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PUBLIC COMMENTS RECEIVED ON THE SECOND DRAFT PERMIT
FOR THE TREATMENT, STORAGE, AND DISPOSAL OF
DANGEROUS WASTE

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AUG 1994
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Mr. Woodrow Wilson

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Dan Duncan
U.S. E.P.A., Region 10 (HW-113)
1200 Sixth Avenue
Seattle, WA 98101

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FEB 09 1994
ROFA INSPECTION

Dear Mr. Duncan;

Concerning the Hanford Draft Facility Wide Hazardous Waste Permit:

I have worked out on the Hanford Project as a Radiation Technician and know all areas, including the beautiful waste storage facility at "Gable Mountain".

With the thousands of acres out there plus experienced personnel at radioactive, etc., waste handling — Its an ideal set-up — plus it will certainly help the economy of this area — GO FOR IT!

I KNOW THE AREA AND WHAT IT WILL CONTAIN — 30 YEARS OF WORKING OUT THERE. — THANKS

WOODROW R. WILSON
1331 MCPHERSON AVE.
RICHLAND, WA. 99352-3225

Woodrow R. Wilson

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Mr. Joseph Burkle

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Joseph Burkle
42 Da Vinci Drive
Lake Oswego, OR 97035
503 699-0463

February 7, 1994

DAN DUNCAN
U.S. EPA
Region 10 (HW-106)
1200 Sixth Ave
Seattle, WA 98101

Dear Mr. Duncan:

As solicited in your advertisement in the Oregonian on Feb 7, I wish to comment on the draft permit for management of hazardous wastes at Hanford:

As I am certain the reaction from any halfway informed and concerned citizen would be, I am appalled at the suggestion that Hanford might be further considered for any additional storage of hazardous or nuclear waste materials. The dangerous situation at Hanford, which has been publicly documented, with the leaking storage tanks and potential for explosion, is frightening. It is so dangerous, that I believe that the site has been listed as the top priority for cleanup by the U.S. government. The fact that this priority was established more than a year ago and no actual plan has been implemented is a disgrace and an affront to the citizens of the Northwest. The reason for the delay is apparent. The bankrupt U.S. government is already so deeply in debt with no chance of repayment and has no clue how to even balance its own budget and live within its means. It obviously cannot afford the tens of billions of dollars it will cost to clean up Hanford and make even a reasonable stab at safety for the surrounding counties.

The fact that Hanford was ever selected as a site for storage of radioactive wastesin the first place, is an example of the complete irrationality and lunacy of the politicians involved. The seepage of radioactive materials into the ground water and eventually into the Columbia River is a potential disaster that would make Three Mile Island seem like a minor fender-bender by comparison. As a **property owner on the Columbia River in Rowena in Wasco County,** the situation is of particular concern to me and my neighbors. We purchased the property in the 1980's as it became a popular spot for windsurfing, concurrent with the phenomenal growth of the sport in Hood River. I and my family and guests windsurf from the beaches of my property out into the Columbia every summer.

As I am sure you are aware, this area has become world famous for its combination of high winds, clean water and beautiful summer weather and surroundings. With the increasing popularity of the sport and this area, our property values have escalated enormously to where they represent a major investment for most of us. A disaster at Hanford would not only endanger our lives, but would render our properties completely worthless, thereby destroying our life savings. With this in mind, I have organized a homeowners' assocation there, discussed the matter with the other property owners, and sought legal counsel as to our rights in case of such a scenario. We are prepared to sue all parties concerned with a Hanford debacle for tens of millions of dollars for our economic and personal loss, physical endangerment and mental anguish.

Any additional use of the Hanford site for hazardous waste storage is **unthinkable** without correction of the existing problem and complete assurance to everyone concerned that EVERY precaution has been taken to insure the safety and well being of everyone in the area. Using a site way out in the desert in Nevada or Arizona hundred of miles from civilization and NOT on a major waterway like the Columbia makes a WHOLE lot more sense. It is my fervent hope that the government with concur with our rationale and do everything within its power to clean up the existing problem at Hanford.

Sincerely,

Joseph Burkle

cc: Joe Witzak, Washington Dept of Ecology

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Mr. Donald F. Peterson

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FEB 17

Joe Witczak
Nuclear and Mixed Waste Management Program
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Feb. 14,1994

Dear Mr. Witczak,

I would like to voice my view of what is to be done with the horrible mess we call Hanford. I never realized how bad the situation really is until watching a news special recently showing the true extent of the challenge ahead. Something that is clear to me is that there has been a glutton of testing done and though testing and preliminary reporting is all necessary I have the impression that too much money has been spent on testing and assessment and not enough spent on actual cleanup, in part due to the delaying effect of existing laws and proceedural constraints. The laws have to be changed and updated to facilitate cleanup. Another option would be to simply bypass regulations when it is in the best interest to achieve progress.

What to do with this toxic witches brew? That I dont know, other than to suggest that it is carefully moved from the leaking storage containers and into newer, more reliable containers which can be safely buried elsewhere. It does not make sense to move toxics to a different location, but it is important that they are isloated so as to be no threat to humans and the environment.

In view of this huge and dangerous mess I would ask that you use your position to press our present administration, congress and the senate for safer, more intelligent energy policies and directions away from nuclear power and its obvious long term radioactive wastes and short term benefits.

Sincerely,

Dan Peterson

Donald F. Peterson
1385 S.W. Taylors Ferry Rd.
Portland, OR. 97219 Dan Duncan
Feb. 14, 1994

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Envirocare of Utah, Inc.

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ENVIROCARE OF UTAH, INC.

THE SAFE ALTERNATIVE

February 21, 1994

Dan Duncan
Hanford RCRA Permit Coordinator
U.S. Environmental Protection Agency
Region 10, HW-106
1200 Sixth Avenue
Seattle, Washington 98101

9413279.1642

Dear Mr. Duncan:

We have received a copy of the draft RCRA Dangerous Waste Permit and the HSWA/RCRA Permit for the U.S. Department of Energy's Hanford Facility. We are reviewing these documents for possible comment. We are writing for clarification of the status of the US Ecology RCRA Closure Plan.

It is our understanding that US Ecology has received and disposed of hazardous waste at its commercial disposal facility including scintillation vials, elemental mercury, and, due to the absence of an approved waste analysis plan, possibly other hazardous wastes which have not been identified. Consequently, US Ecology has submitted a Part B permit application for the facility. Under 40 CFR 265, facilities such as US Ecology are required to prepare and execute a RCRA Closure Plan.

The draft HSWA/RCRA Permit outlines corrective actions for the US Ecology facility. However, it is our understanding that such corrective actions do not constitute a closure plan. It is also our understanding that to date US Ecology has no current approved RCRA closure plan for its facility.

We would like to receive a clarification of our understanding and would like to schedule a meeting to discuss these and other questions that we have concerning the US Ecology closure plan. We will call to arrange to meet at your convenience. Should you have any additional information for us, please contact me at (801) 532-1330.

Sincerely,

Charles A. Judd

Charles A. Judd, P.E.
Executive Vice President

c: Joe Witczak, WDOE
Gary Robertson, WDOH

46 WEST BROADWAY • SUITE 240 • SALT LAKE CITY, UTAH 84101 • TELEPHONE (801) 532-1330

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Ms. Tamara L. Patrick

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MAR 28 1994

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MAR 28 1994
RCRA PERMITS SECTION

2-6-94

Dan Duncan
U.S. Environmental Protaction Agency
Region 10 (HW-106)
1200 Sixth Avenue
Seattle Wa. 98101

Dear Dan,

It makes little, if any, sense to us why materials that will remain deadly and toxic for the next ten thousand years will be stored in one of the worlds' greatest drainage systems.What kind of geologic problems or changes will occur over the next TEN THOUSAND years Dan? Ten thousand years is about how long mankind has been (somewhat) civilized. Have our leaders become so arrogant as to think that U.S. citizens who read english will be around ten thousand years from now to be warned away by some long ago english sign? Or perhaps ten thousand years from now, mankind will be omniscient and simply " pick up the bad vibrations"!

Dan, this stuff needs to be buried DEEP, and completely SEALED OFF where it cannot poison WATER, PEOPLE, ANIMALS, or FLORA. Please do the right thing and get it away from the earths' waterways, which almost guarentees major toxic poisoning anytime within the next ten thousand years.

Sincerely,

Gemma Patrick
Portland, OR

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Ms. Olivia Koppel

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Mar 07 1994
RCRA [illegible] SECTION

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MAR 09 1994

2-6-94

Dear Dan Duncan,

It makes little, if any, sense to us why materials that will remain deadly and toxic for the next ten thousand years will be stored in one of the worlds' greatest drainage systems. What kind of geologic problems or changes will occur over the next TEN THOUSAND years Dan? Ten thousand years is about how long mankind has been (somewhat) civilized. Have our leaders become so arrogant as to think that U.S. citizens who read english will be around ten thousand years from now so they can be warned away by some long ago english sign? Perhaps ten thousand years from now mankind will be omniscient, and " just pick up the bad vibrations"!

Dan, this kind of stuff needs to be buried DEEP, and SEALED OFF where it cannot poison WATER, PEOPLE, ANIMALS, or FLORA! PLease do the right thing and get it away from the earths' water ways, which almost guarantees major toxic poisoning ANY TIME during the next ten thousand years.

Sincerely,

Celina Kappel

PS. I PERSONALLY HAVE WORKED WITH A FAMILY WHO LIVED IN KENTWICK WHOSE FATHER, MOTHER AND SON ALL HAD BEEN CANCER — THE TWO WHO SURVIVED LEFT WASHINGTON.

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Ms. Wanda Keinon

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MAR 07 1994

2-6-94

Dan Duncan
U.S. Environmental Protaction Agency
Region 10 (HW-106)
1200 Sixth Avenue
Seattle Wa. 98101

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Dan, this stuff needs to be buried DEEP, and completely SEALED OFF where it cannot poison WATER, PEOPLE, ANIMALS, or FLORA. Please do the right thing and get it away from the earths' waterways, which almost guarentees major toxic poisoning anytime within the next ten thousand years.

Sincerely,

Wanda L. Lemon

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Mr. Michael R. Warner, RN

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MICHAEL R WARNER RN
1204 SE MARION ST
PORTLAND OR 97202-

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MAR 07 1994

2-6-94

Dan Duncan
U.S. Environmental Protaction Agency
Region 10 (HW-106)
1200 Sixth Avenue
Seattle Wa. 98101

Dear Dan,

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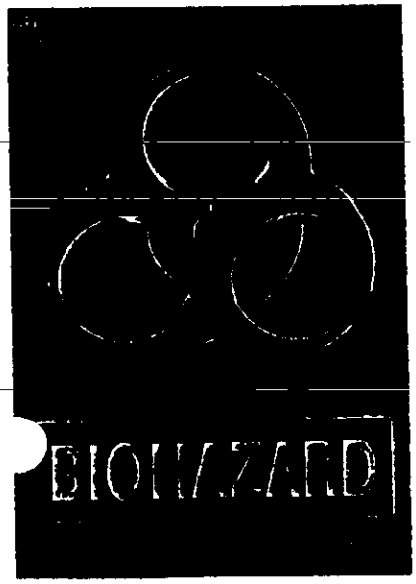
Sincerely,

Michael R Warner



Seriously, man, Lets stop poisoning the Earth! Before long we'll have to have these things every where!

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Ms. Valerie Tomlinson

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COMMENT 9.0

Dan Duncan
U.S. Environmental Protaction Agency
Region 10 (HW-106)
1200 Sixth Avenue
Seattle Wa. 98101

2-6-94

Dear Dan,

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Sincerely,

Valerie Tomlinson

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Mr. Jim Hay

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2-6-94

Dan Duncan
U.S. Environmental Protaction Agency
Region 10 (HW-106)
1200 Sixth Avenue
Seattle Wa. 98101

Dear Dan,

It makes little, if any, sense to us why materials that will remain deadly and toxic for the next ten thousand years will be stored in one of the worlds' greatest drainage systems.What kind of geologic problems or changes will occur over the next TEN THOUSAND years Dan? Ten thousand years is about how long mankind has been (somewhat) civilized. Have our leaders become so arrogant as to think that U.S. citizens who read english will be around ten thousand years from now to be warned away by some long ago english sign? Or perhaps ten thousand years from now, mankind will be omniscient and simply " pick up the bad vibrations"!

Dan, this stuff needs to be buried DEEP, and completely SEALED OFF where it cannot poison WATER, PEOPLE, ANIMALS, or FLORA. Please do the right thing and get it away from the earths' waterways, which almost guarentees major toxic poisoning anytime within the next ten thousand years.

Sincerely,

P.S. My feelings are that these products should not even be produced to start with.

Thank you

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Mr. Sam B. Clifford

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COMMENTS ON THE SECOND-DRAFT
OF THE HANFORD FACILITY RCRA PERMIT

Based upon my review of the second-draft RCRA Permit for the Hanford Site, I have the following suggestions. My general concern is that implementation of the RCRA Permit will be excessively burdensome for the operator and the regulatory inspectors unless RCRA and CERCLA regulations are integrated. The basic problem is that the 'complexity' of the Hanford Site has more to do with the dual RCRA and CERCLA regulations and co-mingled waste streams, than with the physical size of the Hanford Site. 11.1

9413279.1656

1. As drafted, the RCRA Permit fails to use the processes and personnel that have been established in the Federal Facility Agreement and Consent Order (FFACO). Comparison of the FFACO and the RCRA Permit shows many areas where the FFACO (a consent order) has provided 'policy and direction' that the RCRA Permit has subsequently countermanded. The FFACO repeatedly acknowledges that the Hanford Site is simultaneously regulated by both the RCRA and CERCLA regulations, and that the RCRA and CERCLA wastes (dangerous, hazardous, and mixed) are co-mingled. Conversely, the second-draft RCRA Permit remains silent on the issue of dual regulation, radionuclides, and cleanup of co-mingled waste plumes. This discrepancy, consistency with the FFACO, is the major problem with the second-draft RCRA Permit. The FFACO has addressed these issues and has provided a process for the Department and the Agency to derive "physically consistent" requirements for DOE-RL's cleanup of the Hanford Site. In accordance with the FFACO, the RCRA Permit should incorporate the FFACO's policy and direction requirements as RCRA Permit Conditions. Additionally, a single RCRA Permit from the Department and the Agency, which uses the FFACO as its basis, would demonstrate that the Department and the Agency have fulfilled their FFACO obligations. Conversely, if issued, this second-draft RCRA Permit with its two dissimilar portions from the Department and the Agency, demonstrates that the Department's and the Agency's FFACO obligations remain unfulfilled. (see FFACO paragraphs 76, and 79-83, and the Action Plan's Introduction and Section 5.5) 11.2

   Affected Permit Conditions: RCRA Permit's Introduction must address the integration and prioritization of RCRA and CERCLA work, and the resolution process to resolve 'prioritized workscope and budget' conflicts. A single RCRA Permit should be issued by the Department and the Agency. Consistency with the FFACO will affect most Permit Conditions.

2. As drafted, the RCRA Permit endorses the practice of formal letters for notices, responses, report submittals, etc. Conversely the FFACO uses Project and TSD unit Managers to minimize formal communications and expedite the overall cleanup process by identifying responsible individuals and quantifying their authority. The RCRA Permit should use the FFACO derived processes to expedite the overall cleanup process; such as minimizing formal communications. 11.3

   Affected Permit Conditions: I.A.3, I.E.4, I.E.8-22, I.F, I.G, II.B.4, II.D, II.E.2-5, II.F-J, II.K.7, II.L, II.N, II.O.1.d, II.R.2-3, II.X.1, III.1.B.g, III.2.B.q. (46 conditions - key words: notify, report & submit).

3. As drafted, the RCRA Permit is requiring excessive recordkeeping and record retrieval. The FFACO addresses recordkeeping, and the RCRA Permit should follow the FFACO recordkeeping process. Note that recordkeeping should be limited to "the information that supports the decisions". Conversely the second-draft RCRA Permit requires the recording and retrievability of "all" information, until 10 years after the last Hanford Site's post-closure certification is filed; i.e. for about another 70 years.

11.4 The "commitment 6", a cost savings consent order by the FFACO participants, is readily applicable to excessive recordkeeping and record retrieval. Currently the RCRA Permit addresses the Facility Operating Record, 3 locations for maintaining the Administrative Records, and the four locations for providing the Public Information Repository information; these 8 locations will be maintaining duplications of the same information. Given that the regulatory entities are located adjacent to the Hanford Site, and the FFACO and WAC 173-303-840 regulate the extent of public involvement; duplicating 8 facilities and 8 staffs for the retrieval of the same records seems to contradict the essence of Commitment 6.

Affected Permit Conditions: I.E.10, I.E.13, I.E.15-22, II.E-I, II.K.3.b, II.K.6, II.L.2.b.d, II.O, II.R.2-3, II.T-W, III.1.B.f, III.1.B.o, III.1.B.t, III.2.B.b, III.2.B.d. (76 conditions -key words: record, maintain & require).

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4. The basic comment is that it makes no sense to designate, characterize, and proposal cleanup scenarios for materials that are neither "quantifiably" harmful to human health nor the environment. Since the first-draft of the RCRA Permit was issued for public review, the Department and the Agency have adopted the Model Toxics Control Act (MTCA) regulations (WAC 173-340) for both RCRA and CERCLA usage. Also since "protection of human health and the environment" is the primary basis for all RCRA and CERCLA regulations, the use of MTCA should be incorporated throughout this whole RCRA Permit.
11.5 Starting with RCRA and CERCLA's mutually acceptable, MTCA-derived definitions of "waste" and "release", the subsequent use of these definitions would make release reporting, waste designations, waste characterizations, and cleanup proposals compatible with the MTCA-derived cleanup levels for "protection of human health and the environment". As used by both RCRA and CERCLA units, the Data Quality Objectives (DQO) process provides part of this overall concept. And to complete this concept, MTCA-derived definitions should be mutually developed and applied to all RCRA and CERCLA units; including throughout this RCRA Permit.

Affected Permit Conditions: I.E.6, II.A, II.A.3, II.D-F, II.I.1.c, II.J.4, II.K, III.1.B.n, III.1.B.w, III.1.B.bb, III.1.B.gg, III.2.B.l. (21 conditions -key words: release, cleanup & standard).

5. The FFACO has stated that past practice programs are the best way to address groundwater remediation. Conversely, the second-draft RCRA Permit II.F Conditions, stipulate RCRA well specifications and monitoring criteria for "all" groundwater programs at the Hanford Site. Please follow the
11.6 FFACO and delete the II.F Permit Conditions by allowing the past practice programs to establish the groundwater monitoring criteria. Also note that the "vadose zone well monitoring" requirements are premature, because the Department's Responsiveness Summary responses to Comments 74 and II.F.2; state: "the Department intends to include a detailed plan for vadose zone monitoring in a future modification of the permit".

COMMENT 12.0

Pasco, Washington Public Hearing

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RCRA PERMIT HEARING

PASCO, WASHINGTON

MARCH 29, 1994

MW - Well good evening again, and I'm about to call on Barry Bede here, but just half a second. It is -- we are in Pasco today, it is March 29, and is approximately 8:20 in the evening. I have again three speakers, so we'll leave it kind of open ended, but for the sake of the evening if you can be we can probably agree to be brief. Anybody else who wants to speak I would request that they do fill in one of these cards because the cards themselves become part of the administrative record. Barry--

Please state your name and affiliation.

12.1 BB - I'm Barry Bede with US Ecology I oversee the operations of the Richland facility located on the Hanford Reservation. First of all, I would like to extend my appreciation for the efforts that Dan Silver and other EPA personnel have extended to us over the last basically 18 months of trying to develop a mutually acceptable corrective strategy for our low level radioactive waste site. Although the second draft version that is -- that was released in February provides some type of -- little bit different approach. They are still -- still does not resolve some of the major concerns US Ecology has about being mentioned or included in this permit.

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At this time, and on this date we still remain opposed to any reference to our facility in the permit. The major criteria for us being in this permit is the definition of our facility being within the greater facility of the Hanford Reservation. The United States Department of Energy plays no part whatsoever in the operations or regulations of our facility. Under this permit they are being asked to do that. We are concerned about that and from the previous comments from the Department of Energy I believe that they have some concerns about that also.

Our facility is comprehensively regulated by the Washington Department of Health, pursuant to regulations promulgated under the authority -- the Washington Nuclear Energy and Radioactive Control Act. Also, we're in conformance with 10 CFR parts 20 and 61. Our facility is subject to detailed licensing requirements under the Department of Health, we are a regulated facility fully overseen by the state of Washington. The site is subject to extensive environmental monitoring programs approved by the Department of Health and NRC. We have a fairly sophisticated monitoring well system. Vadose monitoring system to view soil, gases, and other analytical desires. The company is currently negotiating with the Department of Health in terms of the site closure plan. The proposed closure plan includes consideration related to the management of chemical hazardous waste constituents in addition to radioactive constituents.

We are informed by the HSWA permit by the Department -- Environmental Protection Agency in Region 10 that includes our -- 13 of our disposal trenches in the U.S. DOE

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permit. They will be required for RI/FS pursuant to the RCRA and potential RCRA corrective activities at our site. We informed US EPA that US Ecology is not a permittee under the U.S. DOE permit. It is not controlled by the Department of Energy in any manner and the US Ecology site is fully regulated -- fully regulated facility under the Atomic Energy Act. The inclusion of our site in the DOE permit will require the Department of Energy to perform activities at our site over which it has no control and will subject the site to conflicting regulatory schemes.

We are informed by the Department of -- by EPA that the US Ecology site is included in the permit based solely on EPA policy interpretation of the term "facility". Moreover it was made clear to us that the EPA would not be proposing any regulatory regulations relating to US Ecology's facility if the Department of Energy had not applied for its Hanford RCRA permit. I just -- I will elaborate certainly more comprehensively in the written comments, but for the record I would like to review this interpretation of the term facility to determine that US Ecology's facilities are included DOE permit. That definition needs close examination. EPA defines the term facility in the Federal Register in 1986 as the term facility is not limited to those portions of owner property at which units for the management of solid or hazardous waste are located, but rather extends to all contingency property under the control of the operator's control under the control of the Department of Energy. The U.S. EPA has issued a policy interpreting the term facility in the context of a permit application by federal government agencies that includes all contiguous property owned, but not controlled by, the federal agency without

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regard to whether the agency has control over that property. Your EPA is repeatedly noted that including all contiguous property owned by the federal agency in a hazardous waste permit may not be advisable because the federal agency may have no control over all contiguous property and may not have the authority to require or manage waste management activities on privately operated land or land owned by other federal agencies.

We believe that the precedent is being set under this permit that is not advisable for any federal agency. EPA recognizes that such policy may require the inclusion of hugh tracks of federally owned land, and hazardous waste permit by a federal agency that should only cover a very limited area actually used for the management of hazardous waste by the agency itself. Despite the EPA announcement that rule making is necessary for the implementation of the definition of facilities for hazardous waste permit application by a Federal agency. No action was taken on this policy. US Ecology has asked EPA representatives whether the policy in question was ever intended to include a privately operated low level radioactive waste disposal facility and regulated under the Atomic Energy Act in a hazardous waste permit sought by a federal agency. U.S. DOE has clearly expressed an opinion that US Ecology facilities should not be included in the permit. US Ecology agrees that it makes no sense to subject the site to conflicting regulatory schemes that would add no additional margin of protection to the public or the environment when a site is already operating under a complete and aggressive state regulatory program.

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In conclusion, there seems three -- a number of other issues to be addressed here. The first issue is a legal issue. Legally US Ecology is not a permit, permittee and cannot be directly bound by the requirements of the Department of Energy's RCRA permit. Such implementation of RCRA oversight by the Department of Energy may and is inconsistent and duplicative of the Atomic Energy Act requirements currently applicable to our site. Factually, no evidence of any release effecting human health or the environment has been provided to justify any RCRA investigation or corrective action on our site. We are comprehensively regulated by the State Department of Health. Any concern about our facility we believe, should be directly - directed between relationship between the state-- our state regulating agency and our specific company. What is proposed here is a corrective action was to be burdened -- the burden of corrective action is going to be placed on the Department of Energy. They are the permittees, they eventually are going to oversee corrective action on their facility. We do not believe that this is an appropriate role that the Department of Energy should take. If the state, EPA, the Department of Health, or any federal agency has concerns about the waste that we dispose of at our facility, we are willing to address that. There is a mechanism to address that to our current regulatory plan through our site closure activities which the Department of Ecology is very willing -- very well included and we have also included EPA in those discussions of our site closure. Factually there is no evidence of any release. Practically, US Ecology is determined to challenge and appeal any inclusion of US Ecology in the permit at this time. We are looking forward to meeting -- having additional discussions with EPA, both in Region 10 and with the headquarter's personnel

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to avoid our inclusion in this permit. Over the next two weeks we also would like to -- we have planned to meet with the Department of Energy and their headquarters individuals to clarify this action. RCRA corrective action at our facility can accomplish nothing at this site that is not already being required. Generally, and in a stricter more elaborate form under the Atomic Energy Act, imposition of RCRA corrective action requirements at the site would be duplicative and produce no discernable environmental benefits. Without EPA issuing a permit directly to US Ecology, no statutory authority to require corrective action at the site can be enforced upon the site -- site operator. That enforcement criteria would only be enforceable for and on the Department of Energy.

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Certainly our written comments will follow in a timely manner. We look forward to addressing this issue more comprehensively with EPA over the next couple weeks. We believe that we -- if there's concern at our facility those concerns should be appropriately addressed. There is a mechanism to address those concerns at this time and that's under our current regulatory status. Thank you.

12.2 MW - Bob Cook.

BC - I'm Bob Cook of Richland, resident of Richland. I was going to comment on the US Ecology issue a bit further. We don't see it the way Mr. Bede sees it, I don't believe. We think the Department of Energy is in fact the responsible party in this regard and that they were responsible putting the materials, the hazardous materials in the first

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place. It seems like it is no different than the number of other sites where hazardous materials are in storage or disposal. As far as the Department of Health administering the hazardous waste rules and doing performance assessments for hazardous waste and long-term, look what's going on. It's doubtful that we would do that. That's got to come under some other entity that's cognizant of hazardous materials, not necessarily the Department of Health. As far as NRC requirements, they don't address the hazardous materials. The EIS which was the basis for dry sites like that one never considered any hazardous materials in the first place, so there's really never been a valid or applicable performance assessment either generic or specific accomplished on the site. We believe that one of the requirements of Parts 61 is in fact its Part 61.41 requires site specific performance assessments to be accomplished -- which was never been done yet as far as I know. It certainly has been done to include the hazardous materials in the site which can kill people just as well as the radioactive materials can. So the whole issue of health effects and effects on the natural resources and ecological effects and so forth should be properly regulated and it seems that the Department of Energy is the owner -- been the owner of the site and is the party that is going to be responsible. I heard what EPA said -- it seems that was right on to me. I think I heard what you said about them being the permittee and I would differ with your interpretation of who should be the permittee, frankly and who would be required to under this. Maybe I didn't understand what you were saying, but in any case we would agree that the DOE should be the permittee being the owner in this case for that US Ecology site.

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The other comment that I had is with respect to the questions I had. It seems that the permits, in fact, should include consideration and natural resources and restoration of natural resources and that they be coordinated with the CERCLA requirements -- the NRDA CERCLA requirements -- and if the permit doesn't provide for that, it should be modified to provide for that type of assessment. As part of the CERCLA provision of course, there are trustees that are involved -- US Ecology is a trustee, DOE is a trustee, The Yakama Nation is a trustee. Maybe there's others, but they ought to all be properly notified, it seems to me, of the issues associated with the potential damage to resources - natural resources and the assessments and so forth.

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MW - Cynthia Sartou.

12.3 I'm Cynthia Sartou, staff attorney with Heart of America Northwest. If my voice starts going out on me I apologize, but I've been ill. I would like to mention just first that I'm kind of upset that the man who started to make the statement during the question-and-answer period has now left as far as I can tell, and that kind of upsets me since I would hope that this was a forum for public participation. It appears that the need to follow a agenda has stopped somebody from saying something he felt very emphatic about, so I hope that he speaks up again. But I would like to say that the parties that -- when people have something to say -- sometimes they can't stay really late and it's sometimes important for them to say things and I would hope that in the future -- although you have an agenda, if somebody has something really important to say, that you'll let them

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say it. First, I would like to state that I have some general comments to make on this permit and next, I have some very specific comments to make. But I could only read the Ecology permit, so the specific comments for right now are limited to the Ecology permit. I'll submit comments on the EPA permit later.

First of all, I would like to say that I do note that paragraph II.N.1 on page 43 of the Ecology permit, and I hope that this was in response to public comment, does restrict the availability of this site for off-site foreign waste. We would like to just reiterate, however, that you know our state is very adamantly against, and the people of this state are very adamantly against, importation of any waste to this site. We feel we have enough to deal with. If you want to import waste from another site, please make sure that all the waste on this site has already been taken care of. I think that takes care of us for 60 or 70 years and -- you know we can't reiterate it strongly enough that the governor has stated he supports us and the public has repeatedly voted to no receipt of the off-site waste, so I appreciate what's been reflected here. I would almost wish it would be a stronger statement. Next, I would like to say that the permits, although somewhat better in ways, are still woefully inadequate as far as protecting and encouraging the public's right to participate in critical decisions. We propose that there be a commitment in the permit to hold comment periods with public hearings on any major modification of a facility permit and that upon a petition of any individual or organization, a hearing should be held in the geographical region of the petitioner. I need to make sense of my comments. And finally on some specific comments I would

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also like to agree with what Bob said earlier that I believe that the responsible individuals should be specifically named in each of the permits for both EPA and Ecology. We've long learned -- long ago learned that you cannot put a federal entity in jail. You cannot do much of anything to them except fine them and then its up to Congress to decide whether they want to pay it. So we would appreciate it if you would specifically state the individuals in the organizations that are responsible. We believe that the permit should specifically acknowledge and reflect all power vested in the state and/or EPA under the Federal Facilities Compliance Act. We would like that specifically set forth within the agreement -- I mean within the permit. The permit should also specifically address when nondefense operating plants and operations fall within its coverage. The permit should specifically enumerate the rights of the state and EPA as created by those permits, including the right to inspect RCRA facilities and disposal site and the right to issue penalties, etc. And that these rights are separate and apart from any authority conferred on the parties pursuant to the Federal Facility Agreement and Consent Order. Going to specific comments and -- our comment, I guess, on the last one specifically made in reference to the fact that there is a lot of language within the agreement, and this goes to some specific comments. Paragraph I.A.3 and I.A.4, pages 14 to 15 of the Ecology Permit, referred to the fact that the permit will be administered in coordination with the FFACO (Federal Facility Agreement and Consent Order). In the past, this language has been used in litigation to argue that the state has no independent RCRA authority, that this is nothing but an EPA CERCLA, and that these are nothing but errors_____ permit or no permit. And we believe that in order to make

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this distinguish clear the permit should specifically state that this is separate and apart and the authority is independent of the authority granted to the EPA under CERCLA. I realize that it gets to be a legal argument. I'll try to explain it sometimes, but Westinghouse attorneys have done a great deal with that legal argument and in any event permits should make clear that coordination with the Federal Facility Agreement and Consent Order does not mean subordination of the permit to that agreement. The two are independent of each other and EPA and Ecology have authority independent of that agreement.

With regard to paragraph I.15.a and I.15.b at page 21, it disturbs me that both refer to the need to report releases and/or permit violations which endanger human health and the environment. Nowhere are these terms defined within this permit. Clearly this phrase could be interpreted differently by differently minded people. For example, in recent litigation Westinghouse has argued that this term means nothing more than that they must report CERCLA reportable quantities and that they need to report nothing more, nothing less. Nothing less and then if it's not stated in CERCLA, they don't have to report it. This troubles me some because I'm not clear from reading permits or for me reading any of the agreements that was ever intended by the parties and I feel that should be clearly stated.

I guess it's my legal background but I don't like ambiguities. I like expressed statements and with regard to paragraph 2 on page 43-44 which states the procedure which is to be

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employed if foreign waste, and/or off-site wastes are allowed into this site, it requires four weeks notification of expected receipt of dangerous waste from foreign sources, but then waives notice for further receipt in the same year from the same source. I question the subsequent waiver. USDOE and any of its contractors should be required to provide the requestor notice each time foreign waste is to be transported to the site. In the alternative they should be required to provide a list of total amounts and expected dates of shipments of all waste expected to be received from a single source in one year. To give the public some idea of what's coming in and when it's coming in and how much is coming in.

That's basically the comments I was able to prepare in the time I had. I will be submitting further comments at a later data as I said, specifically to the EPA permit and any other general comments we have once we have read both fairly carefully over again. Thank you.

