, and must be managed to preserve, protect and perpetuate the resources that are inseparable from our way of life.

The Yakama Nation ERWM Program's review comments are enclosed. The Yakama Nation ERWM Program identified three areas that have significant concerns.

Tribal and Public Involvement, Corrective Action changes and use of the CAD/ROD approach:

The Yakama Nation ERWM Program does not support the replacement of RCRA corrective actions for past practice units with CERCLA corrective actions. A primary purpose of corrective actions is to ensure full characterization of releases to the environment; as such, characterization is necessary to define the nature and extent of contamination. We do not believe that corrective actions as currently performed under CERCLA will be as complete and have cleanup levels as stringent as under RCRA corrective actions (i.e., particularly the characterization of the vadose zone beneath units subject to the II.Y Condition(s)). Furthermore, the Yakama Nation ERWM Program supports the recent Hanford Advisory Board advice (#231) regarding inclusion of corrective action into the Hanford Facility Permit.

All corrective action requirements should be incorporated into the Hanford Facility Permit according to the requirements of the Washington Administrative Code 173-303-64620(3) and -64630(3). These state rules ensure compliance with the Resource Conservation and Recovery Act (RCRA) and the Model Toxic Control Act, and guarantee the public certain rights (including under the State Environmental Policy Act and appeals). Joint decisions compliant with both RCRA and Comprehensive Environmental Recovery, Compensation and Liability Act processes should be issued for those units regulated under both laws."

Additionally, the Yakama Nation ERWM Program is concerned that the proposed changes will affect the Tribal and public involvement process of WAC 173-303-830/840 and limit opportunities to challenge or seek modification of corrective action decisions in the future. Ecology's reservation of authority to review and impose corrective actions after completion of CERCLA actions will not afford the Tribes and the public the same opportunities for involvement as are currently provided through the Dangerous Waste WACs for permit modifications. Through substitution of the Hanford Federal Facility Agreement and Consent Order (HFFACO or the Tri Party Agreement-TPA) changes and a new CAD/ROD for permit modifications, important Tribal and public involvement rights will be lost through this one-time present and future "blanket" incorporation approach. TPA public participation processes are not as extensive and do not provide similar guarantees to the Tribes and public as permit modifications are required to provide under the Dangerous Waste Regulations.

Deep Vadose Zone Operable Units:

The Yakama Nation ERWM Program supports deep vadose zone remediation actions as an important component of the cleanup of Hanford. However, we reiterate our concern that DOE still lacks a comprehensive, integrated approach to the vadose zone. We believe that DOE should perform interim and concurrent actions concerning the groundwater and the vadose zone to ensure that the cleanup of the source sites reduces risks to levels that are protective of Tribal subsistence uses without relying on long-term stewardship and permanent institutional controls. U.S. Nuclear Regulatory Commission regulations in 10 CFR 61.59 limit reliance upon ICs to 100 years after transfer of radioactive disposal facility property to a new owner.

We recommend DOE consider the following in developing a systematic approach to vadose zone cleanup:

- Potential future impacts from the deep vadose zone to groundwater and to the confined aquifer in 200 areas
- Use of more publically available and advanced models for doing modeling to determine potential level of risk to human health and the environment.
- Creation of two separate deep vadose zone RODs; one for the 200 East and one for the 200 West Areas.
- Pursue an independent review of treatability technologies to apply to the deep vadose zone contamination problem.
- DOE should ensure that sufficient and additional funding is directed to address the vadose zone contamination problem.

Mixed Low-Level and Transuranic Mixed Waste Cleanup:

The Yakama Nation ERWM Program is concerned that the proposed TPA milestones for the shipment of Transuranic mixed waste (TRUM) from Hanford is to be extended to 2035 while the current legally required closure date for the Waste Isolation Pilot Plant (WIPP) is 2030. This milestone and DOE's baseline should be aligned with WIPP's transuranic waste repository schedule to ensure that all WIPP-eligible Hanford waste is disposed at WIPP. Furthermore, while in agreement with HAB Advice #231 regarding these issues, the Yakama Nation ERWM Program does not support construction of waste storage facilities that are in violation of DOE Orders or RCRA or CERCLA regulatory obligations and/or will result in long-term/permanent storage of such wastes on the Hanford site.

The Yakama Nation ERWM Program looks forward to dialog on these concerns and comments. If you have any questions, please contact me at (509) 945-6741, or Dave Rowland at (509) 582-3466 or (509) 945-4488.