MW - Thank you very much. Anyone else wish to speak on the issue? Well, thank you all for coming. We do have outside on the desk some evaluation forms. Ecology is very interested in learning what people think of this process. So I certainly invite you take part and once again I would like to reiterate that the deadline -- the postmark deadline - for written comments on the permit is April 11. Thank you very much. Goodnight.

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HEARING

RCRA FACILITY WIDE PERMIT

VANCOUVER, WASHINGTON

MARCH 30, 1994

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mw -- if public comment on the Hanford Facility Wide Permit. It is approximately ten-to-eight o'clock in the evening and now I would like to call on Susan Swartz.

(inaudible)

Oh, okay. (laughter)

Dirk Dunning, and Dirk please repeat your name.

Good evening, I'm Dirk Dunning. I work for the state of Oregon, Department of Energy as the Hanford Program Coordinator for the state. I only have a few comments this evening. Principally, my concerns in looking through the permit are to ensure that a number of rights and responsibilities under law are maintained throughout the application of the permit and the granting of the permit does not waive away these rights.

13.1 In particular on page 5 of the permit, item, or under definitions, item G, "Facility or Site" refers to specifically the facilities shall mean that portions -- that portions of the

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approximately 560 square miles in southeastern Washington State including leased lands which is owned by the United States Department of Energy and which is commonly known as the Hanford Reservation. As I understand, portions of The Hanford Site are owned by other federal agencies or departments, in particular the Bureau of Land Management, possibly the Bonneville Power Administration and potentially others, and I think it -- it's appropriate that the permit include all of those as portions of the federal government, and that they all be covered as DOE is, whether they are specifically under the ownership of the department or not.

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13.2 On page 10 of the permit under I.E. "Duty to Comply Part II". Compliance with the terms of this permit does not automatically constitute a defense to any action brought under Section 3004, etc. and then under Section 104, 106A, 106E, and 107C of the Comprehensive Environmental Response Compensation Liability Act of 1980 as amended otherwise known as Superfund. In particular, I think it's vital that this language be clarified to ensure that any of the natural resource trustee provisions that are under the administration of any of the trustees on the site are upheld, and that none of those are waived away as irrevocable and irreversible commitments of any facilities or portion of land or otherwise as a portion of this commentary.

Also, along that same line, even superior to the Superfund laws and others entered into prior by the United States government, is the Treaty of 1855 with the Yakama Nation, also with the Confederated Tribes Of The Umatilla Indian Reservation and the Nez

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Perce Indian Tribe. Each of these have statutory rights under the constitution of the United States based on the treaty, and the application of all those rights must be ensured and guaranteed throughout the use and application of this permit. In particular, the treaty rights include the rights to the use of that land for the normal accustomed purpose of the tribal members, including for food stuffs as well as religious and other practices and culture and historic heritage sites. Each of those must be protected under the tribal treaty rights, both as recognized under the federal government and as recognized by the centennial proclamation of the state of Washington.

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13.3 On page 12, under I.K.1.D, the draft HSWA portion of the RCRA permit specifically mentions sample or monitor at reasonable times for the purpose of ensuring permit compliance or as otherwise authorized by RCRA any substances or parameters at any location. I believe this should be changed to at anytime. Under this and other laws, the state of Washington has access to all portions of the facility both as trustee under Superfund and as the designated official body under the state of Washington for administration of the Uniform Fire Code as well as other laws and regulations and as such has access at all times to the site and all portions thereof. There doesn't seem to be any reasonable reason to limit this to reasonable times. Particularly without definition as what those might be.

13.4 Under I.L "Monitoring Point Records item 2," the permittee shall retain or ensure the retention of at the facility or other approved location all records of all sampling and

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analysis etc. for a period of five years. For the purpose of disposal facilities, I believe that this should be extended to be in perpetuity or until such time as these materials have been permanently rendered nonhazardous and that the records should be retained for that period or all records relating to the disposal or any analysis relating to the disposal or monitoring of the area or materials.

13.5 On page 14, item I.1 as well I.P.1 the first anticipated noncompliance and the second is 24 hour reporting under other laws particularly under Superfund I believe there's also requirements for notification immediately for certain instances of hazardous material releases to the National Emergency Response Notification Center which has been interpreted to mean within one-hour. I believe this should also be referenced in the permit.

13.6 Under I.O.1 "Transfer of Permit" this permit may be transferred to a new owner or operator only if its modified or revoked and reissued pursuant to 40 CFR section 270.40B or section 270.41B2 before transferring ownership, etc. given these facilities are on a federal reservation and pursuant to the cleanup of that reservation and are not being used as general waste disposal facilities for access to corporations or the public or others that it would be appropriate to limit the use of this permit and disposal to only those materials generated on the Hanford Site and only those materials generated by the federal government or its contractors and other assigned, and the transfer of the permit should be disallowed without reissuance from the beginning.

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13.7 On page 15 under I (inaudible) by the permittee to the administrated (inaudible) by the permittee in accordance with that applicable provision of 40 CFR sections 260.2 and 270.12 as is this federal facilities the information that might potentially be claimed as confidential is all under the ownership and property of the public and the people of the United States and should be and is demandable under The Freedom of Information Act as well as through other means. I think it is appropriate that I.U the entire section be removed and the confidentiality not be allowed.

13.8 On page 20, (I'm sorry) no page 40, under I'm not sure what it is, but on that page little paren 1 little a, I, the description of the horizonal and vertical extent of any immiscible or dissolved contaminants originating from the facility, including concentration profiles of all parameters identified in section 6.B.1.D.I of this attachment. I believe this section is referring to what has been commonly called dense nonaqueous phase liquids, but it would also seem to apply to any materials which are immiscible with water which might include materials lighter than water. There is a problem on the Hanford site of materials which have been disposed to the soils which have descended through the soil column and into the waters and ground waters and then through those to below them and there has been some consideration given to deciding that it is not practicable to remove those materials because there is no known technology today to get at them. If that's done, those materials will continue to migrate and cause a problem in contamination of the ground water and potentially then to Columbia River or other receiving waters, and I think its appropriate that requirements be put in place as part of the permit. The

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technologies must be developed if they do not exist to remove those materials as well as any others that might be lighter than water, that may have similar kinds of problems.

13.4 Again one of my principal concerns is the natural resource trust rights on the site as administered under the Superfund laws be protected. Particularly those of the state of Washington, of the U.S. Department of Energy and other federal departments as delegated by the president of the United States under his authorities to ensure that the rights and responsibilities under those laws-- or under that laws upheld for the use of the people both of the tribes and of the populous at large. Also in addition I would think it would be appropriate that any other potential conflicts in law be clarified, especially those involving the Superfund law or Clean Water Act or potential oil -- I think it's Oil Spill Prevention Act. There are three in particular that refer to similar duties as natural resource trustees. One of my concerns along that line is that should the state of Washington enter into a permit of this sort and fail to protect the natural resource trust rights and commit what under the law might be considered an invocable or irretrievable commitment of resources that then for failure to uphold the trust rights that those financial obligations may well transfer to the state of Washington from the federal government. I believe it's in the interest of the citizens of the state of Washington that not be allowed to happen. Thank you.

MW - Thanks Dirk.

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MW - I would like to call on Lynn Porter.

13.10 I'm Lynn Porter, I'm a member of Hanford Watch. I really identify with what this lady said about feeling like she's walked into a meeting of a secret society and I'm been studying this issue for about a year-and-half now and I still feel that way. I'm -- I get the general idea of what this thing is about, but I don't know enough about it to have any opinions -- it sounds okay. What I do have an opinion on is recently -- and I think this is relevant. Recently Hanford Watch held a public meeting at which Hanford whistleblower Casey Ruud spoke. Casey has been inspector for the Washington State Department of Ecology for the last three years, really has a long history at Hanford. When he spoke to us he was expecting shortly to go work for DOE, I don't know if that's happen or not, but a lot of what he had to tell us was seriously disturbing. Basically, what he said is that Hanford is not being cleaned up. He said there's some people there who seriously want to do it and there's a lot of other people who seriously don't want to do it. He said -- he's extremely frustrated because he goes out and finds situations that need to be cleaned up and he has not been supported by Ecology. He says Ecology is not doing its job as regulator of DOE. He says his boss tell him things like -- "Casey you're not being sensitive to the politics." And when he complains about milestones and the Tri-party Agreement not being met, they tell him, "Well, we don't regard these milestones as being cast in stone, and if we can meet them, fine, and if we can't meet them within reasonable limits, we'll change them." That's a quote. It seems to me that no matter how many times we amend the Tri-Party Agreement and how many permits

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you come up with -- if these things aren't going to be enforced then we're up the proverbial creek without the proverbial paddle and I would just hope that Ecology would especially start doing its job. Thank you.

MW - Anyone else?

Well thank you very much everyone for your comments. This has been very interesting and I think an enlightenment meeting. Again, we do have evaluations, if you would like to fill them out and we will be meeting again in Seattle, tomorrow night at the Seattle Center, Center House and the panelist here will be available to talk informally and with that I like to bring the public hearing portion of the meeting to close. Thank you very much.

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HEARING

RCRA FACILITY WIDE PERMIT

SEATTLE, WASHINGTON

MARCH 31, 1994

The tape recorder failed at the March 31, 1994, Hearing in the Seattle Center House. Therefore, comments of Mr. Marcus Ward, Seattle, Washington, the only person to offer oral testimony, were lost. A letter was sent to Mr. Ward informing him of what happened and offering to include in the record any written comments he might wish to submit. As of July 13, 1994, he has not responded.

Panelists reconstructed the following summary from their notes of Mr. Ward's presentation:

Mr. Ward expressed concern that the Department of Ecology have adequate authority to conduct regulatory oversight at the Hanford Facility. He hoped that the Department would be able to independently make decisions concerning waste management without delays due to approval by other entities, such as the Environmental Protection Agency.

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US Ecology, Inc.

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US Ecology, Inc.
3855 Atherton Road, Suite 5
Rocklin, CA 95765
916/624-9316 FAX: 916/624-7630

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RCRA PERMITS SECTION

March 31, 1994

US Ecology

Randall R. Smith, Director
Hazardous Waste Division
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

Dear Mr. Smith

US Ecology's low-level radioactive waste disposal facility has been listed as Solid Waste Management Units (SWMU) in the Draft RCRA permit for the U.S. Department of Energy facilities at the Hanford Nuclear Reservation. US Ecology requests that you review the EPA policy in this matter and consider removing the company's facility from the final permit.

US Ecology, Inc. ("USE") operates the low-level radioactive waste ("LLRW") regional disposal facility for the Northwest Compact pursuant to the Low-Level Radioactive Waste Policy Act, as amended, and State of Washington enabling legislation. The USE site is licensed by the state of Washington pursuant to its "agreement state" authority delegated by the United States Nuclear Regulatory Commission ("NRC") under §274 of the Atomic Energy Act. The USE site also operates pursuant to a special nuclear materials license issued by the NRC.

The USE facility is located on the Hanford Reservation. In 1964, 1,000 acres of the Reservation was leased by the federal government to the state of Washington pursuant to a 99-year lease. In 1965, Washington subleased 100 acres to US Ecology for the LLRW disposal site. The United States Department of Energy ("USDOE") plays no part whatsoever in the operation or regulation of the USE facility.

The USE LLRW disposal site is regulated by the Washington Department of Health ("WDOH"), pursuant to regulations promulgated under authority of the Washington Nuclear Energy and Radiation Control Act. These include regulations issued by NRC found at 10 CFR, parts 20, 30, 40, 61 & 70 and their Washington State equivalents. The facility is subject to detailed licensing requirements that are site specific and generally based upon the regulatory requirements referenced above. The regulation of the site by the WDOH comprehensively covers all site operations and

includes the full-time presence of WDOH representatives at the site. USE is in full compliance with applicable regulations and license requirements and the facility presents no threat to the public health and safety. The site is subject to an extensive environmental monitoring program approved by WDOH and NRC. Five groundwater monitoring wells are sampled on a quarterly basis for a wide variety of both radioactive and chemically hazardous constituents. Per WDOH approval, USE has also installed vadose zone monitoring wells to collect and analyze soil gas samples. Vadose zone monitoring is being expanded to include both radioactive and chemically hazardous constituents. The company is currently negotiating with WDOH the terms of the site closure plan. The proposed closure plan as amended, will include considerations related to the management of chemically hazardous waste constituents in addition to radioactive constituents.

Pursuant to the Hanford Federal Facility Agreement and Consent Order, the USDOE has applied for a permit to build and operate a waste treatment facility regulated under the federal and state hazardous waste programs including the Resource Conservation and Recovery Act ("RCRA"). A draft permit has been issued by U.S. EPA to USDOE for the Hanford facility. In the draft permit under Section III.D. Corrective Action Requirements, thirteen trenches at the USE LLRW facility have been included as solid waste management units within the permitted USDOE "facility". We are informed by U.S. EPA that inclusion of these disposal trenches in the USDOE permit will require an RI/FS pursuant to RCRA and potentially RCRA corrective action activities at the site. We informed U.S. EPA that USE is not a permittee under the USDOE permit, is not controlled by USDOE in any manner, and the USE site is a fully regulated facility under the Atomic Energy Act. Inclusion of the USE site in the USDOE Hanford RCRA permit will require USDOE to perform activities at the site over which it has no control and will subject the site to conflicting regulatory schemes. We were informed by U.S. EPA that the USE site was included in the permit based solely on an EPA "policy" interpretation of the term "facility". Furthermore, it was made clear to us that U.S. EPA would not be proposing any regulation related to the USE facility if USDOE had not applied for its Hanford Reservation RCRA permit.

Since the interpretation of the term "facility" determines whether the USE facility is included in the USDOE permit, that definition should be examined. U.S. EPA defines the term "facility" in the Federal Register (50 Fed Reg 28702, 28712, July 15, 1986)

> "The term facility is not limited to those portions of an owner's property at which units for the management of solid or hazardous waste are located, but rather extends to all contiguous property <u>under the owner or operator's control."</u> (*emphasis added*).

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U.S. EPA has issued a "policy" interpreting the term "facility" in the context of a permit application by a federal government agency that includes all contiguous property owned by the federal agency without regard to whether the agency has control over the property.

U.S. EPA has repeatedly noted that including all contiguous property owned by a federal agency in its hazardous waste permit may not be advisable because the federal agency may have no control over all contiguous property, and may not have authority to require or conduct manage waste management activities on privately operated land or on land owned by other federal agencies. Furthermore, U.S. EPA recognized that such a policy may require the inclusion of huge tracts of federally owned land in a hazardous waste permit by a federal agency that should only cover a very limited area actually used for the management of hazardous waste by the agency. (See 51 Fed Reg 7727, March 5, 1986). In response to these concerns, in 1986 U.S. EPA issued a notice of intent to propose rules regarding this issue (51 Fed Reg 7723, March 5, 1986). Despite U.S. EPA's announcement that rulemaking is necessary on the interpretation of the definition of "facility" for hazardous waste permit applications by federal agencies, no action has been taken to begin the rulemaking process since that announcement in 1986.

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USE has asked U.S. EPA representatives whether the policy in question was ever intended to include a privately operated LLRW disposal facility licensed and regulated under the Atomic Energy Act in a hazardous waste permit sought by a federal agency. U.S. DOE has clearly expressed its opinion that the USE facility should not be included in the permit. USE agrees that it makes no sense to subject the site to conflicting regulatory schemes that would add no additional margin of protection to the public or the environment when the site is already operating under a complete and aggressive regulatory program.

The purpose of this letter is to request your thoughts on this matter and a meeting with you to explore whether the U.S. EPA policy concerning the definition of "facility" for federal government agencies should be applied to the USE LLRW disposal site. Please note again, all parties agree that, but for the USDOE application for a hazardous waste permit, none of this proposed U.S. EPA activity would be directed at the USE LLRW facility.

Thank you for your consideration of this matter. We look forward to hearing from you in order to schedule a meeting to discuss this situation.

Sincerely yours,

Ronald K. Gaynor

Ronald K. Gaynor
Senior Vice President

RKG:dmh

cc: Dan Duncan, U.S. EPA Region 10
Dean Ingemansen, U.S. EPA Region 10
Dan Silver, WA Department of Ecology
Joe Stohr, WA Dept. of Ecology
Clifford E. Clark, U.S. Dept. of Energy
Barry Bede, US Ecology
Stephen Travers, American Ecology

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Davis Wright Tremaine Law Offices

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FAX TRANSMITTAL

To: Dan Duncan
Dept/Agency:
Fax #: (206) 553-6693
Phone #: (206) 407-7151
From: Lynda McKinney
Fax #:
# of pages ▶ 2
NSN 7540-01-317-7368 5089-101 GENERAL SERVICES ADMINISTRATION

DAVIS WRIGHT TREMAINE

LAW OFFICES

2600 CENTURY SQUARE · 1501 FOURTH AVENUE · SEATTLE, WASHINGTON 98101-1688
(206) 622-3150

LYNDA L. BROTHERS

April 5, 1994

VIA FACSIMILE

Mr. Dan Duncan
U.S. Environmental Protection Agency
Region 10 (HW-106)
1200 Sixth Avenue
Seattle, Washington 98101

RE: Extension of Public Comment Period
Hanford Facility Wide Permit

Dear Mr. Duncan:

The purpose of this letter is to request a 30 day extension of the public comment period for the Hanford Facility Wide Permit ("Permit"). The request is made for the purpose of preparing detailed comments with regard to the major changes made in the treatment of the cleanup of the US Ecology low level radioactive waste disposal facility.

The extension is requested because of the extra time needed to evaluate and respond to the significant and precedent-setting issues associated with the manner in which US Ecology is included in the federal permit. Also the regulatory approach employed in the Permit is very different from that set forth in the 1992 draft permit. In the draft permit, the agencies proposed to clean up the US Ecology facility under the Model Toxics Control Act. Now, the agencies propose to defer to the state Department of Health. The Department of Health is not a party to the Hanford Federal Facility Agreement and Consent Order, thus it is unclear what authority, standards, procedures and processes will be applied to assure proper cleanup. In our review of Department of Health files and authorities, we have been unable to locate cleanup standards, cleanup procedures, or opportunity for public review and comment. We will require additional time to respond to this significant change in the Facility Permit and gather additional information.

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Seattle

Dan Duncan
April 5, 1994
Page 2

Thank you for your prompt attention to this request. Please call me at 206 628-7628 if you have any questions.

Very truly yours,

DAVIS WRIGHT TREMAINE

Lynda L. Brothers

cc: Gary Robertson

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Seattle

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Mr. Greg LeBaron

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7 April 1994

Joe Witczak
Nuclear and Mixed Waste Management Program
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Dear Mr Witczak,

I was encouraged last year when I heard the Washington State Governor and the Secretary of DOE pledge to be more reasonable and cost effective in conducting business in the clean-up of Hanford and in the execution of their responsibilities to protect human health and the environment. However, I was extremely disappointed to see that the philosophy of being more cost effective and focused on clean-up and protecting human health and the environment was not implemented in the Hanford Site-wide Permit. As a tax payer, I am tired of seeing my taxes increase and receiving no benefit; hearing that there is not enough money for schools, health care, improving roads and parks, but there is money to spend two years to compile a document that over regulates by imposing requirements that will do little, if anything, to improve human health or the environment by cleaning up Hanford.

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Would you please help me understand Ecology's position and why Ecology feels this permit is in the best interest of the public from the point of view of a tax payer and an interested party in preserving human health and the environment:

17.1 1) Provide regulatory citations for each requirement in the permit. It appears to me that there are a number of requirements that do not have a regulatory foundation. Especially focus on citations showing that interim status units and generating units should be subject to the permit as currently implied. This will be particularly helpful to me since I am not as familiar with the regulations as Ecology.

17.2 2) Provide regulatory and cost benefit justification for section II.U., "Mapping of Underground Piping". Even if the WAC 173-303-806 justified this requirement (which I do not believe it does), please demonstrate the benefit to human health and the environment of spending over $50 million dollars to prepare maps of the 200 east and west areas where waste tanks remain in the ground and why preparing the maps should be a priority before determining the future land use or removing the tanks and associated waste. Will the 200 east and west areas ever be cleaned up so they can be released unconditionally to the public? Will the associated waste tanks (especially the single shell tanks) ever be completely removed? Will the materials in the burial grounds be removed? Show how spending resources to prepare a set of maps (paper) would be more beneficial than doing the actual clean-up. Demonstrate why a set of maps ($50 million) is a beneficial requirement to me, the tax payer.

17.3 3) There are general requirements in this permit which are subject to interpretation of the individual regulators and are particularly vulnerable to over regulation resulting in little or no benefit to tax payer resources. The Permit is riddled with such requirements. Provide an evaluation of each such statement in the permit and show how such

requirements are cost effective and necessary for the actual clean-up work.

For example, II.I.1. requires the Permittee to "... record all information referenced in this Permit in the Facility Operating Record within seven (7) working days after the information becomes available." This will lead to development of paper and administrative systems to assure the requirement is met and regulators focusing on the development of the paper. I want my tax dollars to be focused on clean up, not producing a lot of paper for which Ecology will have to hire additional people to assure is being produced and properly filed.

Another example is II.E.4. which requires the Permittee to "... provide notification of availability to the Department of all data obtained within thirty (30) days of receipt by Permittee ...". Again, this requires an administrative system to be developed by the Permittee and Ecology and is just a waste of tax payer money with no benefit to human health or the environment.

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4) There are a number of instances in the Permit, like II.C.1., where a regulatory citation is made and then it appears like additional requirements from the regulations are added (sections II.C.2. through II.C.4.). Provide justification for the increased requirements. For example, demonstrate why providing training within 30 days of hiring improves human health and the environment more than the 6 month requirement already in the WAC. Also, show how training staff that does not work at TSD units (like those who work at the Federal Building or other down town offices, especially the clerical staff) improves human health and the environment. It costs my tax dollars to provide training. I believe it would be more beneficial to human health and the environment to give those resources to the schools to better educate children than to spend it to train clerical staff in a downtown office to handle waste.

17.4

In conclusion, the Hanford Site-wide Permit should apply only to the TSD units where the Part B is part of the permit and address only those areas that should apply to all the TSD units. Specific requirements should be found in the individual, unit specific Part B Permits. Also, the Site-wide Permit should reference the WAC requirement. Any additional or modification of the requirements should follow. A cost benefit justification should clearly demonstrate that any requirements above those already in the regulations improve human health and the environment and should be directed at clean-up, not generation of paper work and administrative systems.

In short, the permit should be prepared to protect human health and the environment while ensuring that tax payer resources are properly used by not over regulating or over development of administrative systems but by focusing on clean-up.

Sincerely,

Greg LeBaron
1101 S. Taft
Kennewick, WA 99337

COMMENT 18.0

Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

94-RPS-185

APR 06 1994

Mr. Chuck Clarke
Regional Administrator
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

Ms. Mary Riveland, Director
State of Washington
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504

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Dear Mr. Clarke and Ms. Riveland:

HANFORD SITE COMMENTS ON THE SECOND DRAFT OF THE RESOURCE CONSERVATION AND RECOVERY ACT PERMIT FOR THE TREATMENT, STORAGE, AND DISPOSAL OF DANGEROUS WASTE FOR THE HANFORD FACILITY

The U.S. Department of Energy, Richland Operations Office (RL), Westinghouse Hanford Company (WHC), and Pacific Northwest Laboratory (PNL) have jointly prepared and are formally submitting the enclosed document entitled "Hanford Site Comments on the Second Draft of the Resource Conservation and Recovery Act (RCRA) Permit for the Treatment, Storage, and Disposal of Dangerous Waste for the Hanford Facility" (hereinafter termed the Comment Document). The Comment Document was prepared in response to the sixty-day public review period initiated on February 9, 1994, and is being submitted to meet the respective obligations of RL, WHC, and PNL under 40 CFR Part 124 and WAC 173-303-840(6).

The Comment Document builds on the five review criteria and the comments on the first draft of the RCRA Permit submitted to the State of Washington Department of Ecology (Ecology) and the U.S. Environmental Protection Agency (EPA) on March 16, 1992. These five review criteria include: (1) Consistency with the Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement), (2) Regulatory Authority and Requirements, (3) Appropriate Level of Control, (4) Consistency of Regulatory Requirements, and (5) Management Efficiency and Cost Effectiveness.

The second Draft Permit shows a substantial improvement over the first draft of the RCRA Permit. However, several areas of concern still remain and account for the comments included in the current submittal. Key Comments, resulting from the application of the aforementioned five review criteria, are organized under one of the following comment categories: (1) Regulatory Interpretation, (2) Cost and Management Efficiency, and (3) Waste Movement.

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The Comment Document is organized into Key Comments and Condition-Specific Comments associated with each Key Comment. Also provided for each Condition-Specific Comment is a detailed discussion of the actions requested to be taken by the regulators in finalizing the Permit (including specific Permit language), and the justifications upon which the requested actions are based.

On April 1, 1994, representatives from RL, WHC, and PNL met with Ecology to discuss our Key Comments. We believe significant progress was made in obtaining an understanding by the Ecology staff of the issues associated with these comments. We also reconfirm our commitment to continue to work with you in an effort to resolve these issues in order to avoid exercising the appeal process, if possible. We look forward to meeting with your staff on April 15, 1994, to begin discussing issue resolution details.

We are aware that you have targeted a mid-June 1994, issuance date for the final Permit. In accordance with the regulations, the Permittees have thirty days after the issuance date to file an appeal of any of the Permit conditions. We understand that those conditions that are not appealed will become effective in mid-July 1994.

We have questioned the regulatory basis for several of the Draft Permit conditions that represent a particularly significant scope increase. For example, mapping and marking, and facility wide groundwater monitoring costs are currently estimated at $50 million and $800 million, respectively, over the life of the Hanford Site cleanup. Financial instruments to provide closure and post closure assurance and liability protection for a $7 billion closure program would also be extremely costly. We believe that these three elements, and other elements of the Draft Permit, are candidates for regulatory streamlining as specified in the Cost and Efficiency Initiative negotiated in association with the January 1994, amendment of the Tri-Party Agreement.

As discussed in the April 1, 1994, meeting, we also need to agree on an approach to handle changes to RL contractors including the transfer of management responsibility for environmental restoration from WHC to Bechtel Hanford, Inc. on July 1, 1994. We are pursuing options regarding this need and will be prepared to discuss some of these options at our April 15, 1994, meeting.

We will continue to support open and responsive communication with you as your organizations address review comments received on the second Draft Permit. We believe such communication over the last few months contributed to the significant improvement in the second Draft Permit issued for public comment, and would also benefit Permit finalization. Furthermore, we will continue regulatory streamlining discussions with you and your staff in support of the Cost and Efficiency Initiative.

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If you have questions regarding the contents of this letter or the enclosure, please contact Mr. S. H. Wisness of RL on 376-5441, Mr. W. T. Dixon of WHC on 376-0428, or Dr. T. D. Chikalla of PNL on 376-2239.

Sincerely,

John D. Wagoner
Manager
DOE Richland Operations Office

EAP:CEC

Dr. A. L. Trego, President
Westinghouse Hanford Company

Dr. W. R. Wiley, Director
Pacific Northwest Laboratory

Enclosure:
Hanford Site Comments

cc w/encl:
J. Atwood
D. H. Butler, Ecology
D. C. Nylander, Ecology
J. J. Witczak, Ecology
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HANFORD SITE COMMENTS ON THE SECOND DRAFT OF THE RESOURCE CONSERVATION AND RECOVERY ACT PERMIT FOR THE TREATMENT, STORAGE, AND DISPOSAL OF DANGEROUS WASTE FOR THE HANFORD FACILITY

This document contains the joint comments prepared by the U.S. Department of Energy (DOE), Richland Operations Office (DOE-RL), Westinghouse Hanford Company (WHC), and Pacific Northwest Laboratory (PNL) (hereinafter termed the Commenters) on the Second Draft of the Resource Conservation and Recovery Act (RCRA) Permit for the Treatment, Storage, and Disposal (TSD) of Dangerous Waste for the Hanford Facility (hereinafter termed the Draft Permit). The Draft Permit was issued for a formal 60-day public review on February 9, 1994. In accordance with this formal review process, and to meet the respective obligations of DOE-RL, WHC, and PNL under 40 CFR Part 124 and WAC 173-303-840(6), these joint comments are submitted to the U.S. Environmental Protection Agency (the Agency) and the Washington State Department of Ecology (the Department) to be formally entered into the Administrative Record.

The joint comments are based on a review of both the Dangerous Waste (DW) Portion and the Hazardous and Solid Waste Amendments (HSWA) Portion of the Draft Permit, the accompanying Department's 1992 *Fact Sheet* and 1994 *Initial Responsiveness Summary and Revised Fact Sheet*, the Agency's Responsiveness Summary and Fact Sheet, Draft Permit attachments, and other RCRA permits issued in the state of Washington and the Agency's Region 10. The joint comments build on the five review criteria and comments previously submitted to the Department and the Agency on March 16, 1992, on the first draft of the RCRA Permit. The second Draft Permit shows a substantial improvement over the first draft of the RCRA Permit. However, several areas of concern still remain and account for the comments included in the current submittal.

The DOE-RL, WHC, and PNL look forward to continuing to work with the Agency and the Department to prepare a final Permit that will assure compliance; satisfy the criteria used to prepare these joint comments; allow efficient operation; and finally, allow completion of the cleanup milestones on the Hanford Site. The Commenters remain committed to safe operation and prompt and efficient cleanup of the Hanford Site.

COMMENT CRITERIA

This section includes a brief discussion of the five criteria used to prepare the joint comments. The underlying basis for all these criteria is the need to protect human health and the environment, but in a manner that is as cost effective as possible so that cleanup dollars are used efficiently. Implicit in this approach is the assumption that the "regulations themselves are generally sufficient to protect human health and the environment" [Chemical Waste Management, RCRA Appeal No. 87-12 (May 27, 1988) (Comment Attachment 2)]. Thus, the Commenters request that any conditions in the Draft Permit that go beyond the regulations or affect management efficiency be carefully reevaluated.

These joint comments are based on one or more of the following five criteria.

- **Consistency with the Hanford Federal Facility Agreement and Consent Order**

The Permit must be consistent with the Hanford Federal Facility Agreement and Consent Order (FFACO). The FFACO is the governing document for all cleanup and RCRA (42 USC 6901 et seq.) permitting on the Hanford Site. This is an agreement that binds the Department, the Agency, and the DOE-RL to actions to comply with RCRA, the Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA (42 USC 9601 et seq.)], and the State of Washington Hazardous Waste Management Act [HWMA (RCW 70.105)]. The Permit conditions must be consistent with the provisions of the FFACO. All schedules of compliance must be maintained and controlled in the FFACO to ensure proper consistency and prioritization of work. The Permit conditions must not place the DOE-RL, through its own actions, or those of its contractors, in a position where the conditions of the Permit only can be met by a violation of the FFACO.

- **Regulatory Authority and Requirements**

Each Permit condition must be based on clear regulatory authority and must be consistent with existing regulatory requirements. The applicable federal and state regulations are comprehensive and complex. These regulations cannot be changed by the Permit conditions and cannot be exceeded except where it has been demonstrated that it is necessary to protect human health and the environment. The Permit must be consistent and within the bounds of the existing regulations. The Permit should not be viewed as a means of making regulatory changes without going through the rulemaking process.

- **Appropriate Level of Control**

The Permit must reflect an appropriate level of regulatory control. The Department and the Agency should regulate, not 'manage', the Hanford Site. The DOE-RL and their contractors must retain flexibility to comply with the Permit efficiently, without seeking approval from the regulators for every small change in operations. To do otherwise is to impose a level of regulatory control that is inappropriate and exceeds that of other facilities throughout the state and the Agency's Region 10. A management practice or voluntary activity should not be unnecessarily incorporated into the Permit, thus making any change in the practice or activity subject to Department or Agency approval, and any deviation a potential violation of the Permit. To apply this criterion, the Commenters reviewed and incorporated previously approved provisions and conditions from a number of Region 10 final status hazardous waste permits from inside and outside the state of Washington. In preparing comments, it was assumed that the Permit would be developed in a comparable manner.

- **Consistency of Regulatory Requirements**

The Permit should be consistent with other RCRA permits. Any permit necessarily contains site-specific requirements, but the general provisions that must be in all RCRA permits issued by the Department and the Agency should not discriminate against the Hanford Facility compared to other facilities throughout the state and the Agency's Region 10. This assumption is consistent with policy statements made by Department representatives at the recent Hanford Summit (September 1993) (Comment Attachment 3). The Commenters believe that the size of the Hanford Facility, and the variety of TSD activities occurring thereon, do not create a presumption that these activities are more complex or hazardous than other TSD facilities. The Permit should not establish conditions not previously required in other Department or Agency

permits unless substantive justification is provided in the responsiveness summaries and fact sheets.

- **Management Efficiency and Cost Effectiveness**

The Permit should not impose more costly methods to meet a regulatory requirement when another management practice could do so more efficiently. When two management practices are equally protective of human health and the environment, efficiency and cost effectiveness should be a determining factor.

This criterion is consistent with recent discussions held during negotiations supporting the Fourth Amendment of the FFACO (January 1994). In these recent FFACO negotiations, the DOE-RL, the Department, and the Agency agreed to a Cost and Management Efficiency Initiative (Comment Attachment 4). In Commitment 6 of this initiative (Regulatory Reform), the three parties agreed that many inefficiencies in Hanford Site operations are driven by overly conservative interpretations of environmental regulations and by functional redundancies and procedural duplication in the implementation of these regulations. In addition, the three parties collectively agreed "to initiate programs designed to identify areas for continuing improvement in reducing costs, streamlining schedules, and developing appropriate scopes of work for execution of Hanford's cleanup mission."

KEY COMMENTS

Key comments, resulting from the application of the aforementioned five criteria, are organized under one of the following comment categories: (1) Regulatory Interpretation, (2) Cost and Management Efficiency, and (3) Waste Movement. Table 1 provides each comment category and key comment, a summary statement of the action requested to be taken by the regulators to address each key comment, and the identification of the affected areas of the RCRA Permit related to each key comment.

Attachment 1 of the Hanford Comments provides condition-specific comments associated with each key comment. Also provided for each condition-specific comment is a detailed discussion of the actions requested to be taken by the regulators in finalizing the Permit (including specific Permit language), and the justifications upon which the requested actions are based.

- **Regulatory Interpretation**

The Regulatory Interpretation comment category represents areas where the Commenters considered interpretations by the Department or the Agency (in either the Draft Permit or the accompanying responsiveness summaries and fact sheets) to extend beyond the original intent of the regulations or to involve interpretations inconsistent with other regulatory decisions of a similar nature. This category encompasses the following comments: (1) Permitting Approach, (2) Regulatory Agency Authority, (3) Jurisdiction Over Radioactive Materials, (4) Permittee Responsibilities, and (5) Financial Assurance and Liability Provisions.

18.1 **Permitting Approach.** The Department has issued a Draft Permit for the entire Hanford Facility using an approach that extends additional costly regulatory controls for TSD units over areas located between final status TSD units. There is no regulatory authority for such a 'hybrid approach' or an 'umbrella approach' that purports to include interim status activities under the final status standards or that purports to regulate activities not related to the final status TSD of dangerous waste. The

Permit must be explicit in the scope of coverage; this scope must be limited to the TSD units that meet the criteria for receiving final status pursuant to WAC 173-303-805(8)(c) and WAC 173-303-840(1), and be consistent with the definition of "facility" contained in the RCRA and Dangerous Waste Regulations (40 CFR 270.1(c)(4) and WAC 173-303-040, respectively).

In its Responsiveness Summary, DW Portion (General Comment 49, pages 56-57), Ecology has pointed to no independent state authority to issue an 'umbrella' permit. The Department relies instead on the FFACO. Section 6.2 of the FFACO Action Plan cites 40 CFR 270.1(c)(4) as the authority to issue the Permit, and it clearly contemplates a unit-by-unit approach, not an 'umbrella' permit. The reference to 40 CFR 270.1(c)(4) in the FFACO indicates the intent of the parties to issue the Permit on a unit-by-unit basis, and Ecology has not indicated any state authority to proceed on any other basis.

The WAC 173-303-806(1) indicates that a permit applies only to final status facilities. The "facility" as defined in WAC 173-303-040, is the area "used for... storing, treating or disposing of dangerous waste." This definition is different from the definition of "facility" for corrective action and the definition of "on-site." The general facility standards in WAC 173-303 do not indicate that they apply to "on-site" areas that are not part of a TSD "facility."

With respect to extension of the Permit to interim status facilities, 40 CFR 270.1(c)(4) is explicit in providing that "the interim status of any TSD unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility." Inclusion of an interim status TSD unit in the Permit should happen only when a final action is taken on a Part B permit application as specified in WAC 173-303-805(8)(a). There is no regulatory requirement or authority to include an interim status unit that is closing under interim status in this Permit.

In their Responsiveness Summary, DW Portion (General Comment 71, page 72-73), the Department relies on Section 5.3 of the FFACO Action Plan, which states that interim status units will be closed in accordance with WAC 173-303-610. Since the federal closure standards (Subpart R) are incorporated into WAC 173-303-400, this was clearly an agreement by the FFACO parties to apply the stricter closure standards of WAC 173-303-610. It does not indicate that the parties agreed to the procedures of WAC 173-303-610 -- specifically, approval of the closure plan by incorporation into the Permit. This is indicated by the phrase "irrespective of permit status," which indicates that interim status units would remain as such at closure. It is also indicated by Figure 6.2 of the FFACO Action Plan, which lays out the closure process and indicates that no permit action is needed to approve a closure plan, except for closure as a landfill.

The Commenters also disagree with the Department's statement in the Responsiveness Summary, DW Portion (General Comment 71, pages 72-73), that the permitting process is more efficient if all TSD units are addressed in one document. This approach already has created delays of over 2 years in the commencement of closure for some TSD units, while the Department has been in the process of 'approving' the closure plans through inclusion in the Permit. Handling interim status closure plan review and approval independently of the final status permit process will allow for more efficient paperwork for these closures, facilitate timely and informed public comment, and will prevent the final status Permit from becoming unduly large and complex. It also will allow changes to be processed to closure plans in a more reasonable and expeditious manner without having to amend the final status Permit for every such change. Thus,

handling interim status closures outside of the Permit will enhance management efficiency and cost-effectiveness of Hanford Site cleanup.

18.2 **Regulatory Agency Authority.** The Draft Permit imposes conditions that exceed the regulatory requirements of WAC 173-303. In most cases, the basis for exceeding these requirements is insufficiently addressed in the Responsiveness Summary, DW Portion. It is clear from the many deviations from the regulations and prior permits that the Department has asserted omnibus authority pervasively, often without sufficient justification as to why additional regulation is "necessary to protect human health and the environment". The omnibus clause [WAC 173-303-800(8)] does not give the Department unfettered discretion to go beyond its own regulations. Interpreting identical language in 42 USC § 6924(a), the U.S. Environmental Protection Agency (EPA) Administrator has held that

> [T]he regulations themselves are generally sufficient to protect human health and the environment. It is reasonable to presume that they do so in any given case unless there have been material changes (e.g., in technology) after the regulations were promulgated or other special circumstances exist. Otherwise, the omnibus provision could be used to force a complete reconsideration of the entire regulatory scheme in every permit proceeding, thereby undermining the finality of the regulations and jeopardizing the entire permitting process. (emphasis added) [Chemical Waste Management, RCRA Appeal No. 87-12 (May 27, 1988) (Comment Attachment 2)].

Thus, where the regulator uses its omnibus authority, the Department or the Agency must acknowledge that fact and articulate a reason why the existing regulations are inadequate to protect human health and the environment. For example, the EPA's omnibus authority has been used and upheld where proposed regulations or generally applicable guidance documents filled a gap or interpreted the existing regulations. A general desire to 'improve' the existing regulations is insufficient; so is a conclusionary assertion that the Facility is a special case.

Attachment 1 points out where the Department has deviated from the regulations without a justification based on protecting human health and the environment. Omnibus authority should be used sparingly and only when it can be justified as necessary to protect human health and the environment. The liberal use of the omnibus authority in the Draft Permit has resulted in conditions where the Department is 'managing', rather than regulating, the Hanford Facility.

18.3 **Jurisdiction Over Radioactive Materials.** In the Responsiveness Summary, DW Portion (General Comment 69, pages 70-71, the Department is attempting to assert regulatory authority over the radioactive source, special nuclear, and byproduct material components of mixed waste. The Department's position is in conflict with the requirements of federal law as defined by the Atomic Energy Act [AEA (42 USC 2011)] and further supported by legal decisions, Agency policy, and other responsiveness summaries issued by the Department.

The inappropriateness of any state effort to assert authority over radioactive materials is dictated by the exclusion of source, special nuclear, and byproduct materials from the definition of solid waste set forth at RCRA § 1004; the overriding and preemptive AEA; RCRA § 1006(a) (the inconsistency provision); DOE's Byproduct Rule (10 CFR 962); the EPA Notice Regarding State Authorization (51 FR 24504, July 3, 1986); the EPA Notice on Clarification of Interim Status Qualification Requirements for the Hazardous Components of Radioactive Mixed Waste (53 FR 37045, September 23,

1988); the State's recognition of possible preemption in its HWMA, RCW 70.105.109; the limitations of the waiver of sovereign immunity in Section 6001 of RCRA to materials falling within the RCRA definition of solid waste (thereby excluding source, special nuclear, and byproduct materials); and the FFACO.

This subject was evaluated previously and formally addressed in the negotiations to the FFACO. The resolution incorporated into the FFACO recognizes the distinction between hazardous waste subject to the RCRA and radioactive waste subject to the AEA.

The Commenters contend that the FFACO and federal law must be followed. By federal law, the DOE must retain jurisdiction over the source, special nuclear, and byproduct material components of mixed waste in accordance with the AEA. However, the DOE-RL intends to work with the Department and the Agency in a cooperative manner in the development of any future regulatory programs that apply to radionuclides.

18.4

Permittee Responsibilities. The Draft Permit identifies as Permittees the DOE-RL (Owner/Operator), WHC (Co-operator), and PNL (Co-operator). The definition of "Permittees" and the delineation of responsibilities in the Draft Permit would properly hold WHC and PNL responsible for all activities subject to the scope of the Permit within their respective areas of control. This language distinguishes the responsibilities of the Permittees and should not be confused by inaccuracies in the Responsiveness Summary, DW Portion (Title Page, pages 94-95).

In the Responsiveness Summary, DW Portion (General Comment 6, pages 27-28; Title Page Comment, pages 94-95; and Definitions Comments, pages 102-103), the Department has misidentified WHC and PNL as "operators" and has indicated that the standard from RCRA and Chapter 70.105 RCW is that "persons responsible for the support operation of a facility can be held liable as operators." The Commenters are not aware that the term "operator" is defined in either RCRA or the state statute, Chapter 70.105 RCW. However, the term is expressly (and identically) defined in the implementing regulations for those statutes, and it is not the definition used by the Department.

In 40 CFR 260.10 and WAC 173-303-040, "operator" is defined as the person responsible for the <u>overall</u> operation of a facility. WHC and PNL have certain operational responsibilities at the Hanford Facility, such as waste analysis, waste handling, monitoring, container labeling, personnel training, and recordkeeping. Neither WHC nor PNL contractually are responsible for the overall operation of the Hanford Facility. The DOE-RL, the Department, and the Agency previously have agreed in the FFACO that the United States through the executive agency of the DOE-RL owns and operates the Hanford Facility.

The Federal Acquisition Regulation (48 CFR Chapter 1) further defines and limits contractor management authority and responsibility. The contractors do not have unilateral authority to make controlling decisions that affect the overall management of the Hanford Facility. The contractors are without contractual or legal authority to set, control, provide or require the funding actions, budgetary actions, and functions associated with overall facility management and control. The Department's position in the Responsiveness Summary, DW Portion (General Comment 6, pages 27-28; Title Page Comment, pages 94-95; and Definitions Comments, pages 103-104), is contrary to the respective contracts between the DOE-RL and the contractor Permittees (refer to the WHC and the PNL contracts with the DOE-RL in Comment Attachments 5 and 6, respectively).

18.5

Financial Assurance and Liability Provisions. The Draft Permit does not address the financial assurance and liability provisions of WAC 173-303-620. However, the

Responsiveness Summary, DW Portion (response to Condition II.H.1., pages 181-182), misinterprets both the law and the relationship between the DOE-RL and its Contractors. In the Responsiveness Summary, DW Portion, the Department states, inter alia:

> "The Department agrees that Federal governments (sic) are specifically exempt from the financial assurance requirements in WAC 173-303-620.....
>
> The Department disagrees with the Commenter that the requirements of WAC 173-303-620 are not applicable to their contractors. WAC 173-303-620(1)(b) specifically states that although State and Federal governments are exempt, 'operators of facilities who are under contract with the state or federal government must meet the requirements of this section.'"

This Department position misinterprets both the law and the relationship between the DOE-RL and its contractors. The parties have agreed in the FFACO that the DOE-RL is the owner and operator of the Hanford Facility. As previously noted, the responsibilities of WHC and PNL are limited; therefore, the exemption in WAC 173-303-620(1)(c) applies to the Hanford Facility and the requirements of WAC 173-303-620 are not applicable. The DOE-RL has accepted the role of owner/operator with a commensurate commitment and responsibility to clean up the Hanford Site including closure of TSD units. To require the same financial assurance from contractors, the burden of which would ultimately lie with the DOE-RL, would impose an undue burden upon the federal government. This would be discriminatory to the interest of the federal government as represented by the DOE-RL when compared to other state or federal operators and would make it difficult for the DOE-RL to obtain contractors for site activities.

Alternatively, the Commenters request that the Department recognize the status of DOE-RL as owner and operator and that the financial responsibility provisions of the DOE-RL contracts with WHC and PNL in combination with the indemnification provisions of the Price Anderson Amendments Act of 1988 (42 USC 2010 et seq.), meet the financial assurance and liability provisions of WAC 173-303-620(4), (6), (7), (8), (9) and (10).

The Commenters are not aware of any other DOE facility in the United States that has been required to have contractors with similar responsibilities provide such financial assurance and liability protection under RCRA. Because DOE-RL is the facility owner/operator, the intent of WAC 173-303-620(1)(c) is satisfied and the exemption applies. The Department should not seek to require that money appropriated by Congress for cleanup work be spent instead on bonds and insurance. If the Commenters' approach cannot be taken, billions of dollars in bonds would ultimately need to be set aside by the DOE-RL contractors to accommodate the financial assurance and liability requirements. This situation would likely severely restrict the DOE-RL's ability to procure any competitive bids for RCRA TSD activities on the Hanford Facility.

- **Cost and Management Efficiency**

This comment category encompasses comments supportive of the previously discussed Cost and Management Efficiency Initiative associated with development of the recent FFACO amendment (January 1994). This comment category also addresses ambiguous areas of the Draft Permit that could lead to increased implementation costs for both the Permittees and the regulators. The following comments are included in the Cost and

Management Efficiency category: (1) Permit Implementation, (2) Mapping and Marking of Underground Piping, (3) Facility-wide Groundwater Monitoring, and (4) Quality Assurance and Quality Control Provisions.

18.6 **Permit Implementation.** Permit implementation will be difficult to achieve for both the Permittees and the regulators if the 'hybrid' or 'umbrella' approach taken in the Draft Permit is pursued. This is particularly the case for Part II, General Facility Conditions, where the applicability of these conditions, with regards to TSD units subject to closure and to activities not associated with a specific TSD unit, is ambiguous. The Department has attempted to deal with this ambiguity by stating in the Draft Permit that the Part II conditions will be applied "where appropriate". This language, in many cases, leaves the potential scope of the Permit unbounded and unclear. It is anticipated that the ambiguity associated with an unbounded and unclear Permit scope could have profound adverse impacts on the management efficiency and cost effectiveness of both the Permittees and the regulators. To avoid this possibility, the scope of the Permit should be limited to the TSD units that meet the criteria for, and have received, final status (i.e., those TSD units contained in Part III).

In general, the Department should consider all Permit conditions in the context of the Cost and Management Efficiency Initiative (Comment Attachment 4) and focus on language that would facilitate streamlining Permit implementation. Particular emphasis should be placed on reducing ambiguity and eliminating functional redundancies and procedural duplication. For example, a number of conditions in the Draft Permit could lead to implementation actions that either are inconsistent with, or redundant to, the FFACO. Actions that could be taken to address these conditions, and others requiring clarification or deletion, are included in Attachment 1.

18.7 **Mapping and Marking of Underground Pipelines.** The Department is proposing in the Draft Permit the mapping of underground pipelines (including active, inactive, and abandoned pipelines that contain or contained dangerous waste subject to the provisions of WAC 173-303) on the facility and marking of those same pipelines outside of major fenced areas. The Commenters contend the excavation permit system and the labeling and warning systems now in place are sufficient to provide the needed protection of human health, safety, and the environment, and that no additional requirements should be imposed by the Draft Permit. Existing regulatory provisions allow for equivalent programs [e.g., WAC 173-303-640(4)(g), WAC 173-303-830 (Appendix 1, A.3 and B.6.A.)]. Generating new mapping and schematic systems within the next 3 years, and maintaining these systems for the life of the Permit, will be an ineffective and costly use of resources. The cost, based on a preliminary study, has been estimated to in excess of $10's of millions over a 30-year period (refer to the Preliminary Draft Mapping - Marking Estimate, Comment Attachment 7). The mapping and marking requirements of the Draft Permit are inconsistent with the Cost and Management Efficiency Initiative negotiated in association with the recent FFACO amendment (January 1994) and should be deleted from the Permit. At a minimum, a cost-efficiency evaluation should be conducted, prior to imposing the proposed mapping and marking provisions.

18.8 **Groundwater Monitoring.** Based on the Draft Permit, the Department appears to be requesting the DOE-RL to establish a Hanford Facility-wide groundwater monitoring program. Based on such a program, the bulk of the groundwater wells would come under final status, once the initial Permit is issued. The Commenters contend that only a groundwater monitoring program that applies to final status TSD units incorporated into Part III of the Permit is appropriate. Not all wells on the Hanford Site are, nor should be, RCRA monitoring wells.

A significant cost impact is expected if the Department intends this condition to include all wells not pertinent to the RCRA monitoring program related to final status TSD units (potentially as high as several $100's of millions). The Facility-wide groundwater monitoring requirements of the Draft Permit are inconsistent with the Cost and Management Efficiency Initiative negotiated in association with the FFACO amendment (January 1994) and should be deleted from the Permit. At a minimum, a cost-efficiency evaluation should be conducted, prior to imposing the proposed facility-wide groundwater monitoring provisions.

18.9 **Quality Assurance and Quality Control Provisions.** The Quality Assurance (QA) and Quality Control (QC) provisions are provided at a greater level of detail than is appropriate for a RCRA permit. Yet, in many cases, these provisions either deviate from, or do not reference, the existing, regulator-sanctioned, methods of work related to analytical laboratory, RCRA groundwater monitoring, and ongoing RCRA waste investigation activities. Reference should be made to various guidance documents for specific information/data being sought and suggested graphic means to present data/information.

The Commenters request that the QA/QC provisions of the Draft Permit be revised and abbreviated and focus on the use of the Data Quality Objective (DQO) process. The FFACO (in Sections 6.5 and 7.8) commits both the Department and the DOE-RL to using the DQO process to establish the technical requirements and supporting logic for important QA/QC activities.

In addition, the Commenters request that inconsistencies between the QA/QC provisions of the Draft Permit, DW Portion, and the Draft Permit, HSWA Portion, be reconciled. Inconsistencies currently present in the Draft Permit will contribute to increased costs and reduced management efficiency, with no added value to the protection of human health and the environment.

- **Waste Movement**

This comment category represents areas where the Commenters contend that Draft Permit conditions exceed, or depart from, waste movement regulations without sufficient justification. This category encompasses the following comments: (1) Receipt of Offsite Waste, and (2) Onsite Waste Movement.

18.10 **Receipt of Offsite Waste.** The Draft Permit contains conditions that portend to restrict the receipt of offsite waste at the Hanford Facility. There is no statutory or regulatory basis for restricting the receipt of dangerous waste from either offsite or foreign sources at a permitted TSD facility. Insufficient justification for this prohibition is provided in the Responsiveness Summary, DW Portion (response to comments on Condition II.N.1, pages 207-208).

The Commenters need to retain the management flexibility to receive waste from offsite or foreign generation locations. For example, shipments from DOE facilities in Richland may be considered "offsite".

In the past, offsite waste has been accepted when a specific Hanford Facility TSD unit is uniquely qualified to manage the type of waste in question. The TSD unit-specific permit application portions included in Part III of the Draft Permit have specifically requested the ability to accept offsite waste.

In addition, the Commenters have raised a question to the Department concerning noncontiguous portions of land owned and operated by the DOE-RL, such as the Federal

Building and the 3000 Area. It is expected that the DOE-RL and the contractors managing the waste generating activities located in these areas will request, and be granted, separate EPA/State identification numbers in accordance with WAC 173-303-060. Research waste already is generated routinely by DOE-sponsored research projects at PNL facilities that are not contiguous with the Hanford Facility. This condition would effectively ban waste generated at these locations from ever being managed on the Hanford Facility.

As noted in the previous discussion on Jurisdiction Over Radioactive Materials, the Department's authority is limited strictly by RCRA and the AEA to the nonradioactive components of mixed waste and does not extend to most "nuclear waste". Therefore, regulation of the receipt of nuclear waste from offsite does not fall under the Department's jurisdiction.

18-11 **Onsite Waste Movement.** The Department has proposed that waste moved from one point to another on the Hanford Facility should meet the same requirements imposed for shipping waste offsite. The Commenters contend there is no valid administrative, technical, or regulatory reason for imposing this type of requirement. The Commenters recognize that all waste moved, onsite or offsite, needs to be properly managed.

The Commenters do not agree that onsite waste movement requires a manifest or its equivalent under WAC 173-303-040, -180, and -370(1). The Hanford Facility is a single facility and waste usually is transported from the point of generation to TSD units along roads that are owned by the DOE-RL and are not public right-of-ways. The statement in the Responsiveness Summary, DW Portion (response to comments on Condition II.P., page 213), that the size of the facility somehow justifies treating it differently is unsupported by anything in the record. Many transfers will be for distances that are no greater than the distances that exist at other RCRA permitted facilities in the Northwest.

The Commenters recognize the importance of confirming knowledge of waste received from onsite sources. A program involving confirmation of "generator knowledge," which may include physical and/or visual confirmation for waste received from onsite sources, has been implemented as a best management practice. However, the Commenters do not agree that onsite waste movement should be subject to the confirmation requirements applying to the receipt of offsite waste [as specified in WAC 173-303-300(3)].

In summary, the Commenters recognize the need to have procedures to ensure that waste moved onsite is properly managed. However, the strict application of offsite manifesting and waste verification requirements to onsite waste movement will provide no added protection to human health and the environment. Such requirements will, however, create additional workload, increase costs, result in delays for administrative processing of paperwork, and take away from the ability of laboratories to perform needed analysis to support cleanup activities.

HANFORD SITE COMMENT ATTACHMENTS

As previously noted, condition-specific comments, keyed to each of the previously discussed comments, are provided in Attachment 1. These condition-specific comments are organized using the same heading, page, and line numbering system as the Draft Permit, and address permit conditions in sequence. Each condition-specific comment is divided into three parts: (1) Condition-specific (CS) Comment, a statement of the

CS comment; (2) Requested Action, the action requested to be taken by the regulators to satisfactorily address the CS comment; and (3) Justification, a discussion of the rationale on which the CS comment and requested action is based. All three parts should be considered when one CS comment cross-references another. Other supporting information is provided in the Attachments, listed as follows:

1 Condition-Specific Comments, Requested Actions, and Justifications

2 In the Matter of: Chemical Waste Management, Inc., RCRA Appeal No. 87-12 (May 27, 1988)

3 Hanford Summit, Regulatory Session, September 1993

4 Cost and Management Efficiency Initiative, January 1994

5 United Stated Department of Energy Contract with Westinghouse Hanford Company

6 United States Department of Energy Contract with Pacific Northwest Laboratory

7 Preliminary Draft Mapping - Marking Estimate, February 15, 1994

8 Hanford Facility Site Legal Description

9 Texaco Refining and Marketing Puget Sound Plant Permit

10 Shell Oil Company Permit

11 Chemical Processors, Inc. (Georgetown Facility) Permit

12 Envirosafe Services of Idaho, Inc. Permit

13 Chem-Security Systems, Inc. Permit

14 Burlington Environmental, Inc. (Georgetown Facility) Permit

15 Burlington Environmental, Inc. (Washougal Facility) Permit

16 Burlington Environmental, Inc. (Pier 91 Facility) Permit

17 Van Waters & Rogers, Inc. (Kent Facility) Permit

18 Page Changes, Hanford Facility Contingency Plan, January 5, 1994

19 Revision 2A Page Changes for the 616 Nonradioactive Dangerous Waste Storage Facility Permit Application

20 Revision 2A Page Changes for the 305-B Storage Unit Permit Application

21 Draft HSWA Portion of RCRA Permit (with line numbers for comment reference).

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In Attachment 1, the Commenters in some cases have recommended that an entire condition be deleted based on the justification provided. Because the Department and the Agency might respond by deciding to retain the full condition, or address some but not all of the Commenters' concerns, the Commenters also have provided specific, recommended language to correct other problems in the condition. Regardless of how the Department and the Agency address the Commenters' principal or alternative condition-specific comments, the Commenters do not waive their objection to the inclusion of the full condition or any overbroad portion thereof in the Draft Permit.

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Table 1. Second Draft of the Resource Conservation and Recovery Act Permit for the Treatment, Storage, and Disposal of Dangerous Waste for the Hanford Facility

COMMENTS, REQUESTED ACTIONS, AND AFFECTED AREA OF DRAFT PERMIT
(sheet 1 of 2)

Comment Category/Key Comment	Summary of Requested Action	Affected Area of Draft Permit*
Regulatory Interpretation		
• Permitting Approach	Limit Permit scope to treatment, storage, and/or disposal units that meet the criteria for receiving final status; delete interim status closure plans from the Permit.	TOC(3), I (4-6), LOA (7,8), DEF (10,11), I.A.1.a, I.A.1.b, I.A.3, I.E.11, I.E.13, II.D, II.D.1, II.D.2, II.D.4, II.J.1, II.J.2, V.1, V.2, V.3, DEF(HSWA)
• Regulatory Agency Authority	Use omnibus authority only where it can be shown to be justified based on the need to protect human health and the environment.	I (4), DEF (11), I.A.1.a, I.A.4, I.C.3.b, I.C.3.c, I.E.2, I.E.6, I.E.8, I.E.9, I.E.10, I.E.12.iii, I.E.14, I.E.15, I.E.16, I.E.22, II.A.1, II.B.1, II.C.2, II.C.4, II.E.4, II.I.1.a, II.I.1.b, II.I.1.c, II.I.1.d, II.I.1.f, II.I.1.g, II.I.1.h, II.I.1.i, II.I.1.j, II.I.1.k, II.I.1.l, II.I.1.p, II.I.1.q, II.L.3, II.O.2, II.R.2, II.R.3, II.T, II.W.1, II.W.2, II.X.1, III.2.B.m, III.2.B.o, I.I.1 (HSWA), I.M.1 (HSWA), I.T.2 (HSWA), II.C.1 (HSWA), II.D. (HSWA), III.B.1.a (HSWA), Attachment A (HSWA)
• Jurisdiction Over Radioactive Materials	Acknowledge that the U.S. Department of Energy must retain jurisdiction over radioactive materials in accordance with the Atomic Energy Act of 1954 (42 USC 2011 et seq.).	DEF (9-10), RS (70-71)
• Permittee Responsibilities	Accurately portray the distinction between Permittee responsibilities.	TP (1), I (4), DEF (10,11), I.A.2, RS (27-28; 94-95; 102-103)
• Financial Assurance and Liability Provisions	Consider DOE-RL contracts with their contractors in combination with the indemnification provisions of the Price Anderson Amendments Act of 1988 (42 USC 2010 et seq.) as meeting financial assurance and liability provisions.	II.H, RS (181-182)

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Table 1. Second Draft of the Resource Conservation and Recovery Act Permit for the Treatment, Storage, and Disposal of Dangerous Waste for the Hanford Facility

COMMENTS, REQUESTED ACTIONS, AND AFFECTED AREA OF DRAFT PERMIT

(sheet 2 of 2)

Comment Category/Key Comment	Summary of Requested Action	Affected Area of Draft Permit*
Cost and Management Efficiency		
• Permit Implementation	Redraft Permit conditions to clarify applicability, or delete.	TP (1), I (4,5), LOA (7), DEF (9-11), I.A.1.a, I.C.3.a, I.D.2, I.E.9, I.E.12.iii, I.E.21, I.E.21.a, I.E.21.b, I.E.22, I.G, II.A.3, II.A.4, II.B.1, II.C.1, II.C.2, II.C.4, II.H.1, II.H.2, II.I.1, II.I.1.n, II.I.1.o, II.I.2, II.J.3, II.K, II.K.1, II.L.2.b, II.L.2.c, II.N.2, II.O.1.b, II.W.1, II.X.1, II.X.2, III.1.A, III.1.B, III.1.B.t, III.2.A, III.2.B.p, III.2.B.u, III.2.B, V.1.B.f, V.1.B.m, V.1.B.r, V.1.B.u, V.2.B.d, V.3.B.d, DEF (HSWA), I.C.3 (HSWA), I.L.5 (HSWA), I.V.1 (HSWA), I.V. 2 (HSWA), II.C.1 (HSWA), II.D (HSWA), III.A.1 (HSWA), III.A.2.a (HSWA), III.A.2.f.(vi) (HSWA), III.C-J (HSWA), Attachments A-E (HSWA)
• Mapping and Marking of Underground Piping	Delete Condition; if not deleted, conduct a cost-efficiency evaluation of proposed mapping and marking provisions.	II.U, II.U.1, II.U.2, II.U.3, II.U.4, II.V
• Groundwater Monitoring	Limit groundwater monitoring to final status TSD units; conduct a cost-efficiency evaluation of TSD unit groundwater monitoring provisions applicable to final status TSD units.	II.F, II.F.2.a, II.F.2.b, II.F.2.c, II.F.2.d, II.F.3.a, II.F.3.b, Attachment A (HSWA)
• Quality Assurance and Quality Control Provisions	Decrease the level of detail for quality assurance and quality control conditions and focus content on the use of the Data Quality Objectives process.	II.E, II.E.1, II.E.2, II.E.2.b, II.E.2.b.iii, II.E.2.b.vi, II.E.2.b.xii, II.E.2.c.ii, II.E.3, II.E.3.a.iii, II.E.3.b, II.E.3.b.i, II.E.3.c, II.E.3.c.viii, II.E.4, II.E.5, Attachment A (HSWA), Attachment B (HSWA)
Waste Movement		
• Receipt of Offsite Waste	Remove conditions restricting the receipt of offsite waste at the Hanford Facility.	II.D.3.(vii), II.N.1, III.1.B.r, III.2.B.a
• Onsite Waste Movement	Remove conditions imposing offsite waste movement requirements on the movement of waste on the Hanford Facility.	I.E.17.b, I.E.18, II.Q.1, II.Q.2, III.1.B.e-q, III.2.B.a, III.2.B.b-f

KEY

* Indicates Dangerous Waste Portion, except where specified.

TP = Title Page TOC = Table of Contents I = Introduction DEF = Definitions LOA = List of Attachments HSWA = Hazardous and Dangerous Waste Amendments Portion

(n) = Page Number RS = Initial Responsiveness Summary and Revised Fact Sheet for Dangerous Waste Portion

HANFORD SITE COMMENTS ON THE SECOND DRAFT OF THE RESOURCE CONSERVATION AND RECOVERY ACT PERMIT FOR THE TREATMENT, STORAGE, AND DISPOSAL OF DANGEROUS WASTE FOR THE HANFORD FACILITY

ATTACHMENT 1

CONDITION-SPECIFIC COMMENTS, REQUESTED ACTIONS, AND JUSTIFICATIONS

9413279.1710

18.12 **Condition:** Title Page **Key Comment*:** Permittee Responsibilities
Page, lines: Page 1, lines 24-35 Permit Implementation
CS Comment:** The Draft Permit identifies as Permittees the DOE-RL (Owner/Operator), WHC (Co-operator), and PNL (Co-operator). The definition of "Permittees" and the delineation of responsibilities in the Draft Permit would properly hold WHC and PNL responsible for all activities subject to the scope of the Permit within their respective areas of control. This language distinguishes the responsibilities of the Permittees and should not be confused by inaccuracies in the Responsiveness Summary, DW Portion (Title Page, pages 94-95).

Requested Action: Revise language in the Department's Responsiveness Summary, DW Portion, to reflect the limited operational responsibilities of the contractors.

Justification: In the Responsiveness Summary, DW Portion (General Comment 6, pages 27-28; Title Page Comment, pages 94-95; and Definitions Comments, pages 102-103), the Department has misidentified WHC and PNL as "operators" and has indicated that the standard from RCRA and Chapter 70.105 RCW is that "persons responsible for the support operation of a facility can be held liable as operators." The Commenters are not aware that the term "operator" is defined in either RCRA or the state statute, Chapter 70.105 RCW. However, the term is expressly (and identically) defined in the implementing regulations for those statutes, and it is not the definition used by the Department.