Sincerely,



Russell Jim, Manager
Yakama Nation ERWM Program

ERWM Program

Enclosures:

1. M-15-09-02, M-16-09-03, and M-85-10-01 Comments
2. M-37-10-01 Comments
3. C-09-07 Comments
4. P-00-09-02 Comments
5. J-09-01 Comments
6. A-10-01 Comments
7. L-09-01 Comments
8. P-00-09-01 Comments
9. P-07-09-02 Comments
10. M-91-09-01 Comments
11. Agreement In Principle Comments

cc: Paula Call, U. S. Department of Energy
Ken Niles, Oregon Department of Energy
Gabriel Bohnee, NPT
Stuart Harris, CTUIR
Wade Riggsbee, Yakama Nation ERWM
Dave Rowland, Yakama Nation ERWM
Jean Vanni, Yakama Nation ERWM
John Beckstrom, Yakama Nation ERWM

Comments on TPA change packages M-85-10-01, M-16-09-03, and M-15-09-02:

The Yakama Nation ERWM Program, while supporting the need to establish milestone deliverable due dates for Remedial Investigation/Feasibility Study Work Plans for all non-tank farm and non-canyon operable units and completion of Engineering Evaluation/Cost Analysis for all Tier 2 facilities listed in new Appendix J, is concerned that establishing Interim Milestones without a date for final completion of the major milestone will lead to missing of these milestones and requests for extension of the major milestone. *The Yakama Nation ERWM Program recommends the due date for M-085-00 coincide with M-016-00 final due date of 9/30/2024 if not earlier. Please provide rationale for not using the 9/2024 date.*

The Yakama Nation ERWM Program supports a geographic approach to cleanup on the Hanford site providing that Operable Units and their cleanups do not combine different source units and their waste streams and apply a singular, similar “one-size fits all’ remedy. *The Yakama Nation ERWM Program recommends DOE perform site- specific characterization and risk assessments for each source unit.*

The Yakama Nation ERWM Program is also concerned that with this re-alignment of Operable Units, there are instances where RCRA TSD units are within an Operable Unit and under EPA as lead agency. *The Yakama Nation ERWM program recommends Ecology retain lead agency status for these particular operable units to facilitate RCRA cleanup and to ensure maximum opportunities for public involvement and participation in document review and the permit modification process remains.*

Additionally, while the Yakama Nation ERWM Program supports the integration of soils, facilities, and groundwater cleanup, we are concern there may be cleanup decisions make which artificially separate a contaminate plume in the near surface from deeper in the vadose zone. *The Yakama Nation ERWM Program recommends remedies for groundwater are based on groundwater protection (including surface receptors) from all unit sources, that there are site- specific goals and schedules for additional characterization and a range of cleanup technologies. Furthermore, the Yakama Nation ERWM Program recommends that groundwater monitoring plans for TSD units undergoing closure be incorporated into the Hanford RCRA Permit (unit specific permits) per the WAC 173-303-830/840 process.*

Comments on TPA change package M-37-10-01:

1. *The Yakama Nation ERWM Program requests clarification on whether these are Target or Interim milestones.*
 - a. Target milestones under TPA Section 12.2 do not require public involvement. Target milestones can be deleted, added or accelerated or deleted or the target date may be deferred for more than 60 days as long as it does not affect an interim milestone.
 - b. Permits are required to have set dates in compliance schedules; any changes would require a modification to the Permit and public involvement/comment per WAC 173-303-830. *The Yakama Nation ERWM Program requests clarification on Tribal and Public Involvement opportunities regarding changes to the WAC 173-303 modification process for incorporation of closure documents (e.g. Groundwater Monitoring Plans, SAPs, Work Plans, etc) into the Hanford RCRA Permit.*

Comments on TPA change package C-09-07: *The Yakama Nation ERWM Program is concerned that there may be some waste sites which have been dropped from the Appendix (it is unclear in which Operable Unit the 207-A South Retention Basin is found). The Yakama Nation ERWM Program recommends a recheck of the new Appendix C. The Yakama Nation ERWM Program also recommends that all interim closed units remain listed in Appendix C if not already included.*

Comments on TPA change package P-00-09-02:

There are established definitions for the term "facility" under both the CERCLA and RCRA regulations. It is unclear as to the need to re-define this term for the purposes stated within this change package. It is unclear and confusing what is to address facilities ancillary equipment and the associated soils. *The Yakama Nation ERWM Program requests clarification on these issues.*