In 40 CFR 260.10 and WAC 173-303-040, "operator" is defined as the person responsible for the overall operation of a facility. WHC and PNL have certain operational responsibilities at the Hanford Facility, such as waste analysis, waste handling, monitoring, container labeling, personnel training, and recordkeeping. Neither WHC nor PNL contractually are responsible for the overall operation of the Hanford Facility. The DOE-RL, the Department, and the Agency previously have agreed in the FFACO that the United States through the executive agency of the DOE-RL owns and operates the Hanford Facility.

The Federal Acquisition Regulation (48 CFR Chapter 1) further defines and limits contractor management authority and responsibility. The contractors do not have unilateral authority to make controlling decisions that affect the overall management of the Hanford Facility. The contractors are without contractual or legal authority to set, control, provide or require the funding actions, budgetary actions, and functions associated with overall facility management and control. The Department's position in the Responsiveness Summary, DW Portion (General Comment 6, pages 27-28; Title Page Comment, pages 94-95; and Definitions Comments, pages 103-104), is contrary to the respective contracts between the DOE-RL and the contractor Permittees (refer to the WHC and the PNL contracts with the DOE-RL in Comment Attachments 5 and 6, respectively).

The Department's position would further result in inaccuracies and cost and management inefficiencies such as those addressed in the comments on Draft Permit Condition II.H., DW Portion (page 36, lines 29-33) pertaining to financial assurances and liability protection. These inefficiencies are exactly the problem the Department agreed to address in recent FFACO negotiations. In these negotiations,

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*Refer to Table 1 for listing of key comments.

**CS - Condition-specific

the DOE-RL, the Department, and the Agency agreed to a Cost and Management Efficiency Initiative. In Commitment 6 (Regulatory Reform) of this Initiative (refer to Comment Attachment 4), the parties agreed that many inefficiencies in Hanford Site operations are driven by overly conservative interpretations of environmental regulations and by functional redundancies and procedural duplication in implementation of these regulations.

It was concluded that these conditions result in management and operating practices that reinforce protectionism, discourage good management practices, and delay cleanup progress. The discussion in the Responsiveness Summary, DW Portion, reflects the type of overly conservative interpretation that is addressed in the Cost and Management Efficiency Initiative.

18.13 **Condition:** Table of Contents **Key Comment:** Permitting Approach
Page, lines: Page 3, lines 14-20
CS Comment: The Department lacks regulatory authority for directly placing an interim status unit into a final status Permit except by the provision of WAC 173-303-805(8)(a) and WAC 173-303-805(8)(c).

Requested Action: Delete reference to Part V in the Table of Contents.

Justification: Refer to comment on Introduction, DW Portion (page 6, lines 16-28).

18.14 **Condition:** Introduction **Key Comment:** Permittee Responsibilities
Page, lines: Page 4, lines 11-16
CS Comment: The Draft Permit identifies as Permittees the DOE-RL (Owner/Operator), WHC (Co-operator), and PNL (Co-operator). The definition of "Permittees" and the delineation of responsibilities in the Draft Permit would properly hold WHC and PNL responsible for all activities subject to the scope of the Permit within their respective areas of control. This language distinguishes the responsibilities of the Permittees and should not be confused by inaccuracies in the Responsiveness Summary, DW Portion (Title Page, pages 94-95).

Requested Action: Revise language in the Department's Responsiveness Summary, DW Portion (General Comment 6, pages 27-28; Title Page Comment, pages 94-95; and Definitions Comment, pages 102-103), to reflect the limited operational responsibilities of the contractors.

Justification: Refer to comments on Title Page, DW Portion (page 1, lines 24-35).

18.15 **Condition:** Introduction **Key Comment:** Permittee Responsibilities
Page, lines: Page 4, lines 13-15
CS Comment: Improper punctuation in the Draft Permit, DW Portion, has resulted in an incomplete identification of the Permittees.

Requested Action: Change the semicolon to "(" in line 13 and add another ")" in line 14 after "(co-operator)" and before "(hereinafter called the Permittees)".

Justification: The requested revision will clarify the identification of the Permittees.

18.16 **Condition:** Introduction **Key Comment:** Permitting Approach
Page, lines: Page 4, lines 18-25 Permit Implementation
CS Comment: The Department's approach for issuance of the Permit has changed since the time of issuance of the initial draft permit. The Permit will now consist of two separate portions: (1) a DW portion addressing TSD activities and (2) a HSWA portion addressing corrective action activities. There are terms used in both portions for which the meaning differs depending upon context. For example, the term "facility" means one thing when applied to TSD activities and means another when applied to corrective action activities. Clarification should be extended to include consideration for the contextual meaning of terms used in each portion.

Requested Action: Insert language to clarify that any term used within the DW Portion has the standard meaning as the term is applied to TSD activities and any term used within the HSWA Portion has the standard meaning as the term is applied to corrective action activities, unless explicitly specified as otherwise. Such language could be a rewording of the final statement of the second paragraph to the Introduction to read as follows:

> Use of any term within the Dangerous Waste portion of the Permit shall have the standard meaning as applied to TSD activities, while use of any term within the HSWA Portion shall have the standard meaning as applied to corrective action activities. Such meanings shall prevail except where explicitly stated otherwise.

Justification: Because the Permit is now being issued as two separate portions, with three Permittees listed in the DW Portion, and only one Permittee listed in the HSWA Portion, the contextual meaning of certain terms becomes important. To avoid misunderstanding, the Permit should clarify that identical words could differ in meaning when used within the separate portions. For example, a distinction in the meaning of "facility" for each portion is necessary to accurately reflect the meaning provided in WAC 173-303-040. Refer to comment on the definition of "Facility," DW Portion (Definitions, Page 10, lines 18-23).

18.17 **Condition:** Introduction **Key Comment:** Regulatory Agency Authority
Page, lines: Page 4, lines 34-36, line 38
CS Comment: The wording extends the Department's authority beyond an appropriate level of control.

Requested Action: On page 4, lines 34-36, delete the last sentence of this paragraph.

On page 4, line 38, delete the words, "and Federal".

Justification: The Department does not have the authority to enforce federal regulations.

18.18 **Condition:** Introduction **Key Comment:** Permit Implementation
Page, lines: Page 4, line 39
CS Comment: Qualify the nature of the required modification.

Requested Action: Add the words, "or as specified in subsequent modifications".

Justification: WAC 173-303-806(3) indicates that "any other changes to the final facility permit will be in accordance with the permit modification requirements of WAC 173-303-830." WAC 173-303-830 contemplates that a permit will be modified to implement new statutory or regulatory requirements. Refer to WAC 173-303-830(3)(a)(iii) and Appendix 1 of that section, paragraphs B.1.a. and B.2.a. Further, WAC 173-303-830(3) states, "when a permit is modified, only the conditions subject to modification are reopened." Therefore, if new regulations were promulgated, only the modified portions of the Permit would be subject to those conditions.

18.19 **Condition:** Introduction **Key Comment:** Regulatory Agency Authority
Page, lines: Page 4, line 42
CS Comment: This wording extends the Department's authority beyond an appropriate level of control.

Requested Action: Delete the words, "or other laws".

Justification: In their Responsiveness Summary, DW Portion (page 81), the Department responded to Comment 5.0 by stating "the relationship between the various arms of the State government is not part of this Permit." Applicable laws should only be laws pertaining to the TSD of dangerous waste. The Department does not have the authority to enforce "other laws" through the DW Portion of the Permit.

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18.20 **Condition:** Introduction **Key Comment:** Permit Implementation
Page, lines: Page 5, lines 8-19
CS Comment: A stay of decision should apply to all affected Permittees.

Requested Action: Delete the sentence at lines 13-17 and substitute the following:

> In the event a decision of the Department is challenged by the DOE-RL under an applicable dispute resolution procedure of the FFACO or by any Permittee under WAC 173-303-845, the Department shall stay the decision as it pertains to all affected Permittees in accordance with the terms of the stay, if any, it grants to any Permittee.

Justification: The DOE-RL, as a Permittee, has permit appeal rights under WAC 173-303-845. If the Department should grant a stay of a Department decision to any Permittee, the decision should be stayed as it pertains to all affected Permittees. As the DOE-RL contractors are managing DOE-RL TSD units and DOE-RL waste, it is impractical to stay a decision as to one applicable Permittee and not to all.

18.21 **Condition:** Introduction **Key Comment:** Permitting Approach
Page/Lines: Page 5, line 26 Permit Implementation
CS Comment: The descriptive text is confusing as to the scope of the Permit.

Requested Action: Add a sentence to this paragraph to read as follows:

> The permit conditions and attachments incorporated into Part I of the Permit are enforceable conditions only at final status treatment, storage, or disposal (TSD) units on the Hanford Facility.

Justification: The Permit must be explicit in the scope of coverage. Refer to comments on Introduction, DW Portion (page 6, lines 16-28) and Definitions, DW Portion (page 10, lines 18-23).

18.
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Condition: Introduction **Key Comment:** Permitting Approach
Page, lines: Page 5, lines 28-35 Permit Implementation
CS Comment: The final statement of this paragraph appears to expand regulatory authority to non-TSD activities and to activities that should continue under interim status at the time of Permit issuance.

Requested Action: Delete the final statement in this paragraph. Alternatively, reword the statement as follows:

> As TSD units are incorporated into the Permit, the General Facility Conditions (e.g., spill reporting, training, and contingency planning) will become applicable to activities directly associated with these TSD units in lieu of interim status regulations.

Justification: The only provisions in the Dangerous Waste Regulations for dangerous waste management activities that are not in direct support of a distinct TSD unit are provisions for generators and transporters. Activities undertaken that are not directly associated with TSD units do not require TSD permitting; therefore, the Permit should not make reference to such activities. Also, activities associated with TSD units that do not qualify for final status at this time cannot be addressed in the initial Permit, regardless of whether or not these activities are identical to those at final status TSD units. The Hanford Facility must be permitted as stated in 40 CFR 270.1(c)(4) pursuant to the FFACO. Refer to comment on the definition of "Facility", DW Portion (Definitions, page 10, lines 18-23).

The Part II permit conditions are specifically designed by the Department to require certain actions by the Permittees under this Permit. It is confusing to portray these actions as a "[combination of] typical dangerous waste Permit Conditions [and] those Conditions intended to address issues specific to the Hanford Facility."

Further, the term "where appropriate" is used inappropriately in two locations. In the first, at line 30, Part II conditions are made applicable to final status units "where appropriate". This statement is in conflict with the statement in the Introduction, DW Portion (page 4, lines 27-28). "The Permittees shall comply with all terms and Conditions set forth in this Permit ..." The Permit must be explicit in the scope of coverage; this scope must be limited to the TSD units that meet the criteria for receiving final status. The scope of a dangerous waste permit issued under WAC 173-303-806(1) is to regulate the activities at "final status TSD facilities".

At lines 31-35, the Draft Permit states "Where appropriate, the General Facility Conditions also address dangerous waste management activities which may not be directly associated with distinct treatment, storage, and disposal (TSD) units or which may be associated with many TSD units ..." This statement is improper and should be deleted. WAC 173-303-280 specifies *General requirements for dangerous waste management facilities*, which are then limited to "... *those which store, treat or dispose of dangerous wastes and which must be permitted.*" In the Draft Permit, the Department has inappropriately characterized the entire Hanford Site as a dangerous waste management facility, and thus attempts to justify applying permit

conditions to parts of the Hanford Site that are not involved in the TSD of dangerous waste.

In a limited number of cases, the Commenters have agreed to perform certain activities, such as inspections, at locations not part of final status TSD units. Where these conditions apply to such locations, the condition must be specific as to what locations are intended to be covered.

18.
23

Condition: Introduction **Key Comment:** Permitting Approach
Page, lines: Page 6, lines 16-28
CS Comment: The Department lacks regulatory authority for directly placing an interim status unit into a final status Permit except by the provision of WAC 173-303-805(8)(c). This provision identifies "final administrative disposition of a final facility permit application" pursuant to WAC 173-303-806 as the appropriate vehicle for attaining final status. The permit application requirements of WAC 173-303-806 include the submittal of a Part B permit application. According to WAC 173-303-840(1)(a), the Department cannot begin processing a permit until the applicant has fully complied with the application requirements for the permit. The TSD units addressed in Part V of the Draft Permit have not gone through the final status permitting process and, consequently, cannot be addressed by final status permit conditions.

Requested Action: Eliminate Part V from the Draft Permit.

Justification: As stated in the Hanford Facility Dangerous Waste Permit Application, General Information, Revision 1, final status is being sought for only some of the Hanford Facility TSD units, while others will be closed under interim status. The incorporation of TSD units closing under interim status into a final status permit is without regulatory basis. The Department has acknowledged by signing the FFACO that 40 CFR 270.1(c)(4) is the appropriate mechanism for permitting of the Hanford Facility. The FFACO specifies in the Action Plan at Paragraph 6.2 that the Department and the Agency will issue the initial Permit for less than the entire facility. This Permit will grow into a single permit for the entire Hanford Facility; this procedure is logical and appropriate, and is the permitting procedure that must be followed here.

As stated in the FFACO, those TSD units for which final status is not sought will be closed in accordance with the FFACO under interim status and a separate closure plan will be approved and issued outside of the final status permit. The RCRA permitting system is specifically structured such that TSD units unable to meet final status requirements must be closed under interim status. At this time there are only two TSD units identified in Part III of the Draft Permit that have had the necessary information submitted for issuance of a "final facility permit". The scope of this Permit, in accordance with the Department's Dangerous Waste Regulations, must be limited to these TSD units.

The Commenters disagree with the Department's statement made in the Responsiveness Summary, DW Portion (General Comment 71, page 72), that the FFACO does not provide for closing the 183-H Solar Evaporation Basins under interim status. The FFACO Action Plan, in Sections 2.4 and 3.2, specifically notes that several TSD units, including the closure plans identified in Part V of this Draft Permit, will not receive a permit for operation, but will be closed under interim status. The Commenters contend that the Department has not given a valid argument for

incorporating interim status units into the Draft Permit. The Department appears to have reached the following conclusion in the Responsiveness Summary, DW Portion:

> "Because the FFACO Action Plan Section 5.3 requires that all TSD closures be in accordance with WAC 173-303-610 and because WAC 173-303-610 requires submittals of closure plans with Part B permit applications, then interim status closures must be incorporated into the final status Permit."

The Commenters disagree with the logic of this statement. Neither the Dangerous Waste Regulations nor the FFACO require permitting for TSD units closing under interim status. WAC 173-303-400(3), which contains the interim status standards, references federal regulations as applicable for interim status closures. However, in accordance with the FFACO, the DOE-RL has agreed to by-pass the closure standards in WAC 173-303-400(3) in favor of the more stringent standards contained in WAC 173-303-610. The FFACO does not require or imply that interim status closures be included in the Permit. On the contrary, the FFACO requires closure in accordance with the closure standards contained in WAC 173-303-610, <u>irrespective of permit status</u>. This language clearly implies that closure can, and is expected to, occur under interim status.

The Commenters disagree with the Department's statement made in the Responsiveness Summary, DW Portion (General Comment 72, page 73), that the permitting process is more efficient if all units are addressed in one document. This approach already has created delays of over 2 years in the commencement of closure for some TSD units, while the Department has been in the process of 'approving' the closure plans through inclusion in the Draft Permit. Additionally, applying the Permit modification procedures to interim status units will effectively defeat DOE-RL's ability to manage the Hanford Facility through contractors. As an example, the Environmental Restoration Contractor is scheduled to take over closure responsibility for certain interim status TSD units on July 1, 1994. This schedule will be difficult to meet if the interim status TSD units are included in the Permit.

Handling interim status closure plan review and approval independently of the final status permit process will allow for more efficient paperwork for TSD unit closures and will prevent the final status Permit from becoming unduly large and complex. Also, this approach will allow changes to closure plans to be processed in a more reasonable and expeditious manner without having to formally address the permit modification requirements of WAC 173-303-830. Using the FFACO approach for interim status closures will enhance management efficiency and cost effectiveness of cleanup. Maintaining the separation of closure plans for interim status TSD units also will avoid the ambiguity that would result from imposing final status provisions of the Permit on an interim status TSD unit.

18.
24 **Condition:** List of Attachments **Key Comment:** Permitting Approach
Page, lines: Page 7, line 19 Permit Implementation
CS Comment: The title of Attachment 2 is misleading and the legal description is erroneous. Attachment 2 contains general information required by WAC 173-303-806(4)(a). The Commenters request that the Department clarify the purpose of Attachment 2 to avoid confusion concerning the meaning of "Facility" and correct the content of Attachment 2.

Requested Action: Change the phrase "Facility Description" to "Hanford Facility Site Legal Description" in the title for Attachment 2, DW Portion. Because of errors in the Department's Facility description, the Commenters request that Attachment 2,

DW Portion, be replaced by the Commenters' proposed revision of Attachment 2, Hanford Facility Site Legal Description, Comment Attachment 8.

Justification: The "Facility" is the property described in WAC 173-303-040, whereas Attachment 2 should provide the "legal boundaries of the TSD facility site" as required by WAC 173-303-806(4)(a)(xviii)(G) as part of the general information requirements of the Part B submittal process. Attachment 2 should not be interpreted as superseding the definition for "Facility" given in WAC 173-303-040. Attachment 2 instead should provide information concerning the "TSD facility site." Refer to the comment on the definition of "Facility," DW Portion (Definitions, page 10, lines 18-23).

18.
25

Condition: List of Attachments **Key Comment:** Permitting Approach
Page, lines: Page 7, lines 43-49
page 8, lines 1-16
CS Comment: The Department lacks regulatory authority to place an interim status unit into a final status permit except by the provision of WAC 173-303-805(8)(a), which identifies "final administrative disposition of a final facility permit application" pursuant to WAC 173-303-806 as the appropriate vehicle for attaining final status. The permit application requirements of WAC 173-303-806 include the submittal of a Part B permit application. According to WAC 173-303-840(1)(a), the Department cannot begin processing a permit until the applicant has fully complied with the application requirements for the permit. The TSD units addressed in Part V of the Draft Permit have not gone through the final status permitting process and consequently cannot be addressed by final status permit conditions.

Requested Action: Delete Attachments 11, 12, 13, 14, 15, 16, and 17.

Justification: Refer to comment on Introduction, DW Portion (page 6, lines 16-28).

18.
26

Condition: Definitions **Key Comment:** Permit Implementation
Page, lines: Pages 9-11
CS Comment: The Commenters encourage the Department to reconsider the extent of their efforts to issue a Permit that is consistent with the FFACO. The Department has stated that definitions in the Draft Permit must supersede WAC 173-303, and that definitions in WAC 173-303 must supersede the FFACO.

Requested Action: Delete all definitions from the Draft Permit that are not consistent with the definitions in WAC 173-303 and the FFACO for the same term. Delete all language that establishes a supersedure for definitions.

Instead simply state:

For purposes of this Permit, the following definitions shall apply:

Justification: The requested language will minimize the potential for conflict and confusion and is supportive of the Department's position that the Permit be consistent with the FFACO. The Permit also should be consistent with WAC 173-303. The requested language is essentially identical to language in permits issued by EPA Region 10. The Commenters contend it is unnecessary, and even detrimental, to establish supersedence in the Permit. The definitions of the Permit, WAC 173-303, and the FFACO always should augment each other, rather than introduce the potential for contradiction. The FFACO represents a consensus among the Department, the

Agency, and the DOE-RL for the common good of the three parties. Included in the FFACO is a list of defined terms. The FFACO acknowledges the applicability of definitions provided in Chapter 70.105 RCW and WAC 173-303. The terms defined in the FFACO provide clarification of meaning for the benefit of the parties. The Department has not indicated in any other permit reviewed by the Commenters that the terms defined in the permit "shall supersede any definition of the same term in WAC 173-303-040."

18, 27

Condition: Definitions **Key Comment:** Jurisdiction Over Radioactive Materials
Page, lines: Page 9, lines 45-49; page 10, lines 1-2
CS Comment: Dangerous waste does not include the source, special nuclear, and byproduct material components of mixed waste.

Requested Action: Add the words "the hazardous component of" before the word "mixed." Add the following sentence to the end of the definition:

> Dangerous waste does not include the source, special nuclear, and byproduct material components of radioactive mixed waste.

Alternatively, incorporate a definition for mixed waste from either the FFACO or WAC 173-303-040.

Justification: In the Responsiveness Summary, DW Portion (General Comment 69, pages 70-71), the Department is attempting to assert regulatory authority over the radioactive source, special nuclear, and byproduct material components of mixed waste. The Department's position is in conflict with the requirements of federal law as defined by the AEA and further supported by legal decisions, Agency policy, and other responsiveness summaries issued by the Department.

The inappropriateness of any state effort to assert authority over radioactive materials is dictated by the exclusion of source, special nuclear, and byproduct materials from the definition of solid waste set forth at RCRA § 1004; the overriding and preemptive AEA; RCRA § 1006(a) (the inconsistency provision); DOE's Byproduct Rule (10 CFR 962); the EPA Notice Regarding State Authorization (51 FR 24504, July 3, 1986); the EPA Notice on Clarification of Interim Status Qualification Requirements for the Hazardous Components of Radioactive Mixed Waste (53 FR 37045, September 23, 1988); the State's recognition of possible preemption in its HWMA, RCW 70.105.109; the limitations of the waiver of sovereign immunity in Section 6001 of RCRA to materials falling within the RCRA definition of solid waste (thereby excluding source, special nuclear, and byproduct materials); and the FFACO.

This subject was evaluated previously and formally addressed in the negotiations to the FFACO. The resolution incorporated into the FFACO recognizes the distinction between hazardous waste subject to the RCRA and radioactive waste subject to the AEA.

The Commenters contend that the FFACO and federal law must be followed. By federal law, the DOE must retain jurisdiction over the source, special nuclear, and byproduct material components of mixed waste in accordance with the AEA. However, the DOE-RL intends to work with the Department and the Agency in a cooperative manner in the development of any future regulatory programs that apply to radionuclides.

Condition: Definitions **Key Comment:** Permit Implementation
Page, lines: Page 10, lines 4-5
18.28 **CS Comment:** The FFACO definition for "days" should be used.

Requested Action: Delete the definition for "days". Add the FFACO definition for same, either directly or by reference.

Justification: This term is defined in Article V of the FFACO. The Department has indicated a desire for consistency with the FFACO, which is a binding agreement for the DOE-RL, the Agency, and the Department. The Commenters contend that it is reasonable to use the FFACO definition for "days".

18.29

Condition: Definitions **Key Comment:** Permitting Approach
Page, lines: Page 10, lines 18-23 Permit Implementation
CS Comment: Clarify the definition of "facility" to reflect the regulatory intent of WAC 173-303-040. In the regulation, the term "facility" used in connection with TSD operations is limited to contiguous property used for dangerous waste management. The Department must limit their definition of "facility" in the Draft Permit, DW Portion, to its meaning with respect to TSD operations as specified in WAC 173-303-040.

Requested Action: Define "facility" in the Permit as follows:

> The term 'facility' means all contiguous land, and structures, other appurtenances, and improvements on the land used for recycling, reusing, reclaiming, transferring, storing, treating, or disposing of dangerous waste. For the purposes of the DW Portion of the Permit, the Hanford Facility consists of those treatment, storage, and/or disposal units that have been incorporated into Part III.
>
> Attachment 2 of this Permit sets forth a physical description of the land that contains the TSD units subject to this Permit. Attachment 2 also identifies the overall legal boundaries of the Hanford Facility site.

Justification: The requested language is paraphrased from, and more accurately reflects, the intent of WAC 173-303-040. WAC 173-303-040 is clear concerning the meaning of the word 'facility'. A facility consists of various TSD units and is limited to "contiguous land...used for..." dangerous waste management. WAC 173-303-040 further clarifies this meaning by explaining how the term "facility" is extended for corrective action purposes to include all contiguous property under the control of the TSD facility owner or operator. The Draft Permit makes no such distinction. Instead, the Draft Permit definition identifies Attachment 2, DW Portion, as the description of the facility. Attachment 2, DW Portion, is the overall "legal description of the TSD facility site" as required by WAC 173-303-806(4)(a) (xviii)(G) as part of the general information requirements of the Part B submittal process. Attachment 2, DW Portion, provides a description of the land that contains the facility. Because of errors in the Department's facility description, the Commenters request that Attachment 2, DW Portion, be replaced by the Commenters' proposed revision of Attachment 2, Hanford Facility Site Legal Description, Comment Attachment 8. The Department's Attachment 2, DW Portion, is erroneous because it contains non-contiguous lands such as the lands north and east of the Columbia River, lands owned by parties other than the Commenters, such as the Midway Substation and Community, which is owned by the Bonneville Power Administration (an entity that the Agency has determined to be independent from the

DOE-RL) (refer to February 9, 1994 Agency Response to Comments at Comment #5), and fails to exclude other lands that are used by others. The failure to exclude those noncontiguous lands and lands owned or used by others creates confusion and ambiguity as to whether any of the DW Permit conditions apply to activities in these areas. To clarify that none of the DW Permit conditions apply to activities in these land areas, the Commenters have provided a corrected Hanford Facility Site Legal Description (Comment Attachment 8) that contains exclusions for land areas not used by or under control of the Commenters.

In the Responsiveness Summary, DW Portion (General Comment 49, pages 56-57), the Department indicates that the Dangerous Waste Regulations do not provide the authority for the permitting approach that is necessary for the Hanford Facility and that the Department is issuing the Permit based upon the authority of 40 CFR 270.1(c)(4) as agreed to in the FFACO. The Department has no state equivalent to, and therefore must rely upon, 40 CFR 270.1(c)(4) for authority to permit the Hanford Facility. Permitting on a unit-by-unit basis is clearly provided for by 40 CFR 270.1(c)(4), stated as follows:

> "EPA may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility."

Thus, the Permit cannot incorporate an "umbrella approach" and remain consistent with the FFACO.

In the Responsiveness Summary, DW Portion (General Comment 49, pages 56-57), the Department states that "this permitting approach is consistent with the provisions of the regulations which address general facility standards." The Department then identifies examples of standards for security, inspection, and training with facility-wide impacts. The Commenters do not disagree with the concept of facility-wide requirements. However, the Commenters can agree only to the extent that Permit coverage is limited to TSD activities that are directly associated with TSD units that have been properly incorporated into the Permit. Hence, the initial final status Permit should contain facility-wide conditions that are applicable only to activities directly associated with TSD units permitted according to 40 CFR 270.1(c)(4). As TSD units are added to the final status Permit, these facility-wide conditions will become applicable to these TSD units in lieu of interim status regulations. In the meantime, facility-wide permit conditions cannot be applied to any areas within the facility site that are not part of the final status Permit. Such areas must instead be managed in accordance with interim status regulations and/or other applicable regulations. The Commenters again encourage the Department to recognize the key role of 40 CFR 270.1(c)(4) in the permitting of the Hanford Facility.

The Department also states in the Responsiveness Summary, DW Portion (General Comment 49, pages 56-57) that their "umbrella approach" is "consistent with other permits issued in Washington State as well as other states in this Region." The Department cites four Region 10 permits (Texaco, Shell, Chemical Processors, and Envirosafe) as addressing "facility-wide requirements for provisions such as facility training, facility inspections, and facility contingency plans." The Commenters have reviewed language in these and other permits and have found the language to support the contrary position of the Commenters (refer to Texaco, Shell, Chemical Processors, and Envirosafe permits, Attachments 9, 10, 11, and 12, respectively).

The Texaco permit references WAC 173-303-040 for the definition of facility. The Commenters request that WAC 173-303-040 be likewise used as the basis for defining "facility" in the Hanford Facility Permit. General Facility conditions of the Texaco permit include design and operation requirements for the facility in terms of maintaining and operating the units (Condition II.A.), and contingency plan requirements that pertain to emergencies related to the regulated units (Condition II.I.).

The Shell permit does not define facility, and consequently defaults to WAC 173-303-040. There is nothing in the Shell permit that extends training and contingency plan requirements to areas that do not meet the definition of facility as written in WAC 173-303-040.

Additionally, both the Chemical Processors cited permit and Chem-Security Systems, Inc. cited permit (Comment Attachments 11 and 13, respectively) define the "facility" in terms of property used to manage dangerous waste. The Commenters do not believe that the permits addressed above are intended to extend "facility-wide" requirements to areas that do not meet the criteria contained in the WAC 173-303-040 definition for "facility", nor do the Commenters believe that the Department has permitting authority to extend these requirements to such areas.

In conclusion, the Draft Permit definition for "facility" fails to clarify the meaning of "facility" and appears to include all the land identified within the legal boundaries of the Hanford Facility site. The Commenters are concerned that this could result in the application of permit conditions to areas where no TSD activities are conducted and to areas that are owned or used by other parties, which is inconsistent with the meaning of "facility" provided in WAC 173-303-040. The WAC 173-303-040 definition clearly distinguishes between lands used for TSD activities and lands subject to corrective action. The DW and HSWA portions of the Permit should likewise clearly identify the meaning of "facility" in a manner consistent with the WAC 173-303-040 definition. [Refer to comment on the definition of "Facility", HSWA Portion (Definitions, page 5, line 50; page 6, line 4)].

18.30 **Condition:** Definitions **Key Comment:** Permittee Responsibilities
Page, lines: Page 10, lines 28-39;
page 11, lines 1-3

CS Comment: The Draft Permit identifies as Permittees the DOE-RL (Owner/Operator), WHC (Co-operator), and PNL (Co-operator). The definition of "Permittees" and the delineation of responsibilities in the Draft Permit would properly hold WHC and PNL responsible for all activities subject to the scope of the Permit within their respective areas of control. This language distinguishes the responsibilities of the Permittees and should not be confused by inaccuracies in the Responsiveness Summary, DW Portion (Title Page, pages 94-95).

Requested Action: Revise language in the Department's Responsiveness Summary, DW Portion (General Comment 6, pages 27-28; Title Page Comment, pages 94-95; and Definitions Comment, pages 102-103), to reflect the limited operational responsibilities of the contractors.

Justification: Refer to comment on Title Page, DW Portion (page 1, lines 24-35).

18.
31

Condition: Definitions **Key Comment:** Permit Implementation
Page, lines: Page 10, lines 28-39
page 11, lines 5-8
CS Comment: The definition in the Draft Permit is not consistent with the new definition in the Dangerous Waste Regulations dated December 8, 1993.

Requested Action: Delete the existing text and replace with the following language:

> Independent qualified registered professional engineer means a person who is licensed by the state of Washington, or a state that has reciprocity with the state of Washington as defined in RCW 18.43.100, and who is not an employee of the owner or operator of the facility for which construction or modification certification is required. A qualified professional engineer is an engineer with expertise in the specific area for which a certification is given.

Justification: This change will make the Permit consistent with the most current Dangerous Waste Regulations.

18.
32

Condition: Definitions **Key Comment:** Regulatory Agency Authority
Page, lines: Page 11, line 20
CS Comment: Revise the definition to more accurately reflect the definition found in WAC 173-303-370(4)(a).

Requested Action: Modify the phrase "greater than ten (10) percent for bulk quantities" to read "greater than ten (10) percent in weight for bulk quantities."

Justification: The proposed language revision provides a more accurate reflection of the regulatory requirement located in WAC 173-303-370(4)(a).

18.
33

Condition: Definitions **Key Comment:** Permitting Approach
Page, lines: Page 11, lines 28-34
CS Comment: The Commenters request that the Department clarify the language of this definition to more accurately depict the relationship between the term "facility" and the term "unit". The Commenters encourage the Department to clarify, as WAC 173-303-040 does, that the TSD facility consists of final status TSD units and does not extend to areas or activities that are not directly associated with a TSD unit.

Requested Action: Replace the last sentence of this definition with the following:

> A TSD unit, for purposes of this Permit, is one of a number of TSD units that, taken together, constitute the final status Hanford Facility. These TSD units have been identified in a Hanford Facility Dangerous Waste Part A permit application, Form 3, and have been incorporated into Part III of this Permit. Examples of TSD units include a surface impoundment, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which these are placed.

Justification: The requested language is consistent with the definitions for "unit" and "facility" in WAC 173-303-040. The requested language also clarifies what constitutes a TSD unit and that the conditions in the DW Portion of the Permit are

applicable only to TSD units permitted for final status in accordance with 40 CFR 270.1(c)(4). Refer to comment on the definition of "Facility", DW Portion (Definitions, page 10, lines 18-23).

18.
34 **Condition:** I.A.1.a. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 14, lines 6-15
CS Comment: The language of the Draft Permit is overly restrictive and fails to recognize other waste management authority such as WAC 173-303-646 and CERCLA, applicable to the Hanford Facility.

Requested Action: Delete the first paragraph of Condition I.A.1.a and substitute the following:

> The Permittees are authorized to treat, store, and/or dispose of dangerous waste in accordance with the conditions of this Permit and in accordance with the applicable provisions of Chapter 173-303 WAC (including WAC 173-303 provisions as applied in the FFACO). Any treatment, storage, or disposal of dangerous waste by the Permittees at TSD units that have been incorporated into this Permit that is not authorized by this Permit or Chapter 173-303 WAC and for which a permit is required by Chapter 173-303 WAC, is prohibited.

Justification: The proposed language recognizes other waste management authority applicable to the Hanford Facility and is consistent with other dangerous waste permits issued in the state [refer to Burlington Environmental, Inc: Washougal, Georgetown, and Pier 91 permits (Comment Attachments 14, 15, and 16, respectively)].

18.
35 **Condition:** I.A.1.a. **Key Comment:** Permitting Approach
Page, lines: Page 14, lines 17-25 Permit Implementation
CS Comment: The language of the Draft Permit is confusing and does not properly acknowledge the permitting process contemplated by the FFACO. This condition also seems to imply that interim status units can be incorporated into a final status Permit in violation of WAC 173-303-840(1)(a).

Requested Action: Replace the second paragraph of Condition I.A.1.a. with the following language:

> The Conditions of this Permit shall not apply to TSD units operating or closing under interim status. A TSD unit operating under interim status shall maintain interim status until that TSD unit is incorporated into Part III of this Permit or until interim status is terminated under WAC 173-303-805(8). Interim status units shall be incorporated into this permit through the modification process. Conditions of this Permit shall not be enforced at interim status units undergoing closure.

Justification: The requested language more accurately reflects both regulatory authority and the provisions of the FFACO. The only authorized regulatory vehicle for incorporating an interim status TSD unit directly into a final status facility permit is via review of a Part B permit application that addresses that TSD unit. This fact is reinforced by language throughout the Dangerous Waste Regulations. The Department has agreed through the FFACO to issue the initial permit for "less than the entire facility". The FFACO identifies 40 CFR 270.1(c)(4) as the appropriate

regulatory authority for permitting of the Hanford Facility. This regulation clearly establishes a unit-by-unit approach to permitting.

Refer to comment on Introduction, DW Portion (page 6, lines 16-28).

18.
36 **Condition:** I.A.1.b. **Key Comment:** Permitting Approach
Page, lines: Page 14, lines 27-29
CS Comment: This condition is ambiguous. The Commenters have indicated on the Draft Permit, HSWA Portion, that the state leased lands should not be included in the HSWA Permit. However, even if such lands were included, the effect of this condition would be to erroneously suggest that lands used by or leased by others are subject to the Permit.

Requested Action: Revise this condition to read:

> The conditions of this Permit only apply to TSD units included in Part III of this Permit.

Justification: Refer to comment on Introduction, DW Portion (page 5, lines 28-35). Any conditions applicable as a result of HSWA should be separately identified clearly and specifically in the HSWA Permit. Also refer to comment on Facility definition, HSWA Portion (page 5, line 50).

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18.
37 **Condition:** I.A.2. **Key Comment:** Permittee Responsibilities
Page, lines: Page 14, lines 31-43
CS Comment: The Draft Permit identifies as Permittees the DOE-RL (Owner/Operator), WHC (Co-operator), and PNL (Co-operator). The definition of "Permittees" and the delineation of responsibilities in the Draft Permit would properly hold WHC and PNL responsible for all activities subject to the scope of the Permit within their respective areas of control. This language distinguishes the responsibilities of the Permittees and should not be confused by inaccuracies in the Responsiveness Summary, DW Portion (Title Page, pages 94-95).

Requested Action: Revise language in the Department's Responsiveness Summary, DW Portion (General Comment 6, pages 27-28; Title Page Comment, pages 94-95; and Definitions Comment, pages 102-103), to reflect the limited operational responsibilities of the contractors.

Justification: Refer to comment on Title Page, DW Portion (page 1, lines 24-35).

18.
38 **Condition:** I.A.3. **Key Comment:** Permitting Approach
Page, lines: Page 14, lines 45-49;
page 15, lines 1-6
CS Comment: This section includes those TSD units that will be closed under interim status, in accordance with the FFACO Action Plan, in the Draft Permit. Such incorporation is inconsistent with the FFACO.

Requested Action: Add an additional sentence to Condition I.A.3. that states:

> TSD units that will be closed under interim status are excluded from the Permit incorporation process described in this section.

Justification: Refer to comment on Introduction, DW Portion (page 6, lines 16-28).

18.
39 **Condition:** I.A.4. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 15, lines 8-14
CS Comment: The permit condition improperly makes the FFACO enforceable through the Permit, purports to bring CERCLA activities under the Permit, is unfair to the contractor permittees, and conflicts with Paragraph 12 of the FFACO.

Requested Action: Delete the first sentence of this condition.

Justification: The FFACO is an Agreement among the DOE-RL, the Agency, and the Department. Article I, Paragraph 6, of the FFACO specifies that it is enforceable in accordance with all its terms, reservations, and applicable laws. The FFACO includes requirements of federal and state law far beyond the scope of the state's Dangerous Waste permitting authority and which may not be enforced through such a permit. Furthermore, the FFACO must be read as a whole. Selectively incorporating provisions of the FFACO deprives all of the benefit of the entire agreement. For example, this Permit condition incorporates the FFACO milestones in their entirety into the Permit. The FFACO milestones include CERCLA activities, which may not be regulated under a RCRA permit.

Finally, the contractor permittees are not parties to the FFACO and have not the legal ability to affect the FFACO's terms, now, or in the future, as it may be amended. Making the FFACO enforceable against contractors through this Permit exceeds regulatory authority, the basic tenants of fairness, and is directly contrary to Article II, Paragraph 12 of the FFACO which states:

> "[DOE's]...agents, contractors, and/or consultants shall be required to comply with the terms of this Agreement, but the Agreement shall be binding and enforceable only against the Parties to this Agreement".

18.
40 **Condition:** I.C.3.a. **Key Comment:** Permit Implementation
Page, lines: Page 15, lines 44-49
CS Comment: The language of Condition I.C.3.a. is confusing. Condition I.C.1. contains information necessary for permit modifications in accordance with WAC 173-303-830. Of primary concern is the potential for Condition I.C.3.a., as written, to be construed as prohibiting Class 1 modifications that can be implemented without prior approval from the Department.

Requested Action: Reword Condition I.C.3.a. as follows:

> Except as provided otherwise by specific language in this Permit, the permit modification procedures of WAC 173-303-830 shall apply to modifications or changes in design or operation of the Hanford Facility or any modification or change in dangerous waste management practices covered by this Permit.

Justification: The requested language more accurately reflects the applicability of WAC 173-303-830 and will eliminate confusion concerning Class 1 modifications. The Responsiveness Summary, DW Portion (response to Condition I.C.3.a., page 119), indicates that both the Permittees and the Agency independently had similar concerns about the language of this condition. In consideration of these comments, the Commenters encourage the Department to adequately address this concern.

18.
41 **Condition:** I.C.3.b., I.C.3.c. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 16, lines 5-12, lines 14-17
CS Comment: Corrective action requirements should not be addressed in the DW Portion of the Permit, but only in the HSWA Portion of the Permit.

Requested Action: Delete these conditions.

Justification: Only the HSWA Portion of the Permit should address corrective action requirements for the Hanford Facility.

18.
42 **Condition:** I.D.2. **Key Comment:** Permit Implementation
Page, lines: Page 16, lines 36-43
CS Comment: The Draft Permit condition does not acknowledge and provide for the FFACO, which might have applicable compliance schedules.

Requested Action: Add, at the end of the sentence, the words:

or unless the FFACO authorizes an alternative action.

Justification: The FFACO might include compliance schedules for certain interim status TSD activities and the FFACO would continue to be in effect during any stay of a permit condition. The requested change would clarify the intent of this paragraph.

The Responsiveness Summary, DW Portion (response to Condition I.D.2, page 120) indicates that the Draft Permit language is boilerplate in all state permits. The FFACO is a Department, DOE-RL, and Agency agreement unique to the Hanford Site that impacts this Permit and must be acknowledged.

18
43 **Condition:** I.E.2. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 17, lines 11-23
CS Comment: The Draft Permit addresses federal requirements not appropriate in a state-only permit and does not acknowledge that compliance with the Permit constitutes compliance with state law as specified in WAC 173-303-810.

Requested Action: Delete Condition I.E.2. and add a new Condition I.E.2. as follows:

Compliance Constituting Defense

Compliance with this Permit during its term constitutes compliance for the purpose of enforcement with the Dangerous Waste Regulations as specified in WAC 173-303-810(8).

Alternatively, delete Condition I.E.2. and modify the language of Condition I.A.1.a. to add the permit shield language of WAC 173-303-810(8).

Justification: This language is consistent with WAC 173-303-810(8) that, with limited exceptions, provides that compliance with the Permit constitutes compliance with the law. The analysis of this issue in the Responsiveness Summary, DW Portion (response to Condition I.E.2., pages 121-122) is incomplete and does not address WAC 173-303-810(8). Refer to comment on Condition II.L.3., DW Portion (page 43, lines 20-27).

44 **Condition:** I.E.6. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 17, line 49;
page 18, lines 1-7
18.44 **CS Comment:** The last sentence of this condition is inconsistent with the regulatory language of WAC 173-303-810(5) and exceeds regulatory authority.

Requested Action: Delete the last sentence of this condition.

Justification: The Draft Permit language is consistent with 173-303-810(5) until the last sentence. The Department does not have the regulatory authority to prohibit the Permittees' use of any legal defense to which they are entitled by law. Jurisdiction to determine legal defenses rests with the courts and the legislature.

18.45 **Condition:** I.E.8. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 18, line 24
CS Comment: This condition should be made consistent with Article XLV of the FFACO and should recognize the constraints of other federal law, such as the Privacy Act (5 USC 552a), which may be applicable.

Requested Action: Add to the beginning of Condition I.E.8.:

> Subject to the requirements of applicable federal law and Article XLV of the FFACO, ...

Justification: The proposed language will make the Permit consistent with the FFACO, in accordance with the intent stated in the Introduction, DW Portion (page 4, lines 29-32), and provide for the constraints of other federal law that could be applicable.

18.
46 **Condition:** I.E.9. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 18, lines 33-37 Permit Implementation
CS Comment: This condition, as written, does not acknowledge that there are additional federal requirements that will have to be met to obtain access to Hanford Facility TSD units.

Requested Action: After the word "credentials" in line 37, add the following language, "and other documents as required by law."

Justification: The requested language is consistent with the language in other permits. This language also is fully consistent with the federal rule providing authority for this condition, 40 CFR 270.30(i), which authorizes entry "upon presentation of credentials and other documents as required by law". The requested language is an acknowledgment of the factual situation and, therefore, eliminates any possible ambiguity that might arise in the future implementation of the Permit.

18.
47 **Condition:** I.E.10. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 19, lines 9-49;
page 20, lines 1-16
CS Comment: Condition I.E.10., "Monitoring and Records" does not reflect the standard permit condition of WAC 173-303-810(11), nor is it consistent with corresponding standard monitoring permit conditions contained in other Department-

issued permits. This standard permit condition should be limited to requirements associated with monitoring and monitoring records. Waste analysis activities and other recordkeeping duties specific to the Hanford Facility should be addressed in Parts II and III of the Permit, not by Condition I.E.10.

The Commenters' concerns with Condition I.E.10. as written, include:

- Condition I.E.10.a. addresses "samples and measurements taken by the Permittees for the purpose of *complying with this Permit*", whereas WAC 173-303-810(11) addresses "samples and measurements taken for the purpose of *monitoring*." Condition I.E.10.a. also specifies sampling and analysis requirements that are not addressed in standard monitoring and monitoring record conditions in any other Region 10 permit reviewed.

- Condition I.E.10.c. addresses monitoring information not associated with a particular TSD unit. The Permit should only impose requirements on activities related to TSD of dangerous waste at final status units.

- Condition I.E.10.d. unnecessarily requires record retention extension during unresolved enforcement action to 10 years beyond the conclusion of enforcement, rather than just extending retention in such situations in accordance with WAC 173-303-380(3)(b).

Requested Action: Rework this condition to reflect consistency with the standard permit condition of WAC 173-303-810(11) and the record retention requirements of the FFACO. The Commenters request the following language:

I.E.10.a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. Where monitoring is required at a specific TSD unit, the Permit shall specify, in Part III, the monitoring type, intervals, and frequency that are appropriate for that TSD unit. Additionally, Part III will specify, when appropriate, requirements concerning the proper use, maintenance, and installation of monitoring equipment or methods.

I.E.10.b. The Permittees shall retain at the Hanford Facility records (which could include storage by electronic media, when feasible) of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this Permit, and records of all data used to complete the application for this Permit, for a period of at least 10 years from the date of the sample, measurement, report, or application. The records retention period may be extended by request of the Department at any time. Information required to be kept in TSD unit-specific operating records shall be identified in Part III of this Permit.

I.E.10.c. Records of monitoring information shall include:

i. The date, specific location, and time of sampling or measurements;

ii. The individual(s) who performed the sampling or measurements;

iii. The dates the analyses were performed;

iv. The individual(s) who performed the analyses;

v. The analytical techniques or methods used; and

vi. The results of such analyses.

Also, the Commenters request that the Department collaborate with the Agency to revise both Condition I.E.10., DW Portion, and Condition I.L., HSWA Portion, to read as WAC 173-303-810(11) and 40 CFR 270.30(j), respectively. The two regulations essentially are identical.

Justification: Condition I.E.10. of the Draft Permit, DW Portion, does not accurately reflect the standard permit condition of WAC 173-303-810. WAC 173-303-810(1) states "This section sets forth the permit conditions that are applicable to all permits, except interim status permits...to assure compliance with this chapter." The requested language is consistent with the provisions of WAC 173-303-810(11). The requested language also is consistent with the language in the following permits issued by the Department and/or EPA Region 10:

The Chemical Processors permit (WAD000812909, Condition I.B.1., Comment Attachment 11) and the Van Waters & Rogers permit (WAD067548966, Condition I.B.1., Comment Attachment 17) both simply incorporate all WAC 173-303-810 requirements by reference. The Texaco permit (WAD009276197, Condition I.F.10., Comment Attachment 9) contains standard language reflected in WAC 173-303-810(11) and is limited to monitoring information. The Shell permit (WAD009275082, Condition I.F.10., Comment Attachment 10) contains standard language reflected in WAC 173-303-810(11) and also is limited to monitoring information. The Chem-Security Systems permit (ORD 089 452 353, Condition I.N., Comment Attachment 13) and the Envirosafe Services permit (IDD073114654, Condition I.N., Comment Attachment 12) both contain language essentially identical to the Commenters' requested language.

The Department states in the Responsiveness Summary, DW Portion (response to Condition I.E.10.a., pages 127-129) that "it is not necessary for permit language to blindly parrot the word of the regulation." Although this statement is true, and certainly at times clarification is appropriate, the Department cannot redefine regulations or expand requirements without regulatory basis. The Department confirms this fact in the Responsiveness Summary, DW Portion (General Comment 70, page 72), by stating that "the Department, as well as the Permittees are constrained by the applicable regulatory requirements. WAC 173-303-810(11) provides the proper basis for the language that should be used in this standard permit condition. Also in the Responsiveness Summary, DW Portion (response to Condition I.E.10.a., pages 127-129), the Department stated that the Permittees' requested language was "inconsistent with the Dangerous Waste Regulations". The Commenters disagree. The requested language for this standard condition for monitoring and records is directly from the Dangerous Waste Regulations and is identical to the language of all other Agency Region 10 permits reviewed by the Commenters.

The Department also has expanded on Condition I.E.10. to mandate use of WAC 173-303-110 as the standard facility default requirement for all samples and measurements taken for Permit compliance. Such action has not been taken for any other permits reviewed by the Commenters. WAC 173-303-110 pertains to <u>designation</u> of dangerous waste and should not be abstracted to a standard condition concerning monitoring and monitoring records. The Commenters encourage the Department to acknowledge the FFACO Action Plan, Section 6.5, for sampling and analytical activities.

In conclusion, the Commenters request the Department to recognize that Condition I.E.10. should reflect a standard condition that is limited in applicability to monitoring activities. References to WAC 173-303-110 should be limited to applications where methods of WAC 173-303-110 are mandated by law for the specific activity or where the DQO process has identified such methods as appropriate for parameters of waste analysis. Refer to comments on Condition II.D. and comments on Condition I.L. of the HSWA Portion of the Draft Permit. Also, WAC 173-303-810(11) does not preclude retention of records via electronic media. Data loggers and acquisition instrumentation systems, as well as distributive control systems, are anticipated to be used more frequently for the collection of information. As these records will exist only in an electronic format, information pertaining to the Permit will require downloaded copies to be produced and placed into the Hanford Facility record.

18.
48 **Condition:** I.E.11. **Key Comment:** Permitting Approach
Page, lines: Page 20, line 22
CS Comment: Clarify the applicability of this Draft Permit condition.

Requested Action: Replace the phrase "Facility subject to this Permit" with "TSD units incorporated into Part III of this Permit."

Justification: The applicability of general permit conditions (such as this one) is at final status TSD units incorporated into the Permit, i.e., TSD units incorporated into Part III. Refer to comment on Introduction, DW Portion (page 5, lines 28-35).

18.
49 **Condition:** I.E.12.iii. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 20, lines 43-48 Permit Implementation
CS Comment: The submittal requirement is more stringent than that called for in the Dangerous Waste Regulations.

Requested Action: Reword the condition to read:

Within 15 days of the date of submission of the Permittees' letter . . .

Justification: This Draft Permit condition is more stringent than the regulatory requirements. WAC 173-303-810(14) specifies "fifteen days of the date of submission of the letter," and the Draft Permit condition specifies "fifteen days of the date of receipt of the Permittee's letter," (emphasis added). It will be difficult for the Permittees to know the date the Department receives the permittee's letter, unless the delivery is made by hand.

18.
50 **Condition:** I.E.13. **Key Comment:** Permitting Approach
Page, lines: Page 21, lines 1-12
CS Comment: Clarify the applicability of this Draft Permit condition.

Requested Action: Replace the phrase "Facility subject to this Permit" with "TSD units incorporated into Part III of this Permit."

Justification: Refer to comment on Condition I.E.11, DW Portion (page 20, line 22).

Condition: I.E.14. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 21, lines 14-22
CS Comment: The Dangerous Waste Regulations specify two means by which a permit can be transferred by a permittee. The condition in the Draft Permit arbitrarily eliminates one method of transfer and imposes notice requirements not founded in the regulations.

Requested Action: Delete the Draft Permit language and replace with the following: "This Permit may be transferred to a new Permittee in accordance with the provisions of WAC 173-303-830(2)."

Justification: The requested change addresses all permit transfer options available to permittees under the Dangerous Waste Regulations. There is no regulatory authority to arbitrarily prohibit transfer by modification at the request of a permittee specified in WAC 173-303-830(2)(b). WAC 173-303-830(3)(c) only establishes the causes for modification, not the procedures that WAC 173-303-830(2) provides.

Condition: I.E.15. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 21, lines 24-48;
page 22, line 1-35
CS Comment: Condition I.E.15. does not accurately reflect the standard permit condition of WAC 173-303-810(14)(f) or is the language consistent with language in other permits issued by the Department. The Commenters encourage the Department to reconsider using language that more accurately reflects the regulatory requirement for immediate reporting as a standard permit condition. Condition I.E.15. has not been written to be consistent with WAC 173-303-810(1), which states that the section "sets forth the general permit condition that are applicable to all permits...to assure compliance with this chapter." Instead the Draft Permit condition has been created by the merging of some facets of the appropriate requirements set forth in WAC 173-303-810(14)(f) with the general requirements of WAC 173-303-145. Other Department permits that appropriately address this area were cited in the initial comment package submitted by the Commenters on March 16, 1992. The following inaccuracies remain in Condition I.E.15 as written.

- Condition I.E.15.a. imposes immediate reporting requirements for hazardous substances. The Permit is for the TSD of dangerous waste. Hazardous substances are adequately addressed pursuant to CERCLA and are outside the scope of the Permit unless the hazardous substances are managed as dangerous waste. Condition I.E.15.a. also constrains the term "immediate" to mean "within 2 hours." This is considerably more restrictive than the federal requirement for reporting "within 24 hours". The condition also triggers the immediate reporting requirement based on the Permittees becoming aware of the release and/or noncompliance. WAC 173-303-810(14)(f) requires immediate reporting based on becoming aware of the <u>circumstances</u>.

- Condition I.E.15.b. does not accurately clarify WAC 173-303-810(14)(f), which requires immediate reporting for noncompliances "which threaten human health or the environment <u>outside the facility</u> (emphasis added)". Instead, the condition requires immediate reporting for noncompliances "which threaten human health or the environment".

- Condition I.E.15.c. again extends the scope of the standard permit condition beyond the regulatory requirements of WAC 173-303-810(14)(f) by addressing hazardous substances. Condition I.E.15.c. also fails to clarify that

WAC 173-303-810(14)(f) pertains to releases that threaten human health or the environment outside the facility.

- Condition I.E.15.d. does not reflect any portion of WAC 173-303-810, or is it mandated anywhere in the final facility standards.

- Condition I.E.15.e. does not reflect any final status permit condition. WAC 173-303-145 is a broad regulatory requirement that is not included in the final facility standards. WAC 173-303-145 applies to the Permittees independent of the Permit. In fact, WAC 173-303-145 recognizes the separate release response/reporting requirements of WAC 173-303-810 by stating that "nothing in WAC 173-303-145 shall eliminate any obligations to comply with reporting requirements that may exist in a permit or under other state or federal regulations (emphasis added)."

Requested Action: Rewrite this condition to reflect the standard permit condition located in WAC 173-303-810(14)(f).

Justification: The requested language more accurately reflects the regulatory requirement of WAC 173-303-810(14)(f) and is consistent with the language of other Department-issued permits reviewed by the Commenters.

In the Responsiveness Summary, DW Portion (response to Condition I.E.15., page 134-135), the Department indicated reliance on information of WAC 173-303-145 (which has been amended since late 1992) in developing this standard permit condition. The requirements of WAC 173-303-810, including WAC 173-303-810(14)(f), are standard permit conditions that should be incorporated into all permits. The incorporation of 173-303-145 into a permit is unprecedented and is regulatorily inappropriate. The Commenters encourage the Department to recognize that WAC 173-303-145 is not identified in WAC 173-303-600 as having applicability specific to permit conditions. WAC 173-303-600 contains final facility standards for the management of dangerous waste. Immediate reporting requirements should not be extended automatically to hazardous substances, but rather on a case-by-case basis. If a hazardous substance release, due to the nature of the circumstances, results in "any noncompliance which may endanger health or the environment outside the facility", then immediate reporting is required in accordance with WAC 173-303-810(14)(f). This would include "releases of dangerous waste that may cause an endangerment to drinking water supplies or ground or surface waters." There is no reason to include the reporting requirements of WAC 173-303-145 into the Permit.

There is also no regulatory requirement or precedent for providing a definition of the term "immediate" as used in WAC 173-303-810(14)(f). The Commenters maintain an emergency response capability on the Hanford Facility to make immediate notifications. This capability has been described in Part III permit applications (Attachments 8 and 18 of the Draft Permit) and in the Hanford Facility Contingency Plan (Attachment 4 of the Draft Permit) (Comment Attachment 18). As such, this definition is not needed. No regulatory basis for this condition was offered in the Responsiveness Summary, DW Portion.

18.
53 **Condition:** I.E.16. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 22, lines 37-48; page 23, lines 1-2

CS Comment: Condition I.E.16., as written, does not accurately reflect the intention of the written reporting requirement of WAC 173-303-810(14)(f).

Requested Action: The Commenters request that the submission of the written report be based on "the time the Permittees become aware of the circumstances" as stated in WAC 173-303-810(14)(f), instead of basing the submission on the time "the Permittees become aware".

Justification: There is a distinction between the time that one becomes "aware of" something happening and the time that one "becomes aware of the circumstances". The language of this condition should be changed to more accurately reflect the language in WAC 173-303-810(14)(f).

18.54

Condition: I.E.17.b. **Key Comment:** Onsite Waste Movement
Page, lines: Page 23, lines 14-21
CS Comment: This Draft Permit condition fails to reflect the requirements of the Department's Dangerous Waste Regulations [WAC 173-303-370(4)] by imposing manifest discrepancy reporting on onsite waste movements.

Requested Action: Delete this condition in its entirety.

Justification: The requirements of WAC 173-303-370(4) are applied improperly to this Draft Permit condition. Refer to comment on Condition II.Q.1., DW Portion (page 45, lines 37-49; page 46, lines 1-15).

18.55

Condition: I.E.18. **Key Comment:** Onsite Waste Movement
Page, lines: Page 23, lines 27-32
CS Comment: This Draft Permit condition goes beyond the requirements of the Department's Dangerous Waste Regulations by requiring manifesting of onsite waste movements.

Requested Action: Delete the second sentence of this Condition. Revise the last sentence to read:

> Whenever regulated dangerous waste received from offsite sources without a manifest, the Permittees shall submit a report ...

Justification: By not limiting the condition to waste shipments received from offsite, this condition infers that onsite movement of dangerous waste will be subject to manifesting. Refer to comment on Condition I.E.17.b., DW Portion (page 23, lines 14-21).

18.56

Condition: I.E.21. **Key Comment:** Permit Implementation
Page, lines: Page 24, lines 5-43
CS Comment: This Draft Permit Condition as written does not reflect the recent organizational and responsibility changes within the Department's Nuclear and Mixed Waste Program.

Requested Action: Change Condition I.E.21.a. to have all reports, notifications, or other submissions, including the items in Condition I.E.21.b., sent to the Nuclear and Mixed Waste Program Office in Kennewick. Delete Condition I.E.21.b.

Justification: It would be more appropriate to have the reports, notifications, or other submissions required by the Permit sent to the Department's Kennewick Office because this office will be responsible for overseeing permit compliance on a day-to-day basis. Copies can be sent to both offices, but it would be more efficient and consistent with the organizational responsibilities if the required documentation were sent directly to the Kennewick office.

18.
57 **Condition:** I.E.21.a. **Key Comment:** Permit Implementation
Page, lines: Page 24, line 21
CS Comment: No time limitation is given for the Department to notify the Permittees of a change in address or telephone number.

Requested Action: Insert "Within 15 days of any such change" before "The Department".

Justification: A time limitation for giving the Permittees notice of a change in address and/or telephone number should be indicated in the Permit.

18.
58 **Condition:** I.E.21.b. **Key Comment:** Permit Implementation
Page, lines: Page 24, line 36
CS Comment: A means is required to ensure the receipt of notifications made by the Permittees to the Department.

Requested Action: Change the telephone number to one that will be manned 24 hours a day, 365 days per year.

Justification: Line 40 of this Draft Permit condition states that it is the Permittees' responsibility to ensure that notifications are made. It is not possible to ensure the receipt of notification unless a personal contact is made. If reliance is made on a telephone recorder, it might fail and result in the report not being received through no fault of the Permittees.

18.
59 **Condition:** I.E.21.b. **Key Comment:** Permit Implementation
Page, lines: Page 24, line 40
CS Comment: No time limitation is given for the Department to notify the Permittees of a change in address or telephone number.

Requested Action: Insert "Within 15 days of any such change" before "The Department".

Justification: A time limitation for giving the Permittees notice of a change in address and/or telephone numbers should be indicated in the Permit.

18.
60 **Condition:** I.E.22. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 24, lines 47-48 Permit Implementation
CS Comment: This condition should not be read to require cost estimates in a form or manner other than as specified in Paragraphs 138 and 139 of the FFACO.

Requested Action: Add the following words at the beginning of the Permit Condition:

Except as specified in Paragraphs 138 and 139 of the FFACO...

Justification: Cost estimate requirements of WAC 173-303-620(3) and (5) are incorporated into the annual report requirement of WAC 173-303-390(2) cited in the Draft Permit Condition. The Department has agreed that the Federal Government is exempt from the requirements of WAC 173-303-620 [refer to Responsiveness Summary, DW Portion (response to Condition II.H.1., pages 181-182)]. The DOE-RL and the Department have agreed to the reporting format specified in Paragraphs 138 and 139 of the FFACO. As DOE-RL is the owner and operator of the TSD units managed with the assistance of contractors, it would not be logical to establish a duplicative reporting requirement in the Permit. Refer to comments on Permit Conditions II.H.1. and II.H.2., DW Portion (page 36, lines 36-49; page 37, lines 1-2).

18.

61 **Condition:** I.G. **Key Comment:** Permit Implementation
Page, lines: Page 25, lines 7-11
CS Comment: This condition should be made consistent with Article XLV of the FFACO.

Requested Action: Change the section heading to read:

CLASSIFIED AND CONFIDENTIAL INFORMATION

Add a new first sentence to read:

Article XLV of the FFACO is incorporated by reference.

Justification: The Department, the DOE-RL, and the Agency agreed to manage classified and confidential information as specified in Article XLV of the FFACO. The Department is bound by the FFACO. The FFACO recognizes that in addition to normal proprietary information, the Hanford Facility also deals with classified or confidential information. The Permit must be consistent with the FFACO as specified in the Introduction, DW Portion (page 4, lines 29-32).

18.

62 **Condition:** II.A.1. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 26, lines 7-10
CS Comment: The Draft Permit condition, as written, would require invoking the contingency plan any time a release of dangerous waste occurred, regardless of whether an emergency situation existed.

Requested Action: Rewrite the second half of the Draft Permit condition as follows:

> ...whenever there is a release of dangerous waste or dangerous waste constituents that threaten human health and the environment, or other emergency circumstance at regulated units.

Justification: Releases of dangerous waste or dangerous waste constituents might not create an emergency situation and implementation of the contingency plan might not be necessary to mitigate any hazards. Per WAC 173-303-350(2), the contingency plan is used in emergencies or releases that threaten human health and the environment. The requested language more accurately reflects the regulations and makes it clear that only a release that threatens human health and the environment would invoke the Hanford Facility Contingency Plan or a TSD unit's contingency plan. The Draft Permit condition inappropriately includes the requirement to implement the contingency plan any time there is any release of dangerous waste or dangerous waste constituents.

18.
63 **Condition:** II.A.3. **Key Comment:** Permit Implementation
Page, lines: Page 26, lines 21-22
CS Comment: Correct the typographical error in the regulatory citation.

Requested Action: Replace "WAC 273" with "WAC 173".

Justification: This is the correct regulatory citation.

18.
64 **Condition:** II.A.4. **Key Comment:** Permit Implementation
Page, lines: Page 26, line 27
CS Comment: Clarification is needed regarding the location of names and home telephone numbers for compliance with contingency plan requirements.

Requested Action: Add language to this Draft Permit condition to clarify how to comply with WAC 173-303-350(3)(d). This line should read:

> ...except the names and home telephone numbers will be on file with...

Justification: This change will clarify that names and home telephone numbers will be maintained at the Occurrence Notification Center.

18.
65 **Condition:** II.B.1. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 26, lines 32-34 Permit Implementation
CS Comment: Revise this condition to provide consistency with the Dangerous Waste Regulations.

Requested Action: Delete "at a minimum" on line 32.

Justification: The proposed changes make this condition consistent with WAC 173-303-340(1). "At a minimum" introduces an unnecessary ambiguity into this condition.

18.
66 **Condition:** II.C.1. **Key Comment:** Permit Implementation
Page, lines: Page 27, lines 4-6
CS Comment: Revise this condition to accommodate flexibility in training record maintenance and provision.

Requested Action: Rewrite this condition to reflect how WAC 173-303-330(2) and (3) will be complied with for all Permittees. Condition II.C.1. should read:

> The Permittees shall conduct personnel training as required by WAC 173-303-330. The Permittees shall maintain documents in accordance with WAC 173-303-330(2) and (3). Training records can be maintained in the Hanford Facility Operating Record or on electronic data storage.

Justification: The Draft Permit condition does not recognize that two types of training records are maintained on the Hanford Facility: (1) hard copy training records and (2) electronic data storage training records. By modifying the condition in the requested fashion, all training records systems are accounted for that are maintained by the Permittees.

Condition: II.C.2. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 27, lines 8-12 Permit Implementation

18.67 **CS Comment:** The 30-day training requirements specified in this condition are more restrictive than the regulations. In addition, Condition II.C.2.e. duplicates the requirements of Conditions II.C.2.a.-d.