It is unclear whether the dispositioning process will differ or substitute for the RCRA closure process for TSD units. The inclusion of cribs, ponds, ditches, and landfill under this disposition process is noted. There is concern that corrective actions for these units will be deferred to CERCLA via the "CAD-ROD" approach and lost opportunities for public participation and appeal. Under WAC 173-303-640(8)(a) all contaminated soils and system components and structures and equipment contaminated with waste must be removed. *This is an example of why Yakama Nation ERWM Program does not support the "CAD-ROD" approach. The Yakama Nation ERWM Program requests clarification on these issues.*

It is unclear how the NEPA documentation, RCRA closure plans, and other documents supporting these efforts will be initiated and developed, under what regulatory authority these will be developed, and what lead regulatory agency will have the final approval authority for the disposition end states. *The Yakama Nation ERWM Program requests clarification on these issues.*

It is unclear whether the facility dispositioning process and reliance on DOE Order 430.1B, U.S. Department of Energy Real Property Asset Management (9/24/2003) and The Decommissioning Handbook (DOE/EM-0383, 1/2000) will retain and ensure early Tribal involvement in the development of project goals and objectives. *The Yakama Nation ERWM Program requests clarification on how DOE will initiate discussions and provide for opportunities of public involvement with the Yakama Nation ERWM Program.*

Comments on TPA change package J-09-01:

1. Decision documents for RCRA TSDs do not seem to be appropriately designated. These units will need Closure Plans submitted to Ecology per WAC 173-303-610 closure requirements. *The Yakama Nation ERWM Program requests clarification as to what are the required and/or anticipated documents to be listed. The Yakama Nation ERWM Program recommends that all these required or anticipated documents be listed.*

Comments on TPA change package A-10-01:

The need for re-defining the term "facility" is unclear. This re-defining of the term "facility" suggests the potential to consider soil units (cribs, trenches, burial grounds, and landfills) as subject to disposition rather than cleanup per corrective action regulations. *The YN ERWM Program requests clarification of the potential impacts to RCRA TSD and RCRA Past Practice Units as well as CERCLA Past Practice Units.*

The YN ERWM Program also requests the following deleted text remain in paragraph of Appendix A (Page A-17):

"for corrective action, regardless of the date waste was received or discharged at a unit."

Comments on TPA change package L-09-01:

1. In the explanation of 'Impact of Change' on the Change Control Form, the statement made that these changes will implement a coordinated RCRA/CERCLA process for certain units. *The Yakama Nation ERWM Program requests clarification of which units.*
2. Article XIV. Work: Statement: Ecology will administer RCRA Subtitle C corrective action provisions in accordance with this Agreement and issue all future modifications to the corrective action portion of the TSD permit. There appears to be some confusion regarding incorporation of corrective actions into to the RCRA permit. *The Yakama Nation ERWM Program requests clarification (including the decision basis) of which corrective action decisions will be incorporated into the Hanford Permit.*
3. Article XVI. Resolution of Disputes: Statement made: These Dispute Resolution provisions shall not apply to RCRA permit actions which are otherwise subject to administrative or judicial appeal. *The Yakama Nation requests clarification as to what is meant by "otherwise subject to administrative or judicial appeal."*
4. Article XIV. Work, Paragraph 54: Statement made: Ecology in consultation with DOE shall select the RCRA corrective action(s). The final selection of RCRA corrective actions by Ecology shall be final and not subject to dispute. *The Yakama Nation ERWM Program requests clarification as to the application of the proposed changes and the above statements and the process for Tribal and public involvement.*
5. The "Agreement" states: "In the event of any inconsistency between this Agreement and the attachments to this Agreement (i.e., the Articles), this Agreement shall govern unless and until duly modified pursuant to Article XXXIX of this Agreement."
 - a. Changes within the Action Plan regarding how Corrective Action is implemented on the Hanford site are not consistent with the approach outlined in the Agreement. *The Yakama Nation ERWM Program requests clarification on how use of the CAD/ROD approach meets the consistency requirements of the Agreement.*

Comments on TPA change package P-00-09-01:

1. Corrective Action Decisions would be prepared, issued, and implemented under the HFFACO (TPA) and in accordance with WAC 173-340 regulations. There has not been a clear explanation of how Ecology can apply this process to the Hanford Facility. Furthermore, while Ecology claims to continue to retain authority to require corrective actions under RCRA be performed or after evaluating CERCLA corrective actions, to require additional corrective actions be performed, the opportunity for Yakama Nation Tribal public involvement or appeal are reduced or eliminated. *The Yakama Nation ERWM Program takes issue with the position that WAC 173-303 regulations allow the deferral of RCRA corrective actions to CERCLA and subsequent elimination of the permit modification process requiring incorporation of corrective actions into the Hanford RCRA permit. The Yakama Nation ERWM Program requests clarification on the RCRA regulatory pathway for the CAD/ROD (including regulatory citations).*
2. The Yakama Nation ERWM Program has concerns on the following general issues evolving from the CAD/ROD:

The U.S. Department of Environmental Protection (EPA) has authorized the State of Washington to administer and enforce a state hazardous waste program in lieu of a federal program. To become authorized, a state program must, among other things, consistent with and no less stringent than the hazardous waste program under RCRA and consistent with the federal and state programs in other states (*see generally* 40 CFR Part 271). The state program must have the legal authority to implement provisions at least as stringent as designated federal hazardous waste permit provisions. 40 CFR § 271.10. The Washington State Department of Ecology, Nuclear Waste Program, through the Revised Code of Washington (RCW) Chapter 70.105, Chapter 70-105D (Corrective Action), and implementing regulations at WAC 173-303 (Washington State Dangerous Waste regulations), applies this oversight authority to the US Department of Energy Hanford Site.

- a. Washington State has authority to implement corrective actions through WAC 173-303-646 [Dangerous Waste Regulations], not via the Hanford Federal Facility Agreement and Consent Order (HFFACO or the Tri Party Agreement-TPA). *The Yakama Nation ERWM Program is concerned that the Tri-Party Agencies (particularly Ecology) are relying, for RCRA corrective actions, on milestone schedules in the TPA to meet these requirements rather than directing cleanup and the aligning CERCLA and RCRA decision making processes and procedures through RCRA permit compliance schedules or incorporation of RCRA corrective actions into Part IV of the Hanford Permit. The Yakama Nation ERWM Program requests clarification on the regulatory authority of the TPA.*
- b. The CAD/ROD document is not a MTCA order or decree and it is not being prepared under Ecology authority or Ecology's subsequent obligations to prepare a responsiveness summary and incorporate the corrective action decision into the Hanford Permit. *The Yakama Nation ERWM Program requests clarification on relationship of the CAD/ROD to a MTCA order or decree and clarification on process for incorporation of the CAD into the Hanford Permit.*
- c. There is loss of opportunity for Yakama Nation Tribal public involvement opportunities if Corrective Actions are not incorporated into the Facility Permit per the requirements of WAC 173-340. *The Yakama Nation ERWM Program requests clarification on the process of making modifications to the CAD/ROD and how many opportunities there will be for Tribal public involvement.*
- d. Incorporation of a CAD/ROD decision into the Administrative Record of any unit is not equivalent to incorporation of the document into the unit permit per WAC 173-303-646 or WAC 173-303-830/840. *The Yakama Nation ERWM Program requests clarification on whether incorporation by reference is equivalent to WAC 173-303 requirements to include corrective actions into the Hanford Permit and will allow for Tribal and public involvement opportunities.*