Requested Change: Delete the current Draft Permit language and replace with the following:

II.C.2. All Hanford Facility personnel will receive Hanford Facility orientation training within 6 months of hire. This training will ensure personnel are informed that dangerous waste management activities are being conducted on the Hanford Facility. The training will include:

II.C.2.a. Identification of contacts for information regarding dangerous waste management activities,

II.C.2.b. Identification of contacts for emergencies involving dangerous waste,

II.C.2.c. Description of emergency signals and appropriate personnel response, and

II.C.2.d. Introduction to waste minimization concepts.

Justification: The Department has not demonstrated in the Responsiveness Summary, DW Portion (response to Condition II.C, page 151-153), that a more restrictive timeframe than that identified by regulation is required to protect human health and the environment. Furthermore, the language in the Draft Permit goes beyond what was discussed with the Department during preparation of the Draft Permit. Based on these discussions, it was clearly understood that personnel involved in dangerous waste management activities would receive additional training commensurate with the scope of their job assessments. There was no indication, however, that the Department would include a more restrictive timeframe than that required by regulation. New personnel will receive training as soon as possible or within 6 months of being hired, which is consistent with the requirements in WAC 173-303-330(1)(c). The Department has no regulatory basis for the 30-day timeframe in the Draft Permit.

The Draft Permit identifies five conditions (i.e., II.C.2.a.-e.) describing the general training requirements for Hanford Facility personnel. Condition II.C.2.e. should be deleted because it duplicates what is presented for Conditions II.C.2.a.-d. The Hanford Facility Contingency Plan contains information concerning emergency signals, personnel response, and contacts for emergencies involving dangerous waste. These are the applicable Hanford Facility Contingency Plan elements included in the general training to be provided to meet this condition.

18.68 **Condition:** II.C.4. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 27, lines 34-37 Permit Implementation

CS Comment: This Draft Permit condition needs to be modified to reflect a more appropriate level of Department control.

Requested Action: Strike the sentence, "At a minimum, this training shall ... dangerous waste."

Justification: This minimum training is an unreasonable requirement for any and all visitors or subcontractors to the Hanford Facility. The first sentence of this paragraph states "... *necessary* training to non-Facility personnel (i.e., visitors, subcontractors) as *appropriate* ..." This statement sufficiently brackets the requirement and would allow for no minimum training where appropriate. Clearly, in some instances, no minimum training is necessary; therefore, the minimum training as stated is excessive.

18.
69 **Condition:** II.D. **Key Comment:** Permitting Approach
Page, lines: Page 27, lines 39-48;
page 28, lines 1-47
CS Comment: This Draft Permit condition inappropriately applies waste analysis requirements to locations and TSD units that should not be incorporated into a final status permit.

Requested Action: Remove from this condition reference to locations other than final status TSD units contained in Part III and reference to Part V.

Justification: Refer to comments on Introduction, DW Portion (page 6, lines 16-28).

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18.
70 **Condition:** II.D.1. **Key Comment:** Permitting Approach
Page, lines: Page 27, lines 41-49
CS Comment: This Draft Permit condition is unclear in its application to the Hanford Facility. The Commenters have noted their objection to incorporation of closure plans and the sampling and analysis plans into the final status Permit. Further, as noted in previous comments, there is no regulatory authority for any approach that purports to include interim status activities under the final status standards or that purports to regulate activities not subject to the final status TSD standards.

Requested Action: Revise this condition to read "All waste analyses conducted at TSD units incorporated into Part III of this Permit shall be conducted in accordance with a written waste analysis plan (WAP). WAPs for these TSD units shall be approved through incorporation of the TSD unit into Part III of this Permit."

Justification: The Permit must be explicit in the scope of coverage; this scope must be limited to the TSD units that meet the criteria for receiving final status. The scope of a dangerous waste permit issued under WAC 173-303-806(1) is to regulate activities at "final status TSD facilities". At this time there are only two TSD units identified in the Draft Permit that the Department has determined to have had the necessary information submitted for issuance of a "final facility permit" The scope of the Permit, in accordance with the Department's Dangerous Waste Regulations, must be limited to these TSD units. Refer to comments on Introduction, DW Portion (page 6, lines 16-28), and Definitions, DW Portion (page 10, lines 18-23).

18.
71 **Condition:** II.D.2. **Key Comment:** Permitting Approach
Page,lines: Page 28, lines 1-6
CS Comment: This condition should be revised to eliminate references to interim status TSD units and to discuss WAP modifications for final status TSD units.

Requested Action: Delete the references to TSD units identified in Part V (the interim status closures) and modify this condition to include the following:

The Permittee shall maintain a waste analysis plan for each TSD unit incorporated into Part III of this Permit. Modifications to the waste analysis plan for TSD units incorporated into Part III of this Permit shall be made in accordance with WAC 173-303-830.

Justification: There is no regulatory basis for preparing and maintaining a written waste analysis plan for interim status TSD units undergoing closure. Refer to comment on Introduction, DW Portion (page 6, lines 16-28).

18.
72 **Condition:** II.D.3.(vii). **Key Comment:** Receipt of Offsite Waste
Page, lines: Page 28, lines 33-43
CS Comment: Additional clarification is needed.

Requested Action: Rewrite this condition as follows:

For TSD units receiving dangerous waste from offsite, a procedure shall be in place for confirming that each offsite dangerous waste received matches the identity of the waste specified on the accompanying manifest or shipping paper. This procedure shall include, at a minimum, the following:

- A procedure for identifying each offsite waste movement at the unit; and,
- A method for obtaining a representative sample of each offsite waste to be identified, if the identification method includes sampling.

Justification: This language will establish clarity as to how Permit conditions will be applied. The application of WAC 173-303-300(5)(g), from which this requirement is taken, is to offsite facilities (i.e., those TSD units receiving waste from offsite generators). The requested language will clarify that only waste received from offsite (i.e., not generated at Hanford) requires such procedures.

18.
73 **Condition:** II.D.4. **Key Comment:** Permitting Approach
Page, lines: Page 28, lines 45-47
CS Comment: Waste analysis plans that are not associated with a particular final status TSD unit are outside the scope and regulatory authority of this Draft Permit.

Requested Action: Delete this condition.

Justification: Refer to comment on Condition II.D.1., DW Portion (page 27, lines 41-49).

18.
74 **Condition:** II.E. **Key Comment:** Quality Assurance and Quality Control
Page, lines: Page 28, lines 49-50 through page 35, lines 1-3
CS Comment: By mandating the same broad set of quality assurance and quality control (QA/QC) criteria on both waste analysis and sampling and analysis plans, this condition imposes requirements that are not appropriate for managing dangerous waste properly or for environmental monitoring. Waste analysis performed to properly manage waste will have much different QA/QC requirements than the sampling and analysis of environmental media for purposes of monitoring.

Requested Action: Delete Conditions II.E.2. to II.E.4. and substitute the following language for Condition II.E.1.:

> All data required by this Permit shall include the appropriate level of quality assurance/quality control (QA/QC) to ensure that resulting decisions are technically sound, statistically valid, and properly documented. The appropriate level of QA/QC will be determined and documented using the data quality objective process.

Justification: The level of detail contained in Conditions II.E.2. through II.E.5. is excessive and imposes unnecessary and inappropriate requirements. The FFACO Action Plan, Section 6.5, addresses QA/QC concerns by requiring that the DQO process be used to develop the appropriate QA/QC levels for each TSD unit. This DQO process allows for the TSD units to establish WAPs that are suited to the individual data needs of each TSD unit. The criteria identified in these conditions seem to be based on needs for sampling and analysis of environmental media not waste analysis necessary to properly manage waste. For example, including sampling site, field sampling operations, and similar levels of detail are not needed for WAPs.

The condition, as stated, exceeds the regulatory requirements of WAC 173-303-300. In addition, the level of control stated in this condition is beyond that necessary to ensure that the above requirements are met. An example of this excessive level of control is the requirement for pre-prepared sample labels identified in Condition II.E.2.b.xxi, DW Portion (page 30, lines 46-48).

All references to sampling and analysis plans (SAPs) for interim status TSD unit closures should be deleted. The SAPs and WAPs have totally different data needs and requirements. The FFACO Action Plan, Section 6.5, addresses this concern by requiring that the DQO process be used for interim status TSD unit closure plan sampling and analysis. In addition, the QA/QC requirements are identified in interim status TSD unit closure plans in the quality assurance project plans (QAPjPs) section of the plans. After the DQO process is completed, the SAP and QAPjP are finalized and included in the closure plan. Refer to comment on Introduction, DW Portion (page 6, lines 16-28).

Conditions I.E.10.e.; II.E.2.b.iii.; II.E.2.b.vi.; II.E.2.C.ii.; and II.E.2.d.(2). of the Draft Permit, DW Portion, contain different requirements than the corresponding technical requirements of the Draft Permit, HSWA Portion. The substance of the differences in the conditions is not related to specific data needs or objectives of the two regulatory programs. However, the differences create substantial impact in the manner in which Permittees will comply with the Draft Permit conditions.

These differences will cause the Permittees to (1) maintain a duplicate set of records (with minor differences to meet the different requirements) in four areas; (2) have two different standard operating procedures; (3) have two different analyst training programs; and (4) have two different QA/QC procedures to monitor performance. This additional complexity is costly and can lead to unnecessary audit findings having no impact on data reliability/useability. There is no discernable value added to these differences with regards to the protection of human health and the environment. Refer to comments on Conditions III.C. through III.J. and Attachments A through E, HSWA Portion (pages 26-77).

If Condition II.E. is not revised as requested, recommended language changes have been provided in the wording of each of the referenced conditions in the comments that follow.

18.75

Condition: II.E.1. **Key Comment:** Quality Assurance and Quality Control
Page, lines: Page 29, lines 1-10
CS Comment: This requirement unnecessarily generates another document.

Requested Action: Insert the words "or equivalent information" between "(QA/QC) plan" and "to document" on line 3.

Justification: Chapter 1, QA/QC of SW-846 contains the following language on page ONE-1: "The project plan may be a sampling and analysis plan or a waste analysis plan if it covers the QA/QC goals of the Chapter, or it may be a Quality Assurance Project Plan as described later in this chapter.....It is recommended that all projects which generate environment-related data in support of RCRA have a QA Project Plan (QAPjP) or equivalent. In some instances, a sampling and analysis plan or a waste analysis plan may be equivalent if it covers all of the QA/QC goals outlined in this chapter."

18.76

Condition: II.E.2. **Key Comment:** Quality Assurance and Quality Control
Page, lines: Page 29, lines 12-13
CS Comment: The basis for the QA/QC criteria in this condition should be consistent with the DQO provisions for QA/QC requirements specified in the FFACO Action Plan.

Requested Action: Rewrite this condition to include reference to the DQO process as cited in the FFACO Action Plan, Sections 6.5.

> Each QA/QC plan shall contain a Data Quality Assurance Plan. The level of quality assurance and quality control (QA/QC) for the collection, preservation, transportation, and analysis of each sample that is required shall depend on the DQOs for the sample. The plan shall include, where determined appropriate in accordance with the DQOs, the following:

Justification: The suggested wording ensures that the basis for the QA/QC criteria in this condition of the Draft Permit is consistent with the DQO provisions for QA/QC requirements specified in the FFACO Action Plan, Section 6.5. Draft Permit Condition II.E.5. (page 34, lines 47-50 and page 35, lines 1-3) states that the DQO process can be used; because the process is important on the Hanford Site, this process should be moved forward in the Draft Permit. A better location would be to include the DQO process discussion as the second paragraph to Condition II.E.1., DW Portion.

18.77

Condition: II.E.2.b. **Key Comment:** Quality Assurance and Quality Control
Page, lines: Page 29, line 26
CS Comment: Expand this condition to include the citation or referencing of procedures.

Requested Action: Modify the clause on line 26 as follows:

> A sampling section that shall include a description of, reference, or citation to:

Justification: Clarification that the current practice of describing, referencing, or citing procedures and/or methods is still adequate. It should not be necessary to

repeat information that is readily available by cite or reference in each SAP and WAP.

78 **Condition:** II.E.2.b.iii. **Key Comment:** Quality Assurance and Quality Control
Page, lines: Page 29, lines 36-37
18.78 **CS Comment:** As written, there is no reference point to establish what or how "a technically sufficient number" is or how it is to be determined.

Requested Action: Revise this section as follows:

> Criteria for determining the number of sample sites sufficient to meet the needs of the project as determined by the DQO planning process.

Justification: As written, there is no reference point to establish what or how "a technically sufficient number" is determined. The suggested wording is consistent with the objective of the FFACO to use the DQO process to establish the technical requirements and supporting logic for important Hanford Site QA/QC activities (refer to Sections 6.5 and 7.8 of the FFACO Action Plan). The suggested wording establishes "the needs of the project" as the limit of data quality.

18.
79 **Condition:** II.E.2.b.vi. **Key Comment:** Quality Assurance and Quality Control
Page, lines: Page 29, line 45
CS Comment: The section is difficult to implement as stated.

Requested Action: Rewrite the section as follows:

> Criteria for establishing which parameters are to be measured at each sample collection point and the frequency that each parameter is to be measured.

Justification: The location, timing, and frequency of sampling and analysis on a parameter-by-parameter basis needs to be established.

18.
80 **Condition:** II.E.2.b.xii. **Key Comment:** Quality Assurance and Quality Control
Page, lines: Page 30, lines 46-47
CS Comment: Rewrite this section for clarity.

Requested Action: Rewrite as follows:

> Pre-prepared sample labels containing blank spaces for the entry of all information necessary for effective sample tracking.

Justification: As written, the condition requires that all information for sample tracking be printed on the labels when in fact, the labels should have blank spaces to prompt field personnel to enter the necessary data at the time of sample collection.

18.
81 **Condition:** II.E.2.c.ii. **Key Comment:** Quality Assurance and Quality Control
Page, lines: Page 31, lines 4-5
CS Comment: As written, there is no reference point to establish what "a technically sufficient number" is or how it is to be determined.

Requested Action: Revise this section as follows:

> Criteria for determining the number of field measurements sufficient to meet the needs of the project as determined by the DQO planning process.

Justification: Refer to comment on Condition II.E.2.b.iii., DW Portion (page 29, lines 36-37).

18.
82 **Condition:** II.E.3. **Key Comment:** Quality Assurance and Quality Control
Page, lines: Page 33, line 11
CS Comment: The term "raw data" is inappropriately used in this condition.

Requested Action: Rewrite the condition as follows:

> ...the validated and unvalidated data and conclusions of the investigation. The data...

Justification: The language should be consistent with the renegotiated FFACO that states, "The DOE shall make available to EPA and Ecology validated and unvalidated laboratory analytical data." Raw data generally refer to data that have not undergone any interpretation and review by the laboratory staff. Unvalidated data generally have undergone a first-line technical/interpretive review to ensure data quality and that no analytical systems have malfunctioned, e.g., software failure. It is equally important to distinguish between validated and unvalidated data released from the laboratory. This change should be made to ensure consistency with the FFACO and to avoid confusion.

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.8.
83 **Condition:** II.E.3.a.iii. **Key Comment:** Quality Assurance and Quality Control
Page, lines: Page 33, line 22
CS Comment: There is not a definition of the term 'raw data' in the Draft Permit.

Requested Action: Add the following definition of 'raw data' to the definition section of the Draft Permit.

> The initial value of analog or digital instrument outputs and/or manually recorded values obtained from measurement tools. These values are converted into reportable data (e.g., concentration, percent moisture) via automated procedures and/or manual calculations.

Justification: Adding a definition for 'raw data' will clarify the Draft Permit condition and will avoid confusion over different perceptions of what 'raw data' means.

18.
84 **Condition:** II.E.3.b. **Key Comment:** Quality Assurance and Quality Control
Page, lines: Page 33, lines 36-49
CS Comment: These items are not considered to be QA/QC deliverables, but rather a selection of tabular or graphical tools that can be used in the analysis and interpretation of data.

Requested Action: Delete this section.

Justification: Stipulating the routine generation of this graphical information is considered to be beyond the scope of the QA/QC area.

18.
85 **Condition:** II.E.3.b.i. **Key Comment:** Quality Assurance and
Page, lines: Page 33, line 38 Quality Control
CS Comment: This section of the condition needs to be modified to provide information necessary for implementation.

Requested Action: Rewrite the condition as follows:

validated and/or unvalidated data;

Justification: Refer to comment on Condition II.E.3, DW Portion (page 33, line 11). Also, raw data will not lend itself well to a tabular format because of its nature. Tabular displays are valuable only after data are converted to a meaningful form (e.g., concentration, percent moisture).

18.
86 **Condition:** II.E.3.c. **Key Comment:** Quality Assurance and
Page, lines: Page 34, lines 1-36 Quality Control
CS Comment: These items are not considered to be QA/QC deliverables, but rather a selection of tabular or graphical tools that can be used in the analysis and interpretation of data.

Requested Action: Delete this section.

Justification: Refer to comment on Condition II.E.3.b., DW Portion (page 33, lines 36-49).

18.
87 **Condition:** II.E.3.c.viii. **Key Comment:** Quality Assurance and
Page, lines: Page 34, lines 29-32 Quality Control
CS Comment: This condition is too prescriptive and could prove to be unmanageable because of the size of the specific monitoring network.

Requested Action: Modify the condition to allow a case-by-case determination of mapping requirements based on the size of the area and number of monitoring wells.

Justification: The requested action is consistent with the established practices for the quarterly and annual reports and will produce a more manageable product tailored to the specific site.

18.
88 **Condition:** II.E.4. **Key Comment:** Quality Assurance and
Page, lines: Page 34, lines 38-45 Quality Control
Regulatory Agency Authority
CS Comment: It is unclear why the Permittees should notify the Department when data are obtained. There is no regulatory basis for such notification.

Requested Action: Delete this condition. Alternatively, insert "pursuant to this Permit" between "obtained" and "within" on line 39.

Justification: Considering the level of analyses requested, this condition will lead to an inordinate volume of routine notifications. Data are maintained as a record

and are available for the Department's review upon request. This condition imposes an unwarranted level of control that goes beyond the actions necessary to protect human health and the environment. The alternate language at least will provide a proper regulatory framework and make this requirement consistent with the Draft Permit, HSWA Portion, Attachment B.

18, 89

Condition: II.E.4. **Key Comment:** Quality Assurance and Quality Control
Page, lines: Page 34, lines 38-45
CS Comment: The FFACO sections concerning HEIS should be used to replace this condition.

Requested Action: It is recommended that this condition address the FFACO requirements concerning HEIS reporting.

Justification: The HEIS provides on-line computer information that is constantly available to the regulators; thus, this requirement is considered to be unnecessary.

18, 90

Condition: II.E.5. **Key Comment:** Quality Assurance and Quality Control
Page, lines: Page 34, lines 47-50; page 35, lines 1-3
CS Comment: The language in this condition should be moved to a more appropriate place.

Requested Action: Relocate this language as specified in the comment on Condition II.E.2., DW Portion (page 29, lines 12-13).

Justification: The language of this condition should be included in Condition II.E.2., near the beginning of the section, because the DQO process establishes the type, level, and control criteria for all QA/QC practices associated with a data collection activity. Refer to comment on Condition II.E.2., DW Portion, (page 29, lines 12-13).

18, 91

Condition: II.F. **Key Comment:** Groundwater Monitoring
Page, lines: Page 35, lines 5-48; page 36, lines 1-21
CS Comment: Only a groundwater monitoring program specific to final status TSD units is appropriate for the Hanford Facility. Section II.F. should only apply to the individual TSD units that have been incorporated into Part III of the Permit. All other TSD units, until incorporated into Part III of the Permit, should continue to be regulated by the interim status regulations.

Requested Action: (1) Change the title of Section II.F. to read, "Groundwater Monitoring". (2) Add the following sentence to the beginning of the paragraph starting at line 7.

> This condition shall apply only to those wells the Permittees use for the groundwater monitoring programs applicable to the TSD units incorporated into Part III of this Permit.

If the requested action to limit the groundwater monitoring program to Part III TSD units is not followed, substitute the following language for Condition II.F.:

Within 18 months of the effective date of the Permit, the Permittees shall submit a report to the Department that presents the compliance status and groundwater monitoring needs for all TSD units that are, or will be, incorporated into the Permit.

Justification: In its Responsiveness Summary, DW Portion (General Comments 74-77, pages 75-77; response to Condition II.F., pages 175-180), the Department has cited WAC 173-303-645 as justification for a Hanford Facility-wide groundwater monitoring system, including remediation and closure of wells. The Department has based their justification on that fact that "discharges into the ground" have occurred at the Hanford Facility with no recognition of, or distinction between, "active regulated unit", past-practice unit, or CERCLA sites. There is no basis to assume, or imply, that all areas or wells on the Hanford Site have been associated with, or impacted by, releases from TSD units. The regulations do not empower the Department with the authority to regulate the maintenance or closure of wells not associated with TSD monitoring activities.

Not all wells on the Hanford Site are, or should be, RCRA monitoring wells. Approximately 3,500 groundwater wells and vadose zone boreholes have been drilled on the Hanford Site, with over 2,900 still existing. Most of these wells were drilled before 1987 and may not conform to present RCRA construction standards.

A significant cost impact is expected if the Department intends this condition to include all wells not pertinent to the RCRA monitoring program based on the following amounts per well:

(1) Cost to evaluate a well is approximately $5K per well.
(2) Well remediation/decommissioning costs are estimated at $100K per well.
(3) Well maintenance activities are approximately $7M per year per well.

Thus, provision of a Hanford Facility-wide groundwater monitoring system, as outlined in the Draft Permit, could be a significant cost impact (potentially as high as several $100's of millions). In the recent FFACO negotiations, the DOE-RL, the Department, and the Agency agreed to a Cost and Management Efficiency Initiative. In Commitment 6 (Regulatory Reform) (refer to Comment Attachment 4), the parties agreed that many inefficiencies in Hanford Site operations are driven by overly conservative interpretations of environmental regulations and by functional redundancies and procedural duplication in implementation of these regulations. Condition II.F., as it is now written, could lead to undue cost increases that do not result in increased protection of human health and the environment.

The makeup of the program that would be required to address Condition II.F. is ambiguous and needs to be addressed by the Department and the Permittees as part of the efforts to support the Cost and Management Efficiency Initiative if the Department does not limit groundwater monitoring to final status TSD units included in Part III of the Permit. Further support of this clarification and planning need is contained in the Department's Responsiveness Summary, DW Portion (response to Condition II.F, page 176), which stated that "a series of negotiations concerning: priority of issues, project definitions, extent of work and the time of completion" should be conducted to address the resolution of groundwater monitoring issues. The Commenters' requested action, to develop a comprehensive report that presents the compliance status and RCRA groundwater monitoring needs, is compatible with that approach. This report would document input from such discussions between the Department and the Commenters. In addition, this report would (1) address the scope of the RCRA groundwater monitoring program in relation to CERCLA and other non-RCRA

groundwater monitoring activities conducted on the Hanford Site, and (2) include a cost-efficiency evaluation based on a detailed cost estimate. In conclusion, substitution of the proposed alternate language for Draft Permit Condition II.F would allow time for a more thorough management evaluation of the costs and benefits of a RCRA groundwater monitoring program.

18.92

Condition: II.F.2.a. **Key Comment:** Groundwater Monitoring
Page, lines: Page 35, lines 26-33
CS Comment: Consistent with the comment on Condition II.F., this condition must be clarified to apply only to those wells associated with TSD units included in Part III of this Permit.

Requested Action: In Condition II.F.2.a., (starting at line 26), change the first sentence to add "appropriate for this program" after the word "wells" in line 36; and add "as a qualified well" to the end of the sentence after the word "use".

Justification: The significant costs incurred for applying RCRA standards to wells not involved in the RCRA groundwater monitoring program for final status TSD units, and the lack of a regulatory basis for including these wells in this Permit, require that non-RCRA wells be excluded from this condition. Because many of the wells on the Hanford Site were established to meet programmatic needs other than RCRA, those programs control, and use, other appropriate standards for the maintenance and closing of these wells.

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18.93

Condition: II.F.2.b. **Key Comment:** Groundwater Monitoring
Page, lines: Page 35, lines 35-43
CS Comment: Because there is no regulatory basis for this condition, it should not be included in the Permit. This condition requires the preparation of a plan and schedule, as well as development of technical standards for a program of inspecting all groundwater and vadose zone monitoring wells, within 120 days following Permit implementation. Because of the extensiveness of this process, this time limit would be far too short, even if this condition could be justified.

Requested Action: Delete this condition.

Justification: There is no regulatory basis for requiring this condition. In addition, there is the potential that this requirement could conflict with well investigations conducted pursuant to CERCLA. Even if this condition could be justified, at least 1 year, rather than 120 days, should be allowed for preparation of an inspection plan.

18.94

Condition: II.F.2.c. **Key Comment:** Groundwater Monitoring
Page, lines: Page 35, lines 45-48
CS Comment: Remediation of a well should be distinguished from routine maintenance to prevent the Permittees from having to notify the Department before initiating any changes to a well. Changing or lowering a pump, scrubbing, or other activities that do not alter the original structure of a well should be excluded.

Requested Action: Define "remediation of a well" and distinguish this from well maintenance. On line 46, after the word "remediate", add the phrase "(excluding maintenance activities)".

Justification: Failure to make this distinction would exceed an appropriate level of control and would not be cost effective.

18.
95 **Condition:** II.F.2.d. **Key Comment:** Groundwater Monitoring
Page, lines: Page 36, lines 1-4
CS Comment: This condition should be revised to exclude the decommissioning of wells.

Requested Action: Add to this section that decommissioning of wells is not applicable.

Justification: Decommissioning is covered under abandonment in Draft Permit, Condition II.F.2.a., which refers to the Hanford Well Remediation and Decommissioning Plan in Attachment 6 of the Draft Permit.

18.
96 **Condition:** II.F.3.a. **Key Comment:** Groundwater Monitoring
Page, lines: Page 36, lines 8-10
CS Comment: Vadose zone wells should not be included in this condition.

Requested Action: On line 8 after the text, "ground water" delete the words, "and vadose zone wells".

Justification: The Permittees are not required to meet this condition for vadose zone wells. In the Responsiveness Summary, DW Portion, the Department did not provide a justification for vadose zone monitoring wells.

18.
97 **Condition:** II.F.3.b. **Key Comment:** Groundwater Monitoring
Page, lines: Page 36, line 18
CS Comment: Attachment 7 of the Draft Permit, Policy on Remediation of Existing Wells and Acceptance Criteria for RCRA and CERCLA, was written to identify procedures for remediation and decommissioning of wells used by RCRA and/or CERCLA programs. Attachment 7 should not be applied through the Permit to non-RCRA wells, CERCLA wells, or wells that meet programmatic criteria for fitness-for-use.

Requested Action: Provide a qualifier in this condition that Attachment 7 applies only to wells used to monitor final status TSD units.

Justification: The Hanford Site has a number of groundwater monitoring wells used for purposes other than RCRA. The Draft Permit, DW Portion, should apply only to those wells that are used to monitor final status TSD units, not to Hanford Site wells that are used for other purposes.

18.
98 **Condition:** II.F.3.b. **Key Comment:** Groundwater Monitoring
Page, lines: Page 36, lines 18-21
CS Comment: This condition requires that all existing wells be evaluated in comparison to current standards.

Requested Action: On line 18 after the text, "(Attachment 7)" delete the words, "Upon completion of this evaluation, " and add the following text "Within the schedule identified in Condition II.F.2.d,".

Justification: The intent of the proposed modification is to allow data from these wells to be used (even though evaluation shows the wells might not meet current standards), until these 'off-specification' wells are either remediated or replaced within the 8-year period allowed in Condition II.F.2.d., DW Portion.

18.
99

Condition: II.H. **Key Comment:** Financial Assurance and Liability Provisions
Page, lines: Page 36, lines 31-33
CS Comment: The Draft Permit does not address the financial assurance and liability provisions of WAC 173-303-620. However, the Responsiveness Summary, DW Portion (response to Condition II.H.1., pages 181-182), misinterprets both the law and the relationship between DOE-RL and its contractors.

Requested Action: Add a new Condition II.H.3. to the Draft Permit to read:

> Because the Hanford Facility is owned by the federal government and operated by the U.S. Department of Energy, Richland Operations Office, the Permittees shall not be required to comply with the financial assurance or liability provisions of WAC 173-303-620(4), (6), (7), (8), (9), and (10).

Justification: In the Responsiveness Summary, DW Portion (response to Condition II.H.1., pages 181-182), the Department states:

> "The Department agrees that Federal governments (sic) are specifically exempt from the financial assurance requirements in WAC 173-303-620.....
>
> The Department disagrees with the Commenter that the requirements of WAC 173-303-620 are not applicable to their contractors. WAC 173-303-620(1)(b) specifically states that although State and Federal governments are exempt, 'operators of facilities who are under contract with the state or federal government must meet the requirements of this section.'"

The Department's position misinterprets both the law and the relationship between the DOE-RL and its contractors. Responsibilities of WHC and PNL are limited; therefore, the exemption in WAC 173-303-620(1)(c) applies to the Hanford Facility and the requirements of WAC 173-303-620 are not applicable.

In 40 CFR 260.10 and WAC 173-303-040, "operator" is defined as the person responsible for the <u>overall</u> operation of a facility. As set out below, WHC and PNL have certain operational responsibilities at the Hanford Facility. Neither WHC nor PNL contractually are responsible for the overall operation of the Hanford Facility. The DOE-RL, the Department, and the Agency have agreed previously in the FFACO that the United States through the executive agency of DOE-RL owns and operates the Hanford Facility. The DOE-RL has accepted the role of owner-operator with a commensurate commitment and responsibility to clean up the Hanford Site including closure of TSD units. To require the same financial assurance from contractors, the burden of which would ultimately lie with the DOE-RL, would impose an undue burden upon the federal government. This would be discriminatory to the interests of the federal government as represented by the DOE-RL when compared to other state or federal operators and would make it difficult for the DOE-RL to obtain contractors for site activities.

The contractors' roles are more limited as specified under their respective contracts with the DOE-RL (refer to Comment Attachments 5 and 6) and the contractors should not

be identified as responsible for all activities. Contractors cannot be held to separate financial responsibilities from the DOE-RL because their source of funds, budgetary processes, and program development are controlled by their contracts, DOE Orders, and accounting procedures.

The DOE-RL is responsible for overall management and operation of the Hanford Facility, including policy, programmatic funding, scheduling decisions, and general oversight of the contractors' performance. The contractors are responsible for certain day-to-day activities such as waste analysis, waste handling, monitoring, container labeling, personnel training, and recordkeeping. The requirements of WAC 173-303-620 and 40 CFR 264, Subpart H, to include financial assurances and liability requirements are clearly programmatic funding functions and, therefore, outside the contractors' responsibilities.

The definition of "Permittees" [refer to comment on Definition, DW Portion (page 11, lines 1-3)] and the delineation of responsibilities [refer to comment on Condition I.A.2., DW Portion (page 14, lines 31-43)] would hold WHC and PNL responsible for all activities subject to the scope of the Permit within their respective areas of control. This language expressly recognizes the need to distinguish the responsibilities of the Permittees.

The discussion in the Responsiveness Summary, DW Portion (response to Condition II.H.1., pages 181-182), reflects the type of overly conservative interpretation that is addressed in the Commitment to Regulatory Reform of the Cost and Management Efficiency Initiative (refer to Comment Attachment 4). The Commenters are not aware of any other DOE facility in the United States that has been required to have contractors with similar responsibilities provide such financial assurance and liability protection under RCRA. Because DOE-RL is the facility owner/operator, the intent of WAC 173-303 is satisfied and the Department should not seek to require that cleanup money be spent on bonds and insurance.

The Commenters recommend that the Department reach the same conclusion as to financial assurance and liability protection that it has reached as to cost estimates.

Applying the same consistency considerations, the Commenters request that the Department consider the financial responsibility provisions of the DOE-RL contracts with WHC and PNL in combination with the indemnification provisions of the Price Anderson Act as meeting the financial assurance and liability requirements of WAC 173-303-620(4), (6), (7), (8), (9), and (10). This approach would be consistent with Commitment 6 (Regulatory Reform) of the Cost and Management Efficiency Initiative.

i8.

i00 **Condition:** II.H.1. and II.H.2. **Key Comment:** Permit Implementation
Page, lines: Page 36, lines 29-49;
page 37, lines 1-2
CS Comment: It is believed that these conditions are substantively redundant with paragraphs 138 and 139 of the revised FFACO (January 94).

Requested Action: Delete these conditions.

Justification: As part of the January 1994 amendment, paragraphs 138 and 139 of the FFACO were significantly modified to enhance regulatory involvement in the budget planning and allocation process. The DOE-RL proposes that facility closure and

postclosure cost estimates be provided as part of the 138 and 139 processes, and not through a separate mechanism. This approach will ensure consistency of data provided. The DOE-RL would be responsible to ensure that closure and postclosure estimates are clearly distinguishable from other costs.