- e. It is thought, should this TPA change package be approved, once the initial public participation requirements are met, that any future documents (e.g. SAPs, Work Plans, etc) submitted to fulfill work under this CAD/ROD would not have to be subject to public involvement/review& comment. *The Yakama Nation ERWM Program requests clarification as to what future documents will be provided for Tribal review and comment and how that process will occur.*
3. Statement is made regarding Figure 7-2 [HFFACO] that the CAD/ROD approach is 'functionally equivalent' to a Record of Decision process. That statement is debatable. *The Yakama Nation ERWM Program requests the Tri-Parties define the terms "functionally equivalent" and by what authority "functional equivalence" is provided.*
- a. It is incorrect to imply that the CAD/ROD is functionally equivalent to a Permit or the Permit approach to incorporate corrective actions into the Hanford Facility RCRA Permit. *The Yakama Nation ERWM Program requests basis for statements and how many opportunities for Tribal and public involvement will be allowed under this approach.*
- b. Stating that something is "functionally equivalent" does not ensure that work done is sufficiently comprehensive to satisfy the technical and substantive requirements of both RCRA and CERCLA. *The Yakama Nation ERWM Program requests clarification on the steps to be taken by the Tri-Parties to ensure these requirements are met for all authorities.*
4. Action Plan, Section 3.5, 1st paragraph, 2nd sentence: There is no current classification for R-CPPs in WIDS or in the MP-14 process of the TPA. *The Yakama Nation ERWM Program requests clarification on the process to address this concern.*
5. Action Plan, Section 5.4: Last sentence of last paragraph: The words "past practice process" will not ensure that corrective actions per WAC 173-303-646 are satisfied. Additionally, R-CPP authority use as defined: "generally be used for operable units that contain significant TSD units and/or lower-priority past-practice units" implies the potential use of the CAD/ROD approach when dealing with inclusion of corrective action into TSD permits as established in Part II of the HFFACO and disregard of WAC 173-303-646 requirements. *The Yakama Nation ERWM Program requests clarification on how and under what authority corrective action for TSD units will be performed and incorporated into the Hanford Permit.*
6. Action Plan, Section 7.1: Last paragraph: Statement is made that steps in Figure 7-2 are "functionally equivalent" but deletions of text in Section 7.4.2 removes the requirement that these processes be just that-"functionally equivalent." *The Yakama Nation ERWM Program requests clarification whether or not there is a requirement that processes be "functionally equivalent."*
7. Action Plan, Section 7.4.2, Last sentence and multiple changes in Section 7.4.3 & 7.4.4, 7.4.5, 7.4.6: Addition of new text indicates a preference to defer to CERCLA rather than follow the WAC 173-303 process for performing corrective actions on the Hanford site. Ecology appears to be abrogating/relinquishing its corrective action responsibilities to USDOE and allowing this authority to be dictated by the TPA process and milestones.
- a. Deletion of conducting corrective actions per the schedules of compliance specified in the RCRA permit is in violation of WAC 173-303-64620(3)
- i. [The permit will contain schedules of compliance for such corrective action where such corrective action cannot be completed prior to issuance of the permit], and
- ii. WAC 173-303-64630(3)[In the case of facilities seeking or required to have a permit under the provisions of this chapter the department will incorporate corrective action requirements imposed pursuant to the Model Toxics Control Act into permits at the time of permit issuance.] *The Yakama Nation ERWM Program requests clarification on how these WAC 173-303 requirements are to be met.*
- b. O & M Plans: Terminating O & M while continuing it for other units within and operable unit suggest using a "partial closure permitting" approach which is not authorized by Washington State. *The Yakama Nation ERWM Program requests clarification on this issue.*

- c. Delisting after O & M is completed: Certification of completion under RCRA verses CERCLA is unclear; there does not appear to be the opportunity for public participation. *The Yakama Nation ERWM Program requests clarification on this issue.*
- d. Evaluation of effectiveness of corrective actions: Under WAC 173-303-645(11)(g) require reports on effectiveness of corrective action programs on a semi-annual basis. How is a requirement to have a review only “at least every 5 years during the O & M phase” in compliance with this regulation? *The Yakama Nation ERWM Program requests clarification on this issue.*
- e. Action Plan, Section 7.5: Deletion of text from 2nd to last paragraph of section indicates no future corrective actions to be incorporated into the Hanford permit for any unit. *The Yakama Nation ERWM Program requests clarification on this issue.*

Comments on TPA change package P-07-09-02:

There is concern that the decision-making basis and other valuable information will be lost should RODs not remain a part of the Administrative Record for each operable unit. *The Yakama Nation ERWM Program requests this information remain as included in the Administrative Record for each operable unit.*

Proposed changes provide for DOE to author Records of Decision for regulator approval. *The Yakama Nation ERWM Program recommends close collaboration and inclusion of alternatives that the regulators would like to evaluate in the Feasibility Studies and Proposed Plans.*

Comments on TPA change package M-91-09-01-Mixed Low-Level Waste and Transuranic Mixed Waste:

The Yakama Nation ERWM Program supports what the Hanford Advisory Board noted in recent advise (HAB Consensus Advice #231) regarding Mix Low-Level and Transuranic Mixed Waste Cleanup with the following exceptions:

The Yakama Nation ERWM Program does not support the construction of waste storage facilities which are in violation of DOE Orders or RCRA or CERCLA regulatory obligations and/or will result in long-term/permanent storage of such wastes on the Hanford site. The Yakama Nation ERWM Program will seek additional consultation with the Tri-Party Agencies on this issue and associated issues and will be providing further technical/regulatory comments on these proposed changes.

Comments on TPA Agreement In Principle: As It is unclear whether revisions to the Hanford Federal Facility Agreement and Consent Order (HFFACO) to ensure *that investigations and remediation of soil contamination from single shell tanks be coordinated with actions taken elsewhere at the Hanford site to investigate and remediate deep vadose zone contamination* implies or approves of delays in investigations and remediation of soils contaminated by leaks from the single shell tanks (SST). It is also unclear whether this statement allows or anticipates corrective actions for the SST system (and associated contaminated soils) to be performed under CERCLA actions rather than RCRA actions. *The YN ERWM Program, while recognizing this is not included as a TPA change package, would appreciate clarification on these issues.*