18.
101 **Condition:** II.I.1. **Key Comment:** Permit Implementation
Page, lines: Page 37, lines 4-21
CS Comment: The Commenters encourage the Department to reconsider the language drafted for the Hanford Facility Operating Record requirements. The Commenters again request that the Department reduce the body of documents mandated by Condition II.I.1. to be maintained in the Hanford Facility Operating Record. WAC 173-303-380 accurately reflects the requirements for facility recordkeeping.

Requested Action: In the interest of efficiency, and to more accurately reflect regulatory requirements, reduce the body of documents required to be maintained in the Hanford Facility Operating Record. Also, delete the second sentence of this paragraph and replace with the following:

> Where specifically addressed in this Permit, the Permittees shall record by reference the location of such information in the Hanford Facility Operating Record. The Hanford Facility Operating Record shall identify the location of such information within seven (7) working days after the information becomes available.

The requested language for Condition II.I.1. more accurately reflects the intent of WAC 173-303-380.

Justification: The Department has unnecessarily expanded the scope of the Facility Operating Record. Such an increase in the volume of information that must be maintained in the record imposes significant additional costs on the Permittees with no added benefit to the protection of human health and the environment.

18.
102 **Condition:** II.I.1.a. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 37, lines 23-24
CS Comment: The Permittees encourage the Department to remove reference to generating activities on the topographic map required by WAC 173-303-806(4)(a). The Commenters disagree with the Responsiveness Summary, DW Portion (response to Condition II.I.1.a., page 187). The Department takes the position in this response that WAC 173-303-806(4)(a)(xviii), WAC 173-303-806(4)(a)(xx)(C), and WAC 173-303-806(4)(a)(xx)(B) specify mapping requirements that include waste generators. In fact, a study of the regulatory requirements of WAC 173-303-806(4) indicates that mapping requirements do not extend to generators.

Requested Action: Reword the condition to properly reflect the requirement of WAC 173-303-380(1)(b). Clarify, if necessary, that the Draft Permit does not impact generator activities that are conducted in accordance with WAC 173-303-200. The following language is requested for Condition II.I.1.a.:

> The location of each final status dangerous waste unit within the facility and the quantity of waste at each location. For disposal units within the facility, the location and quantity of each dangerous waste must be recorded on a map or diagram of each cell or disposal area. This

information must include cross-references to specific manifest document numbers, if the waste was required to be accompanied by a manifest.

Justification: WAC 173-303-806(4)(a) specifically states that the "Part B information requirements presented in (a) through (h) of this subsection reflect the standards promulgated in WAC 173-303-600." WAC 173-303-600 provides standards for final status facilities and contains no requirements applicable to generator activities. WAC 173-303-600(3)(d) specifically indicates that the standards are not applicable to "a generator accumulating waste on site in compliance with WAC 173-303-200." The Department is requested to acknowledge that the Hanford Facility engages in generator activities in accordance with WAC 173-303-200 and that such activities are not subject to permitting, or are these activities subject to interim status or final status standards. The Department states in the Introduction, DW Portion (page 4, lines 15-16) that the DW Permit is for the TSD of dangerous waste. Generator activities conducted pursuant to WAC 173-303-200 do not constitute TSD of dangerous waste and hence are outside the scope of the Draft Permit.

18.

Condition: II.I.1.b. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 37, line 26
CS Comment: The Commenters request that the Department reword this condition to more accurately reflect WAC 173-303-380(1)(c).

Requested Action: Reword Condition II.I.1.b. to read as follows:

Records and results of waste analyses required by WAC 173-303-300.

Justification: The requested language more accurately reflects the requirement of WAC 173-303-380(1)(c).

18.

Condition: II.I.1.c. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 37, lines 29-32
CS Comment: The Commenters request that the Department reword this condition to more accurately reflect WAC 173-303-380(1)(d).

Requested Action: Reword Condition II.I.1.c. to read as follows:

II.I.1.c. Summary reports and details of all incidents that require implementing the contingency plan, as specified in WAC 173-303-360(2)(k).

Justification: The Department has enlarged the recordkeeping requirements unnecessarily. WAC 173-303-380(1)(d) requires that the Hanford Facility Operating Record contains information pertaining to implementation of the facility contingency plan. The Permittees already provide the Department with Occurrence Reports that contain all pertinent details on unusual occurrences and offnormal occurrences. These reports normally are transmitted to the Department within 3 days of issuance. There is no reason to require the Permittees to also maintain this information in the operating record. Not all items reported in unusual occurrence or offnormal occurrence reports pose potential impact to human health and the environment. Occurrences that have no impact to human health and the environment should not require an assessment report.

105

Condition: II.I.1.d. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 37, lines 34-36
CS Comment: Draft Permit Condition II.I.1.d. contains redundant information and is unnecessarily restrictive. The Draft Permit contains the requirement to keep manifests in Condition I.E.18. Condition II.I.1.d. addresses exception report recordkeeping, which is a generator requirement.

Requested Action: Delete Condition II.I.1.d. and reference the requirement of WAC 173-303-390(4) in Condition I.E.18. Alternatively, modify Condition II.I.1.d. to read as follows:

Copies of all unmanifested waste reports.

Justification: Draft Permit Condition II.P. already addresses manifest recordkeeping requirements by reference to WAC 173-303-370. Furthermore, Condition II.I.1.a., if properly written to reflect WAC 173-303-380(1)(b), should include the requirement to cross-reference waste locations to specific manifest document numbers. Refer to the comment on Condition II.I.1.a., DW Portion (page 37, lines 23-24).

Requirements associated with unmanifested waste reports are located in WAC 173-303-390(4) and would be more appropriately addressed in Condition I.E.18., DW Portion (page 23, lines 27-32). Exception reporting is a generator requirement, which is outside the scope of the Draft Permit. Exception reporting is required by WAC 173-303-220(2) and recordkeeping requirements for exception reports are addressed in WAC 173-303-210(2), both of which are regulations exclusively applicable to generators.

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106

Condition: II.I.1.f. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 37, line 40
CS Comment: Draft Permit Condition II.I.1.f. is redundant and unnecessarily expands the scope of the Facility Operating Record.

Requested Action: Delete Condition II.I.1.f.

Justification: In the Responsiveness Summary, DW Portion (response to Condition II.I.1.g., page 189), the Department states that "the requirement for placement of this plan into the Facility Operating Record will be deleted." The requirement has not yet been deleted.

WAC 173-303-380 does not contain any requirement to keep training records in the operating record. The training program recordkeeping requirements are addressed in Draft Permit Condition II.C.1., DW Portion (page 27, lines 4-6), which requires compliance with WAC 173-303-330(2) and (3). The written training plan and training records must be kept at the Hanford Facility in accordance with Condition II.C.1., DW Portion. Maintaining this information as part of the operating record will result in unnecessary increased costs. Comments previously submitted to the Department regarding the inclusion of training records in the Hanford Facility Operating Record pointed out that this practice is burdensome and costly.

Also in the Responsiveness Summary, DW Portion (response to Condition II.I.1.g., page 189), the Department cites WAC 173-303-390. A permit condition should be reasonably related to the purpose of the regulation cited as its basis. WAC 173-303-390 addresses facility reporting requirements, not what information must be included in a facility operating record. More specifically, it states: "The

owner or operator of a facility is responsible for preparing and submitting the reports described in this section." Nowhere in WAC 173-303-390 does it specify where information that might be used to prepare a report on facility employee training must be kept.

If the Department asserts under WAC 173-303-390 that it requires a report documenting facility personnel training activities, then such a report could be prepared from training records located other than in a facility operating record. The Permittees should not be required to assume the administrative burden and increased cost that compliance with Draft Permit Condition II.I.1.f. would entail.

18.
107 **Condition:** II.I.1.g. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 37, lines 42-43
CS Comment: Draft Permit Condition II.I.1.g. does not accurately reflect the requirement of WAC 173-303-340(5). Redundant maintenance of agreement information in the operating record will contribute to additional, unnecessary costs.

Requested Action: Rewrite this condition to reflect the requirement found in WAC 173-303-340(5). The condition should read:

> Documentation of refusal by state or local authorities that have declined to enter into agreements in accordance with WAC 173-303-340(4).

Justification: Draft Permit Condition II.B.4., DW Portion (page 26, lines 47-49), already addresses requirements of WAC 173-303-340(4). WAC 173-303-340(5) contains the only information related to preparedness and prevention that must be maintained in the operating record. This requirement is limited to placing documentation in the operating record for situations where state or local authorities decline to enter into agreements concerning response arrangements. Any summary reports placed into the operating record pursuant to WAC 173-303-380(1)(d) would have addressed involvement of state or local authorities.

18.
108 **Condition:** II.I.1.h. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 37, lines 45-46
CS Comment: Draft Permit Condition II.I.1.h. imposes redundant and unnecessary requirements on the Permittees without regulatory basis.

Requested Action: Delete Condition II.I.1.h.

Justification: WAC 173-303-380 requires Permittees to maintain information on incidents that require implementation of the contingency plan. A requirement to maintain in the operating record information on all spills and releases is excessive and is without regulatory basis. Even the broad regulatory requirement of WAC 173-303-145 only requires response for spills and discharges into the environment that threaten human health or the environment. Incorporating records of all spills into the operating record without regard to the threat to human health and the environment threshold of WAC 173-303-145 imposes an unnecessary requirement.

The General Facility Conditions apply to final status TSD activities, not generator activities. Records of spills and releases occurring during generator activities should not be included in the Hanford Facility Operating Record. Information on releases that is maintained in the operating record should be limited to that which is prescribed by WAC 173-303-380(1)d).

Condition: II.I.1.i. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 37, lines 48-49
CS Comment: DOE-RL has agreed to provide projections of anticipated costs for closure of final status TSD units annually in a separate report. Refer to comment on Draft Permit Condition II.H, DW Portion (page 36, lines 29-49; page 37, lines 1-2).

Requested Action: Delete Condition II.I.1.i.

Justification: Condition II.I.1.i. reflects a requirement related to Condition II.H., DW Portion, that is based on WAC 173-303-620, which is not applicable to the federal government. Nevertheless, the DOE-RL has agreed to provide closure cost projections independent of the Permit. The Department states in the Responsiveness Summary, DW Portion (response to Condition II.I.1.j., page 191) that they "may require a generator to furnish additional reports" and that WAC 173-303-380(g) mandates keeping in the operating record cost estimates required for the facility. Generator requirements are outside the scope of the Permit and should not be addressed by this condition. Although WAC 173-303-380(g) addresses cost estimate recordkeeping, such recordkeeping is limited to cost estimates that are required. According to WAC 173-303-620(1)(c), the federal government is not required to prepare cost estimates.

Condition: II.I.1.j. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 38, lines 1-2
CS Comment: Draft Permit Condition II.I.1.j. is redundant and unnecessarily expands the scope of the operating record.

Requested Action: Delete Condition II.I.1.j.

Justification: The appropriate requirement should be addressed in Draft Permit Condition II.I.1.c. and should be based on WAC 173-303-380(1)(d).

The requirement of WAC 173-303-380(1)(d) is explicitly limited to "summary reports and details of all incidents that require implementing the contingency plan, as specified in WAC 173-303-360(2)(k)" and reinforced by Condition II.A.1. Refer to comments on Draft Permit Conditions II.I.1.c. and II.I.1.h., DW Portion (page 37, lines 29-32; page 37, lines 45-46, respectively).

In their Responsiveness Summary, DW Portion (response to Condition II.I.1.m., page 192), the Department cites WAC 173-303-145(2)(ii) and WAC 173-303-145(2)(d) as being applicable. Neither of these citations appear to exist. The Department also indicates that most fires and explosions will require implementation of the contingency plan. The Commenters agree and, therefore, request that this redundant condition be deleted.

Condition: II.I.1.k. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 38, lines 4-5
CS Comment: Draft Permit Condition II.I.1.k. is unnecessary and is without regulatory basis.

Requested Action: Delete Draft Permit Condition II.I.1.k.

Justification: There is no requirement in WAC 173-303-380 to include this information in the operating record; its inclusion would not contribute to protection of human health and the environment.

18.
112 **Condition:** II.I.1.l. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 38, lines 7-9
CS Comment: Draft Permit Condition II.I.1.l. is ambiguous. All waste treatment under this Permit should be associated specifically with a TSD unit.

Requested Action: Delete Condition II.I.1.l.

Justification: Condition II.I.1.l. has no regulatory basis. Dangerous waste treatment must be at a TSD unit covered by the Permit. Any waste treatment under other regulations beyond the scope of this Permit will be reported in accordance with the applicable regulation. Information contained in the Hanford Facility Operating Record must be from a TSD unit covered by this Permit.

18.
113 **Condition:** II.I.1.n. **Key Comment:** Permit Implementation
Page, lines: Page 38, lines 13-15
Comment: Draft Permit Condition II.I.1.n. imposes redundancy and will result in unnecessary maintenance costs associated with the Hanford Facility Operating Record. Condition I.E.10. already requires retention of these records. TSD unit-specific record retention is addressed by Condition II.I.1., DW Portion (page 37, lines 17-19). Refer to comment on Condition I.E.10., DW Portion (page 19, lines 9-49; page 20, lines 1-16).

Requested Action: Delete Condition II.I.1.n.

If the Department deems it necessary to include this information specifically in the Facility Operating Record, the Commenters request clarification that the records required under this Permit are limited to monitoring records from RCRA TSD monitoring activities (e.g., groundwater monitoring wells for final status TSD units) [refer to Condition II.I.1.n., DW Portion (page 38, lines 13-15)], including the calibration and maintenance records for the equipment associated with these activities.

Justification: WAC 173-303-810 requires monitoring records to be kept in accordance with the standard permit conditions. Monitoring information already is maintained at the Hanford Facility and is available to the Department at their request. The Commenters encourage the Department to reconsider their position on the requirements associated with the Hanford Facility Operating Record that add cost but no, or minimal, added benefit to protection of human health and the environment. Refer to comment on Draft Permit Condition II.I.1.o., DW Portion (page 38, lines 17-34).

18.
114 **Condition:** II.I.1.o. **Key Comment:** Permit Implementation
Page, lines: Page 38, lines 17-34
CS Comment: Draft Permit Condition II.I.1.o. imposes redundancy and additional requirements at a cost with no, or minimal, added benefit. Draft Permit Condition I.E.10., DW Portion (page 19, lines 9-49; page 20, lines 1-16) already provides for maintenance of this information.

Requested Action: Delete Condition II.I.1.o.

Justification: Maintenance of monitoring records is a standard permit condition and should be reflected in Draft Permit Condition I.E.10. Furthermore, all monitoring records required by WAC 173-303-380(f) already have been addressed by the Department in Draft Permit Condition II.I.1., DW Portion (page 37, lines 17-19). Refer to comment on Draft Permit Conditions I.E.10., DW Portion (page 19, lines 9-49; page 20, lines 1-16) and Draft Permit II.I.1.n., DW Portion (page 38, lines 13-15).

18.
115 **Condition:** II.I.1.p. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 38, lines 36-37
CS Comment: Condition II.I.1.p. should be removed from the Draft Permit, DW Portion, and reflected in the Draft Permit, HSWA Portion.

Requested Action: Delete Condition II.I.1.p. and request the Agency to address retention of summaries of corrective action records in the Draft Permit, HSWA Portion.

Justification: Requirements pertaining to retention of corrective action records should be administered through the Draft Permit, HSWA Portion, not the DW Portion.

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18.
116 **Condition:** II.I.1.q. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 38, lines 39-40
CS Comment: Condition II.I.1.q. adds to the Hanford Facility Operating Record without regulatory basis.

Requested Action: Delete Condition II.I.1.q.

Justification: The Commenters found no language in WAC 173-303-380 or WAC 173-303-390 that specifically addresses "progress reports and any notifications required" by the Permit. In their Responsiveness Summary, DW Portion (response to Condition II.I.1.t., page 195), the Department states that "WAC 173-303-380 and 390 indicate what kinds of reports are required to be provided." The Commenters encourage the Department to delete this condition based on the fact that the Department already has addressed all the requirements for the retention of records in accordance with WAC 173-303-380 and -390 elsewhere in the Draft Permit. For examples, refer to Conditions II.I.1.r., DW Portion (page 38, lines 42-43), II.I.1.s., DW Portion (page 38, line 45), and II.I.1.t., DW Portion (page 38, lines 47-48).

18.
117 **Condition:** II.I.2. **Key Comment:** Permit Implementation
Page, lines: Page 39, lines 1-16
CS Comment: The Commenters encourage the Department to eliminate this Draft Permit condition. Certifications concerning waste minimization are already submitted in accordance with generator provisions. Additionally, Draft Permit Condition I.E.22., DW Portion (page 24, lines 45-48) already requires waste minimization reporting for waste generated at the Facility.

Requested Action: Delete this condition.

Justification: Compliance with WAC 173-303-390, Facility Reporting, is the primary compliance requirement for final status TSD units. Condition I.E.22.. adequately provides for waste minimization reporting at the Facility.

18.
118 **Condition:** II.J.1. and II.J.2. **Key Comment:** Permitting Approach
Page, lines: Page 39, lines 20-29
CS Comment: The Department lacks regulatory authority to place an interim status unit into a final status Permit except by the provision of WAC 173-303-805(8)(a). This provision identifies "final administrative disposition of a final facility permit application" pursuant to WAC 173-303-806 as the appropriate vehicle for attaining final status. The permit application requirements of WAC 173-303-806 include the submittal of a Part B permit application. According to WAC 173-303-840(1)(a), the Department cannot begin processing a permit until the applicant has fully complied with the application requirements for the permit. The TSD units addressed in Part V of the Draft Permit have not gone through the final status permitting process and, consequently, cannot be addressed by final status permit conditions.

Requested Action: Eliminate Part V from the Draft Permit.

Justification: Refer to comment on Introduction, DW Portion (page 6, lines 16-28).

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119 **Condition:** II.J.3. **Key Comment:** Permit Implementation
Page, lines: Page 39, lines 31-38
CS Comment: Draft Permit Condition II.J.3. should not address the incorporation of TSD units into the Permit.

Requested Action: Delete the text on lines 35 and 36 that states "including changes to incorporate the addition of TSD units to the Permit."

Justification: Addressing permit modifications for the incorporation of TSD units in this condition is redundant; it is already addressed by Draft Permit Conditions I.A.1.a., DW Portion (page 14, lines 6-14) and I.C.3., DW Portion (page 15, lines 42-49; page 16, lines 1-17). If the incorporation of TSD units into the Permit affects the operating plans, facility design, or the expected year of closure, the requirements of Draft Permit Condition II.J.3. will be applicable.

18.
120 **Condition:** II.K. **Key Comment:** Permit Implementation
Page, lines: Pages 40, lines 7-50;
page 41, lines 1-49
CS Comment: Tying the determination of accomplishment of "clean closure" for any given TSD unit to "future site use" is inappropriate.

Requested Action: Delete all references to "future site use" from Draft Permit Condition II.K.

Justification: "Future site use" is the main criteria for "clean closure" identified in each of the II.K. conditions, even though future uses of all of the areas in question have not been determined and are not likely to be determined in the near term. Furthermore, all of the Hanford Facility TSD units are located within the boundaries of operable units that will undergo further remediation at some time. Because of current uncertainties over the scheduling and/or integration of closure and remediation activities, it cannot be determined whether a closure will be conducted before, after, or simultaneously with the operable unit remediation. Without knowing what the final goal of the operable unit remediation is, "future uses" cannot be determined for any given area to support a closure plan decision.

This situation could preclude any near-term "clean closures" even though all of the contamination due to any TSD activities might be completely removed in conducting the work required under the closure plan.

18.
121 **Condition:** II.K.1. **Key Comment:** Permit Implementation
Page, lines: Page 40, lines 9-15
CS Comment: This condition is internally inconsistent. The first sentence establishes one set of criteria for "clean closure". The second sentence allows for different criteria.

Requested Action: Change the language to clarify the criteria that will be used to determine when "clean closure" has been accomplished. The following language is suggested:

> For purposes of Condition II.K., the term clean closure shall mean the status of a TSD unit at the Hanford Facility that has been closed to the cleanup levels consistent with the final remedial action record of decision reached for the operable unit within which the TSD unit is located.

Justification: The first sentence of Draft Permit Condition II.K.1., as written, establishes the requirements of WAC 173-303-610(2)(b) as the criteria for defining clean closure. Those requirements are based on a prescribed site use. The second sentence appears to allow for some other future site use determination that could result in a different set of clean up parameters. The suggested language avoids the internal inconsistency and more correctly reflects how the clean up work on the Hanford Site will have to be conducted to be as efficient and cost effective as possible. Any other scenario could result in duplication of work and much higher costs, which are inconsistent with the Cost and Management Efficiency Initiative.

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18.
122 **Condition:** II.L.2.b. **Key Comment:** Permit Implementation
Page, lines: Page 42, line 23
CS Comment: The terminology for "ECN" needs to be corrected.

Requested Action: Change "Engineer Change Notice" to "Engineering Change Notice".

Justification: "Engineering Change Notice" matches the approved list of acronyms of the Draft Permit, DW Portion (page 12, line 3).

18.
123 **Condition:** II.L.2.c. **Key Comment:** Permit Implementation
Page, lines: Page 42, line 41
CS Comment: Clarification is needed regarding the applicability of an NCR.

Requested Action: Add the words "or exceeds" following "meets"

Justification: If the work exceeds a specification, it should be handled as an ECN, not an NCR. This concept is consistent with the concept employed in the Draft Permit Condition II.R.1, DW Portion.

18. 124
Condition: II.L.3. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 43, lines 20-27

CS Comment: Draft Permit Condition II.L.3. refers to federal requirements not appropriate in a state-only permit and fails to acknowledge that compliance with the Permit constitutes compliance with state law as specified in WAC 173-303-810.

Requested Action: Delete Draft Permit Condition II.L.3. language and substitute the following language:

> The Permittees in receiving, storing, transferring, handling, treating, reprocessing, and disposing of dangerous waste shall design, operate, and/or maintain the TSD units that have been incorporated into this Permit in compliance with Chapter 173-303 WAC. Compliance with this Permit during its term constitutes compliance for the purpose of enforcement with the Dangerous Waste Regulations as specified in WAC 173-303-810(8).

Justification: Refer to comment on Draft Permit Condition I.E.2., DW Portion (page 17, lines 11-23).

18.

Condition: II.N.1. **Key Comment:** Receipt of Offsite Waste
Page, lines: Page 43, lines 39-42
CS Comment: There is no regulatory basis for restricting the receipt of dangerous waste from either offsite or foreign sources at a permitted TSD facility.

Requested Action: Delete the first sentence of Draft Permit Condition II.N.1.

Justification: The Department lacks the regulatory authority to prohibit a permitted TSD facility from accepting offsite or foreign waste. No statutory or regulatory basis for this prohibition is mentioned in the Department's 1992 Fact Sheet or in the Responsiveness Summary, DW Portion (response to Condition II.N.1., pages 207-208).

The Commenters need to retain the management flexibility to receive waste from offsite or foreign generation locations. This flexibility normally is used when a specific Hanford Facility TSD unit is uniquely qualified to manage the type of waste in question. The TSD unit-specific permit application portions included in Part III have specifically requested the ability to accept offsite waste.

Finally, the Commenters have raised a question to the Department concerning noncontiguous portions of land owned and operated by the DOE-RL, such as the Federal Building and the 3000 Area. It is expected that the DOE-RL and the contractors managing the waste generating activities located in these areas will request, and be granted, separate EPA/State identification numbers in accordance with WAC 173-303-060. Research waste already is generated routinely by DOE-sponsored research projects at PNL facilities that are not contiguous with the Hanford Facility. This Draft Permit condition would effectively ban waste generated at these locations from ever being managed on the Hanford Facility.

As noted in the previous discussion on Jurisdiction Over Radioactive Materials, the Department's authority is limited strictly by RCRA to the nonradioactive components of mixed waste and does not extend to most "nuclear waste". Therefore, regulation of the receipt of nuclear waste from offsite does not fall under the Department's jurisdiction.

Condition: II.N.2. **Key Comment:** Permit Implementation
Page, lines: Page 43, line 47;
page 44, lines 1-6
CS Comment: The term "foreign source" is not defined.

Requested Action: The term "foreign source" should be replaced with "sources outside the United States" to be consistent with language found in WAC 173-303-290(1), dated December 8, 1993.

Justification: The current Draft Permit language is based on the WAC 173-303-290(1), dated March 7, 1991. This version of the WAC did not provide a definition of "foreign source". The December 8, 1993 version of WAC 173-303-290(1) uses the following text: "The facility owner or operator who is receiving dangerous waste from sources outside the United States shall notify the Department..." Use of this text will eliminate the confusion generated by the use of the term "foreign source".

Condition: II.O.1.b. **Key Comment:** Permit Implementation
Page, lines: Page 44, lines 33-36
CS Comment: Draft Permit Condition II.O.1.b. requires the Permittees to duplicate an inspection that could be accomplished adequately with one inspection per year.

Requested Action: Replace language with the following:

> ...River, contained within the Facility boundary, annually. This inspection should take place at a low-water mark of the year. These inspections...

Justification: One inspection of the Columbia River banks is sufficient to address the criteria in Draft Permit Condition II.O.1.c., DW Portion. Anything visible at the high-water mark would be visible at a low-water mark. The Columbia River is controlled by dams and the seasonal river fluctuations are overridden by this control. The best way to determine the optimal time of the year to inspect the river banks would be to work with the U.S. Army Corps of Engineers who control the Priest Rapids and McNary Dams.

Condition: II.O.2. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 45, lines 16-17
CS Comment: The inspection proposed by Draft Permit Condition II.O. extends beyond the scope of final status permitted units and extends to areas that are being remediated pursuant to CERCLA and the FFACO. While the Commenters are willing to perform the requested inspection, any remedial action at areas that are not within the boundaries of a specific TSD unit that is contained in this Permit, must be performed in accordance with the plans and schedules developed pursuant to the FFACO. The DOE-RL will work with the Agency and the Department to develop appropriate remedial action schedules under the FFACO.

Requested Action: Modify Draft Permit Condition II.O.2. to read as follows:

> The Permittees shall comply with WAC 173-303-320(3) regarding remedial action for problems found at a TSD unit contained within Part III of this Permit. Remedial actions at other locations shall be scheduled and conducted in accordance with requirements of the FFACO.

Justification: The inspection provisions of Draft Permit Condition II.O. are broader than authorized under WAC 173-303 because the inspections are not limited to TSD units contained in Part III of this Permit. Remedial actions outside the boundaries of those TSD units contained within Part III of this Permit must be scheduled and conducted in accordance with requirements of the FFACO to avoid the potential for interference with the conduct and prioritization of activities established pursuant to CERCLA and the FFACO.

18.
129

Condition: II.Q.1. **Key Comment:** Onsite Waste Movement
Page, lines: Page 45, lines 37-49;
page 46, lines 1-15
CS Comment: There is no regulatory basis to require the documentation of onsite waste shipments.

Requested Action: Delete this Draft Permit Condition.

Justification: The Commenters do not agree that onsite waste movement requires a manifest or its equivalent under WAC 173-303-040 (definition of "on-site"), -180, and -370(1). The WAC 173-303-040 defines onsite as "the same, geographically contiguous, or bordering property". The section further clarifies this definition by adding that "travel between two properties divided by a public right of way, and owned, operated, or controlled by the same person, shall be considered onsite travel if: The travel crosses the right of way at a perpendicular intersection; or, the right of way is controlled by the property owner and is inaccessible to the public".

The Hanford Facility is a single facility with a single EPA/State identification number. The Responsiveness Summary, DW Portion (response to Condition I.E.17.b., page 140) is in error when it states "... many of the units which generate waste are not accessible by non-public right of ways and further, many are not located on contiguous property..." To the contrary, waste usually is moved from the point of generation to TSD units solely along roads that are owned by the DOE-RL and are not public right-of-ways. Where transport on public right-of-ways is required, manifesting (and its associated requirements) is required by Draft Permit Condition II.P, DW Portion (page 45, lines 23-33). No Hanford Facility TSD units are directly accessible by public right-of-ways; travel on restricted-access roads is required to reach the TSD units.

It is inappropriate to require this level of control and documentation when the shipment begins and ends within a controlled area and is not conducted on a public roadway. The Department, the Agency, and U.S. Department of Transportation regulations all specifically apply manifesting and associated requirements only to offsite shipments of hazardous waste. As an example, the Department's regulations [WAC 173-303-370(1)] specifically limits the use of manifests to offsite shipments, and WAC 173-303-180 also specifies that manifests for shipping hazardous waste only apply to shipments from offsite. The WAC 173-303-370(1) specifically states that discrepancy reporting requirements are applied only to owners and operators that receive waste from offsite sources. The WAC 173-303-390(1) requirement for unmanifested waste reporting applies to offsite shipments.

Furthermore, the Draft Permit restricts the Permittees from using their professional judgment in dealing with an unmanifested waste shipment. WAC 173-303-370(5)(c) provides for the management of waste where the conditional acceptance of unmanifested waste is more protective of human health and the environment than to return it to the

offsite generator. There is no reason offered why the Permittees should not be entitled to handle such waste in accordance with this regulation.

The Department offers no technical justification to substantiate that a manifest or equivalent documentation, and associated requirements such as manifest discrepancy reporting, are necessary to protect human health and the environment. The Department's 1992 Fact Sheet (pages 8 and 20) stated the basis for this condition was the potential long transport distances on the Hanford Facility and the intent of the Department to treat all onsite waste movements as if these were to offsite facilities. This contention is reiterated in the Responsiveness Summary, DW Portion (response to Condition I.E.17.b., pages 139-140) without further regulatory justification being offered. The Department points to no history of waste shipment discrepancies or transportation problems to justify treating the Hanford Facility as other than a single site.

The "intent" of the Department to adopt an interpretation contrary to the regulation is no justification for doing so. The determination by the Department that the Hanford Facility is to be treated differently just because it covers a large land area also is insufficient justification. Many transfers will be for distances that are no greater than the distances that exist at other RCRA permitted facilities in the Northwest.

The Commenters recognize the need to have procedures to ensure that waste is properly managed and to have an effective inventory control system in place. The inventory control system has provisions to reconcile discrepancies in the records of waste moved onsite. Tracking mechanisms have been in place for the onsite movement of waste on the Hanford Facility for many years as a best management practice; this documentation is used to ensure that waste destined for further onsite or offsite management units is properly managed. Onsite waste handling at the Hanford Facility is consistent with that which is protective of human health and the environment.

18.

130 **Condition:** II.Q.2. **Key Comment:** Onsite Waste Movement
Page, lines: Page 46, lines 17-19
CS Comment: The proposed Draft Permit language is too restrictive as written.

Requested Action: The Commenters recommend changing the phrase "such that no material can escape during transport" to read "to minimize the potential for material to escape during transport."

Justification: The requested language more accurately reflects the intent of covering the material.

18.

131 **Condition:** II.R.2. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 46, lines 31-35
CS Comment: The Draft Permit Condition not only exceeds the regulations, but requires the recording of "the date the substitution became effective" at an unrealistic time -- "prior to institution of such substitution."

Requested Action: Revise Draft Permit Condition II.R.2. as follows:

> The Permittees must place in the operating record (within 7 calendar days after the change is put into effect) the substitution documentation, accompanied by a narrative explanation, and the date the substitution

became effective. The Department may judge the soundness of the substitution.

Justification: WAC 173-303-830(4)(a)(i)(A) requires modification documentation to be provided "within seven calendar days after the change is put into effect," not "prior to institution of such substitution." Also, providing the "date the substitution became effective" as requested by this condition, "prior to institution of such substitution," is not possible.

Deletion of "and take appropriate action" is suggested as these words are not required in this condition. Draft Permit Condition II.R.3., DW Portion (page 46, lines 37-41), deals with the Department's response should the substitution be denied.

18.
132 **Condition:** II.R.3. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 46, lines 37-41
CS Comment: The Draft Permit Condition exceeds the regulations. Enforcement action is not necessary just because a substitution is denied.

Requested Action: Revise Draft Permit Condition II.R.3. as follows:

> If the Department determines that a substitution was not equivalent to the original, it must notify the Permittees that the Permittees' claim of equivalency has been denied, of the reasons for the denial, and that the original material or equipment must be used. If the product substitution is denied, the Permittees must comply with the original approved product specification or find an acceptable substitution.

Justification: The changes to Draft Permit Condition II.R.3. could be made consistent with WAC 173-303-830(4)(a)(i)(C), which states "...the department may for cause reject, any Class 1 modification. The department must inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification have been rejected, the permittee must comply with the original permit conditions."

18.
133 **Condition:** II.T. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 46, line 49;
page 47, lines 1-4
CS Comment: This Draft Permit Condition exceeds regulatory requirements without sufficient justification.

Requested Action: Delete Draft Permit Condition, II.T.

Justification: There is no regulatory authority to impose this requirement on the Permittees or is there any explanation in the Responsiveness Summary, DW Portion, (response to Condition II.T., page 215) that the condition is necessary to protect human health and the environment. While a form of this condition might be appropriate in the Draft Permit, HSWA Portion, it is not appropriate in the Draft Permit, DW Portion.

134 **Condition:** II.U. **Key Comment:** Mapping and Marking of Underground Piping

Page, lines: Page 47, lines 6-49; page 48, lines 1-50; page 49, lines 1-6

CS Comment: Inclusion of this condition is inappropriate in the Draft Permit.

Requested Action: Delete Draft Permit Condition II.U.

Justification: The Commenters disagree with the Responsiveness Summary, DW Portion (response to Condition II.U., page 218) statements that the regulatory bases for imposing this condition are found at WAC 173-303-806(4)(a)(xviii)(L) and WAC 173-303-806(4)(c)(iv). The Department is attempting to use these regulatory citations inappropriately. Both of these regulatory citations are relevant to information to be provided in a Part B permit application. It has been the specific intent of the Commenters to include the required information in permit application documents, as has been noted to the Department several times. When the permit application documents for TSD units that include tank systems are submitted, the appropriate maps and diagrams have been, or will be, provided.

There are also some pragmatic concerns with the approach set forth in Draft Permit Condition II.U. At the scale stated in WAC 173-303-806(4)(a)(xviii)(L), a 6-inch pipe would be shown as a line 1/400-inch wide. It would be difficult to even see such a line. If several pipelines ran in parallel, even if several feet apart, it would be impossible to differentiate between the lines. A map on this scale would be useless in determining whether any safety or environmental concerns were present.

However, in trying to resolve a significant issue that was hindering the issuance of the initial Permit, there were discussions concerning preparation of a simplified map. On evaluating the cost of preparing and maintaining even a simplified map, it has become clear that it will be very expensive to accomplish. The cost, based on a preliminary study, has been estimated to be in excess of $50 million over a 30-year period (refer to the Preliminary Draft Mapping - Marking Estimate, Comment Attachment 7).

Further, as has been noted several times to the Department, including in the previous comments on the initial Draft Permit (submitted on March 16, 1992), and as discussed in the following, another system is already in place to identify underground pipelines any time excavation below grade is planned. An excavation permit system ensures that anyone digging in an area where a buried pipeline is located will be aware of the buried hazards if any. The excavation permit requires an exhaustive search of the construction and engineering drawings and documents to identify subsurface engineered structures, their depths, sizes, and configuration, as well as excavation precautions.

While the Department's representatives might have observed a situation wherein it was difficult to identify a specific pipe in an excavation, as was noted in the Responsiveness Summary, DW Portion (response to Condition II.U., page 218), the map being sought through Draft Permit Condition II.U. will not help to resolve that type of problem. Frequently, it is necessary to go back to the drawings after an excavation has been opened to more clearly identify a specific pipeline. The Commenters also disagree with the Department's belief that the DOE-RL has not maintained adequate records on underground pipelines. The records kept by the DOE-RL are as good as the records of nearly every municipality, local or state agency, or industrial plant. The same problem of identifying a particular pipe in a excavation where there are multiple pipes occurs ubiquitously. Additionally, the Department has no basis for the statement that the DOE-RL cannot adequately ensure protection of

human health and the environment. The systems already in place on the Hanford Facility are far more protective of human health and the environment than the map that would be prepared in response to this Draft Permit condition. Therefore, preparing the maps will provide no added value and will result in an unnecessary expenditure of millions of dollars.

In the recent FFACO negotiations, the DOE-RL, the Department, and the Agency agreed to a Cost and Management Efficiency Initiative. In Commitment 6 (Regulatory Reform) (refer to Comment Attachment 4), the Parties agreed that many inefficiencies in Hanford Site operations are driven by overly conservative interpretations of environmental regulations and by functional redundancies and procedural duplication in implementation of those regulations. Not implementing Draft Permit Conditions II.U. and II.V. are examples of areas where cost savings can be realized without decreasing the protection of human health and the environment.

WAC 173-303-806(4)(a)(xviii)(L) requires a topographic map with a scale of 1" equal to no more than 200' showing the "location of operational units within the TSD facility site, where dangerous waste is (or will be) treated, stored, or disposed (include equipment clean-up areas)." WAC 173-303-806(4)(c)(iv) requires "a diagram of piping, instrumentation, and process flow for each tank system."

Although the information needed is required to be provided in the Part B application, the Hanford Facility presently satisfies the intent of both these WAC regulations, even for interim status units through an existing Hanford Sitewide engineering drawing system. These existing drawings contain information pertaining to the "piping, instrumentation, and process flow for each tank system". These drawings show the location of underground dangerous waste pipelines and are available to the Department. As each individual Hanford Facility TSD unit permit application is submitted, drawings with information consistent with the applicable regulations are provided. Between the Hanford-wide engineering drawing system and the individual TSD unit drawing packages, the Hanford Facility more than meets the above WAC regulations.

The piping maps and schematics required by Draft Permit Condition II.U exceed the criteria of the above WAC regulations and impose an unnecessary level of control. Draft Permit Condition II.U requires the Hanford Facility to maintain redundant dangerous waste piping drawing systems. There is no WAC requirement for this. The reiteration of information from the existing piping drawings onto the maps and schematics required by Draft Permit Condition II.U. will not provide the Department any new information or any added benefit to the protection of human health and the environment. Providing a redundant system is not, as the Department claims, "critical in overall environmental assessment and safety" or will it provide any new "elemental piece of information in dangerous waste management" Responsiveness Summary, DW Portion (response to comment on Condition II.U., page 219).

The Department maintains that because TSD unit drawings and remediation work plan maps will be needed in the future, "the cost incurred to complete this task now will be saved in the future." This is not the case. The cost of preparation of the drawings, schematics, and maps now would be aimed at meeting the requirements of the Draft Permit conditions and would have to be funded as a completely separate activity.

The Department's response fails to take into account the extra costs incurred because of the short turnaround time, the compilation approach, and the annual updates specified by Draft Permit Condition II.U. To complete the tasks of Draft Permit

Condition II.U. in the time required, additional staff, tasked specifically to prepare the schematics, drawings, and maps; new equipment (hardware, software); and additional office space would be needed. Existing systems and personnel, which can handle only a certain number of individual TSD units' permit documentation drawings at one time, cannot handle the massive number of maps and schematics required by Draft Permit Condition II.U. in the 3 years specified. Also, this response does not account for the cost to perform the annual updates on the hundreds of maps and schematics required by Draft Permit Condition II.U. These would be additional costs that would not be incurred if the work is done as part of the development of Part B application documents and/or work plans.

Whether the information prepared as part of this task would be useful in preparation of Part B and work plans documents would have to be reevaluated each and every time such information was necessary. The Commenters acknowledge that some of the information might be useful some of the time, but the Commenters also believe that some of the information would have to be redone to meet specific needs that cannot be identified at this time, and that some of the information would be unused or useless in other cases. It would be a more productive use of limited resources to develop the information as it is needed to support the preparation of Part B documents and cleanup activities than to set up a whole special program whose function would be aimed only at meeting the Draft Permit conditions.

Finally, the Department states that it "does not believe that the piece-by-piece pipe diagrams that will be supplied over the next ten years will provide a clear representation of the complex underground dangerous waste transfer system at the Hanford Reservation." This claim implies that the Department would have to wait for over 10 years for any information on the underground dangerous waste pipelines. This is not the case. The existing engineering drawing system provides the information required by WAC 173-303-806(4)(a)(xviii)(L) and WAC 173-303-806(4)(c)(iv). Therefore, the existing engineering drawing system suffices as a representation of the buried dangerous waste transfer system.

18.
135

Condition: II.U.1. **Key Comment:** Mapping and Marking of Underground Piping
Page, lines: Page 47, lines 8-19
CS Comment: Inclusion of this condition is inappropriate in the Draft Permit.

Requested Action: Delete Condition II.U.

If Condition II.U. is not deleted, substitute the following language for Condition II.U.1.:

> Within 12 months of the effective date of the Permit, the Permittees shall submit a report to the Department that describes the procedures proposed to be used to compile the information necessary to prepare: (1) within 36 months of the effective date of this Permit, piping schematics for dangerous waste underground pipelines (including active, inactive, and abandoned pipelines that contain or contained dangerous waste subject to the provisions of Chapter 173-303 WAC) within the 200 East, 200 West, 300, 400, 100N, and 100K Areas; (2) within 36 months of the effective date of this Permit, maps showing the location of dangerous waste underground pipelines (including active, inactive, and abandoned pipelines that contain or contained dangerous waste subject to the provisions of Chapter 173-303 WAC) on the Hanford Facility that are located outside of the fences enclosing the 200 East, 200 West, 300, 400, 100N, and 100K Areas; and (3) within 60 months of the effective date of this

Permit, maps showing the location of dangerous waste underground pipelines (including active, inactive, and abandoned pipelines that contain or contained dangerous waste subject to the provisions of Chapter 173-303 WAC) within the 200 East, 200 West, 300, 400, 100N, and 100K Areas.

The schematics and maps would identify the origin, destination, size, depth, and type (i.e., reinforced concrete, stainless steel, cast iron) of each pipe and the location of the diversion boxes, valve pits, seal pots, catch tanks, receiver tanks, and pumps, using Washington State Plane Coordinates, NAD 83(91), meters. If the type of pipe material were not documented on existing drawings, the most probable material type should be provided. These maps would be accompanied by a description of the quality assurance and quality control measures used to compile the maps.

The age of all pipes required to be identified would be documented in an attachment to the submittal. If the age could not be documented, an estimate of the age of the pipe would be provided based on best engineering judgment.

The report shall describe the methods that will be used to retrieve the piping information, the estimated accuracy of the data to be provided, quality assurance and/or quality control techniques to be employed including field verification activities (i.e., surveying, ground penetrating radar, etc.) to support information gathered from existing drawings, and conceptual examples of the product that will be submitted.

The report also shall provide a detailed cost estimate for carrying out the procedures identified for preparation of the schematics, maps, and associated documentation for the report. The detailed cost estimate shall be used to evaluate the cost and management efficiency of requiring the preparation of the schematics, maps, and associated documentation.

Justification: Refer to comment on Draft Permit Condition II.U. Substitution of the proposed language for Draft Permit Condition II.U.1. would allow time for a more thorough management evaluation of the costs and benefits of preparing the schematics and maps to ensure that it is the most efficient, cost effective means of providing the information.

18.

136 **Condition:** II.U.2. **Key Comment:** Mapping and Marking of Underground Piping
Page, lines: Page 47, lines 21-48
US Comment: Refer to comment on Draft Permit Condition II.U.

Requested Action: Delete Condition II.U.

Alternatively, if Draft Permit Condition II.U. is not deleted: Add caveats on map updates and piping within structures similar to those found in Draft Permit Condition II.U.4. (page 48, lines 20-49; page 49, lines 1-6). Delete lines 27-38 and replace with the following:

...that are located outside of the fences enclosing the 200 East, 200 West, 300, 400, 100N, and 100K Areas. These maps shall incorporate information available 6 months before the scheduled submittal date. Thereafter, the maps shall be updated annually to incorporate additional information, as such information becomes available in accordance with the FFACO milestone schedule. A schedule

for the provision of map input shall be included in the report specified in Condition II.U.1.

These maps shall identify the origin, destination, size, depth, and type (i.e., reinforced concrete, stainless steel, cast iron) of each pipe and the location of the diversion boxes, valve pits, seal pots, catch tanks, receiver tanks, and pumps, using Washington State Plane Coordinates, NAD 83(91), meters. If the type of pipe material is not documented on existing drawings, the most probable material type shall be provided. These maps need not include the pipes within a building/structure. These maps shall be accompanied by a description of the quality assurance and quality control measures used to compile the maps.

Justification: For deletion refer to comment on Draft Permit Condition II.U.

For modification (if Draft Permit Condition II.U. is not deleted): The updating schedule clarifications made to Draft Permit Condition II.U.2. are consistent with those found in Draft Permit Condition II.U.4. Annual updates need a 'cut-off' date and 6 months was the agreed upon time period.

An addition of the clarification on pipes within buildings/structures makes Draft Permit Condition II.U.2. consistent with Draft Permit Condition II.U.4.

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18.
137 **Condition:** II.U.3. **Key Comment:** Mapping and Marking of Underground Piping
Page, lines: Page 48, lines 1-18
CS Comment: Refer to comment on Draft Permit Condition II.U.

Requested Action: Delete Draft Permit Condition II.U.3.

For modification (if Draft Permit Condition II.U. is not deleted): Change Draft Permit Condition II.U.3. to reflect the original intent for one-time-only submittal. Also replace the words "diagrams" and "maps" with "schematics." Revise Draft Permit Condition II.U.3. as follows:

Within 36 months of the effective date of this Permit, the Permittees shall make a one-time-only submittal to the Department of piping schematics for dangerous waste underground pipelines (including active, inactive, and abandoned pipelines that contain or contained dangerous waste subject to the provisions of Chapter 173-303 WAC) within the 200 East, 200 West, 300, 400, 100N, and 100K Areas. The piping schematics shall identify the origin, destination, and direction of flow for each pipe, as well as whether the pipe is active, inactive, or abandoned. These schematics need not include the pipes within a fenced tank farm or within a building/structure. These schematics shall be accompanied by a description of the quality assurance and quality control measures used to compile the schematics.

These schematics need not be maintained in the Hanford Facility Operating Record.

Justification: For deletion of Draft Permit Condition II.U.3.: Refer to comment on Draft Permit Condition II.U. Requiring annual updates to the schematics is a further example of ineffective and costly use of DOE-RL resources.

For modification (if Draft Permit Condition II.U. is not deleted): These schematics were originally requested for the sole purpose of providing the Department with some

preliminary information on the pipelines described in Draft Permit Condition II.U.4. The schematics were meant to be issued only once and before the maps of Condition II.U.4. The schematics were not meant to be updated after the maps of Condition II.U.4, which contain more information, were issued. These schematics no longer serve their function.

Word changes from "diagrams" or "maps" to "schematics" are to avoid confusion.

18.
138 **Condition:** II.U.4. **Key Comment:** Mapping and Marking of Underground Piping
Page, lines: Page 48, lines 20-50; page 49, lines 1-6
CS Comment: Refer to comment on Draft Permit Condition II.U.

Requested Action: Delete Draft Permit Condition II.U. If Draft Permit Condition II.U. is not deleted, modify the last paragraph of Draft Permit Condition II.U.4. as follows:

> These maps, and any attachments, shall be maintained in the Facility Operating Record and updated annually after the initial submittal with new or revised information.

Justification: For deletion: Refer to comment on Draft Permit Condition II.U. For modification (if Draft Permit Condition II.U. is not deleted): Use of word "maps" is more accurate.

18.
139 **Condition:** II.V. **Key Comment:** Mapping and Marking of Underground Piping
Page, lines: Page 49, lines 8-19
CS Comment: Labeling and placing of markers above buried dangerous waste pipelines will not enhance the protection of human health and the environment beyond that already afforded by other proactive measures, such as the excavation permit system currently in effect on the Hanford Site.

Requested Action: Delete Draft Permit Condition II.V.

Justification: The Department has cited WAC 173-303-640(5)(d) as the basis for requiring Draft Permit Condition II.V. WAC 173-303-640(5)(d) requires that "all tank systems holding dangerous waste shall be marked with labels or signs to identify the waste in the tank. The label or sign shall be legible at a distance of at least fifty feet, and shall bear a legend which identifies the waste in a manner which adequately warns employees, emergency response personnel, and the public of the major risk(s) associated with the waste being stored or treated in the tank system(s). (Note - If there already is a system in use that performs this function in accordance with local, state or federal regulations, then such system will be adequate.)"

The Hanford Facility already meets the labeling and warning requirements of the stated WAC regulation. Draft Permit Condition II.V. would go beyond the normal means of meeting WAC 173-303-640(5)(d) and imposes an unnecessary level of control. The Hanford Facility meets the WAC regulation as provided in the following paragraphs.

First, employees, emergency response personnel, and the public are warned of risks associated with the dangerous waste before being allowed on the Hanford Facility. Additionally, access to areas where dangerous waste tank systems are located is restricted. Public access to the dangerous waste pipelines is prevented by the

pipelines being located in a controlled area where 24-hour surveillance is maintained with protective force personnel. Second, Hanford Facility personnel and visitors are informed of the major risk(s) associated with the waste by labels on the exposed/abovegrade portions of tank systems that identify the waste in the tank system and the major risk(s) involved. Most tank systems are also within fence barriers. Third, personnel and visitors are escorted by trained personnel and/or receive specialized training in the unique hazards that exist on the Hanford Site. Finally, an excavation permit system controls access to buried pipelines.

The excavation permit system ensures that anyone digging in an area where a buried pipeline is located will be aware of the buried hazards if any. The excavation permit requires an exhaustive search of the construction and engineering drawings and documents to identify subsurface engineered structures, their depths, sizes, and configuration, as well as excavation precautions.

The buried pipelines themselves do not present a hazard to individuals in the area, unless there is an excavation or there has been a leak. The hazards posed by excavations are managed by the excavation permit system and any leaks are managed according to applicable regulatory requirements. Both situations would be appropriately posted, independent of any permit requirement. Thus, the marking required by Draft Permit Condition II.V. would not provide any additional protection.

The Department's Responsiveness Summary, DW Portion (response to Condition II.U.1, pages 220-221), stated the that "Department representatives have witnessed an excavation that was controlled by the...excavation permit process with unsatisfactory results. A number of underground pipes were exposed during the excavation that were unidentifiable on the maps available to the responsible officials at the site. In another instance, a pipe leading to a dangerous waste trench could only be identified as the 'mystery pipe'." As pipes have been buried on the Hanford Facility for approximately 50 years, some information has been lost. Sometimes, during excavations, pipes are discovered that do not appear on the engineering drawings. Meeting Draft Permit Condition II.V. will not prevent these types of instances from occurring or will it replace the existing excavation permit system used to locate buried pipelines.

The signs required by Draft Permit Condition II.V. would be physically located from information taken from the maps referred to in Draft Permit Condition II.U. The information would be copied, along with some field verification, from the existing engineering drawings (mentioned in the comment on Draft Permit Condition II.U.). This means that the signs required by Draft Permit Condition II.V. will be posted over buried pipelines whose locations already are known. Posting these sign will not prevent "unsatisfactory results" during excavations. The signs and maps required by the Draft Permit are all based on information derived from the existing engineering drawing system.

Draft Permit Condition II.V. will not create new information "to locate and assess potential environmental problems associated with these pipes". Draft Permit Condition II.V. will not add any new benefit for the protection of human health and the environment, or will it be a cost effective practice.

18.

140

Condition: II.W.1. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 49, lines 23-35 Permit Implementation
CS Comment: The Commenters request that the Department reword this condition to more accurately reflect the requirement of WAC 173-303-800(5).

Requested Action: Revise Draft Permit Condition II.W.1. to read identically to the regulatory language found at WAC 173-303-800(5), as follows:

> "The Permittees are responsible for obtaining all other applicable federal, state, and local permits authorizing the development and operation of the TSD facility."

Justification: The length of time needed to prepare a permit application depends on a number of factors, including the volume of information required by the issuing agency. In the Commenters' experience, it is unreasonable to require submittal of permit applications no later than 60 days after the information to prepare the permit is available. In some cases, information might become available years before a permit is required, and the implementation of regulations requiring permit applications becomes the trigger. As an example, PSD permits have a defined lifespan of only 18 months from issuance to start of construction. As such, the timing of application submittal depends on when construction is planned to start, not when the information becomes available.

The Commenters are concerned about the Department's definition of the term "best efforts" in the Draft Permit. This definition is unique to this Draft Permit. "Best efforts" should be evaluated on a case-by-case basis, as is done for other Department and Agency permittees. Many of the terms in this definition are undefined elsewhere in the Draft Permit, such as the terms "outside contractors", "earliest opportunity". This leads to ambiguity concerning this Draft Permit Condition. The Department states in the Responsiveness Summary, DW Portion (response to Condition II.W.1., page 224) that "this condition is to preclude the Commenters from using as an excuse for noncompliance with this Permit, their inability to obtain a permit under another regulatory program due solely to their omission to submit the proper information in the necessary time frames to secure the required permits." Such language is not warranted to ensure that the Permittees meet their responsibilities to other regulatory entities.

18.

141 **Condition:** II.W.2. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 49, lines 37-39
CS Comment: The Department lacks regulatory authority for incorporating other permits into the Draft Permit, DW Portion.

Requested Action: Delete this condition.

Justification: The Department does not have authority to incorporate other permits issued under other permitting authorities into the Permit. Other permits are independent requirements placed upon the Permittees by the agency(ies) issuing the permit. There is no regulatory need or requirement to incorporate any such permits into the Permit.

In the Responsiveness Summary, DW Portion (response to Condition II.W.2., page 225), the Department indicates that Draft Permit Condition II.W.2. "protects the authorities of other departments/agencies should a permit be included as an attachment to this Permit." The Commenters disagree. The authorities of other departments/agencies are protected by their corresponding statutes. Attaching permits that are administered by other agencies to the Permit will only obscure authority.

18. 142 **Condition:** II.X.1. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 50, lines 1-16 Permit Implementation
CS Comment: The condition exceeds regulatory requirements without sufficient justification and is ambiguous.

Requested Action: Delete the first and second paragraph of this condition.

Justification: The first paragraph creates an ambiguity because it addresses the same issues found in the third paragraph, but uses differing standards (e.g., "the Department may" in line 6 conflicts with "the Department shall" in line 25). The second paragraph arbitrarily defines "best efforts". This paragraph does not recognize the DOE-RL's right under the FFACO to raise the defense that proper operation or maintenance could not be achieved because of a lack of appropriated funds. The DOE-RL cannot violate the provisions of the Anti-Deficiency Act. The Department is exceeding its regulatory authority by attempting to arbitrarily define the term "best efforts" in the Draft Permit. The third paragraph of Draft Permit Condition II.X.1. is a standard regulatory provision mentioned in WAC 173-303. The first two paragraphs, however, are unique to this Draft Permit and are arbitrarily drafted. There is no explanation in the Responsiveness Summary, DW Portion, for the uniqueness of this Draft Permit condition.

"Best efforts" should be evaluated on a case-by-case basis, as is done for other Department permittees. Many of the terms in this arbitrary definition are undefined elsewhere in the Draft Permit, such as the terms "outside contractors" or "earliest opportunity". This leads to ambiguity as to what the Department expects the Permittees to do to satisfy this Permit condition.

The Draft Permit does not recognize that the DOE-RL may raise as a defense that proper operation or maintenance was not possible because of the lack of appropriated funds. The FFACO in Article XLVIII, paragraph 143, preserves the DOE-RL's right to raise this defense and the Department's right to dispute it. The Permit needs to parallel the FFACO on this issue.

18. 143 **Condition:** II.X.1. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 50, lines 33-34
CS Comment: The Draft Permit Condition II.X.1. exceeds regulatory requirements without sufficient justification.

Requested Action: Delete this paragraph or replace the words "in the Facility Operating Record" with "on file at the Hanford Facility."

Justification: There is no requirement found in WAC 173-303-380, or elsewhere, to keep this information in the operating record. Refer to comment on Condition II.I., DW Portion (page 37, lines 6-21).

18. 144 **Condition:** II.X.2. **Key Comment:** Permit Implementation
Page, lines: Page 50, lines 36-39
CS Comment: Consolidate Condition II.X.

Requested Action: Move the discussion of FFACO schedule extensions (current Draft Permit Condition II.X.2.) into Draft Permit Condition II.X. and redesignate the current Draft Permit Condition II.X.1. as Condition II.X.

Justification: The schedule extension procedures in the FFACO will govern most of the major RCRA permitting schedules. Moving the discussion of FFACO schedule extension into Draft Permit Condition II.X.1. will make it clear that the FFACO schedule extension procedure takes precedence, and the rest of Section II.X. refers only to TSD units that are not covered by the FFACO.

18.
145 **Condition:** III.1.A. **Key Comment:** Permit Implementation
Page, lines: Page 51, lines 14-20
CS Comment: Revision 2 of the 616 Nonradioactive Dangerous Waste Storage Facility (616 NRDWSF) Permit Application that is referred to was submitted to the Department and the Agency in October 1991. This permit application has many areas that are currently out of date.

Requested Action: Replace applicable portions of Revision 2 of the 616 NRDWSF permit application with the attached Revision 2A page changes (Comment Attachment 19).

Justification: The Revision 2A page changes have been prepared to include information that more accurately reflects current conditions at this TSD unit.

18.
146 **Condition:** III.1.A. **Key Comment:** Permit Implementation
Page, lines: Page 52, line 16
CS Comment: The Building Emergency Plan included in Revision 2 of the 616 NRDWSF permit application identifies the telephone number to be used to summon emergency response assistance as 811. The Hanford Facility has changed this number to 911.

Requested Action: Include a Permit condition that requires the use of 911 to summon emergency response assistance.

Justification: This condition is required to ensure that the proper number is identified for summoning emergency response assistance.

18.
147 **Condition:** III.1.B.e. through r. **Key Comment:** Receipt of Offsite Waste
Page,lines: Page 52, lines 36-49 through page 56, lines 1-11 Onsite Waste Movement
CS Comment: A revised WAP for the 616 NRDWSF is submitted with the attached 2A page changes. The Commenters contend that all conditions regarding Chapter 3.0 of the 616 NRDWSF permit application have been adequately addressed. Because of the extent of the changes, there is no correlation between the text referred to by these conditions and the text in the new plan. Therefore, in lieu of addressing each condition relating to Chapter 3.0, the Department is requested to consider the new WAP provisions.

Requested Action: Delete these conditions and refer to the proposed WAP included as part of the Revision 2A page changes.

Justification: The Commenters contend that the revised 616 NRDWSF WAP addresses applicable regulations and Draft Permit Conditions III.1.B.e. through III.1.B.r. Waste confirmation is to be performed on waste received from both onsite and offsite sources. While the regulations do not require the confirmation of waste received from onsite sources, it is included in the plan as a best management practice and in no way infers that the requirements of WAC 173-303-300(3) are applicable to waste received from onsite sources.

It should be noted that the regulations require that sampling be conducted in accordance with WAC 173-303-110, which specifies both American Society for Testing and Materials and SW-846 methods, depending on the media to be sampled. Therefore the requirements identified in Condition III.1.B.l. are inappropriate. The revised WAP has been written to comply with the sampling requirements specified in the regulations.

There is no regulatory basis for restricting the receipt of dangerous waste that is generated under a "different Agency identification number" as specified in Condition III.1.B.r. Given this fact, the WAP provided has been written to allow the receipt of waste generated under other EPA/State identification numbers. Refer to the comment on Condition II.N.1., DW Portion (page 43, lines 39-42).

18.
148 **Condition:** III.1.B.t. **Key Comment:** Permit Implementation
Page, lines: Page 56, lines 21-25
CS Comment: It is excessive to require monthly reporting of information that the Department already has.

Requested Action: Delete this condition.

Justification: Chapter 12.0 of the 616 NRDWSF permit application fulfills the regulatory reporting requirements for releases and remediation efforts. This includes notifying the Department concerning releases, providing required reports within 15 days, involving the Department in the remediation process for each release and, if needed, providing restart notification. Additional reporting, especially monthly, does not provide any additional protection to human health and the environment, or is it cost effective.

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18.
149 **Condition:** III.1.B. **Key Comment:** Permit Implementation
Page, lines: Page 58, line 21
CS Comment: Add a condition defining critical systems for the 616 NRDWSF.

Requested Action: Add the following Permit condition:

The following are defined as critical systems for the 616 NRDWSF:

1. Unit secondary containment systems (Drawing H-6-1566).
2. Unit fire/explosion suppression control systems (Drawings H-6-1555 and H-6-1561).

Justification: These systems have been identified as those specific systems of the 616 NRDWSF's structure or equipment wherein failure could lead to the release of dangerous waste into the environment.

18.
150 **Condition:** III.2.A. **Key Comment:** Permit Implementation
Page, lines: Page 59, lines 12-18
CS Comment: Revision 2 of the 305-B Storage Unit (305-B) Permit Application that is referred to was submitted to the Department and the Agency in June 1992. This permit application has areas that are currently out of date.

Requested Action: Replace applicable portions of Revision 2 of the 305-B permit application with the attached Revision 2A page changes (Comment Attachment 20).

Justification: The Revision 2A page changes have been prepared to include information that more accurately reflects current conditions at this TSD unit.

18.
151 **Condition:** III.2.B.a. **Key Comment:** Onsite Waste Movement
Page, lines: Page 60, lines 10-13 Receipt of Offsite Waste
CS Comment: This requirement to manifest all waste shipments into and out of 305-B exceeds regulatory authority and is more stringent than agreed-upon language discussed between the Department and the Permittees.

Requested Action: The Draft Permit condition should be modified to read as follows:

> For dangerous waste shipments to 305-B that originate and remain within the fenced boundaries of the 300 Area, the Permittees shall ensure that a copy of the chemical disposal/recycle request form (Chapter 2.0, Section 2.8.1 of the 305-B permit application) accompanies the shipment.
>
> For all shipments of waste from 305-B to a location outside the 300 Area, and for all shipments originated by the Permittees from a location outside the 300 Area to 305-B, the Permittees shall comply with Conditions II.P. and II.Q. of this Permit, as applicable, regarding waste manifesting and transportation.

Justification: There are several difficulties with the condition as it appears in the Draft Permit. First, the term 'dangerous' needs to be added where the term 'waste' appears, to clarify that this is the only material regulated by this Permit. Shipments of nonregulated waste are beyond the scope of this Permit.

Secondly, the Commenters and the Department have agreed that the chemical disposal/recycle request (CDRR) form used for approval of waste to be received at the 305-B contains all necessary information for emergency response personnel who might respond to an incident involving shipments of waste inside the 300 Area. It was agreed that additional paperwork (i.e., the Uniform Hazardous Waste Manifest or similar shipping paper called for in Draft Permit Condition II.Q.1) was not needed, and that a CDRR traveling with the shipment was adequate documentation. It also should be noted that the Commenters disagree with the requirements for documentation of onsite waste movements; refer to comment on Condition II.Q.1., DW Portion (page 45, lines 37-49; page 46, lines 1-15).

Finally, the condition has been clarified to specify that it is the Permittees, not necessarily the 305-B personnel, who are responsible to prepare manifests or other documentation when shipments originate or are received at the 305-B. For shipments received from offsite, the originator of the shipment has the responsibility to prepare appropriate documentation per WAC 173-303-180 (and the Permit, if the originator is one of the Permittees).

18.
152 **Condition:** III.2.B.b. through f. **Key Comment:** Onsite Waste Movement
Page,lines: Page 60, line 15-50
through page 63, lines 1-13
CS Comment: A revised WAP for 305-B is submitted with the attached Revision 2A page changes. The Commenters contend that all conditions regarding Chapter 3.0 of the 305-B permit application have been adequately addressed. Because of the extent of the changes, there is no correlation between the text referred to by these conditions and the text in the new WAP. Therefore, in lieu of addressing each condition

relating to Chapter 3.0, the Department is requested to consider the new WAP provisions.

Requested Action: Delete these conditions and refer to the proposed WAP included as part of the Revision 2A page changes.

Justification: The Commenters contend that the WAP adequately addresses applicable regulations and Draft Permit Conditions III.2.B.b. through III.2.B.f.

18.
153 **Condition:** III.2.B.m. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 63, line 41
CS Comment: Draft Permit Condition III.2.B.m. exceeds regulatory requirements.

Requested Action: Remove "The last sentence in this Section is deleted."

Justification: PNL management still needs to be involved in a restart decision regardless of the status of the Department notification. WAC 173-303-360(2)(j) does not grant the Department authority to prevent restart, only the privilege of notice that regulatory requirements relating to a facility emergency have been met. The mention of PNL management is required for internal purposes; however, the entire contingency plan has been submitted to the Department in compliance with WAC 173-303-806(4)(a)(vii).

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18.
154 **Condition:** III.2.B.o. **Key Comment:** Regulatory Agency Authority
Page, lines: Page 64, line 1
CS Comment: Draft Permit Condition III.2.B.o. exceeds regulatory requirements.

Requested Action: Change the "I"s to read "B", not "A".

Justification: The DOT requires [49 CFR 172.704(c)(2)] recurrent training for shipping activities biennially. This change would make the Draft Permit condition requirement consistent with current regulatory requirements for this training.

18.
155 **Condition:** III.2.B.p. **Key Comment:** Permit Implementation
Page, lines: Page 64, line 9
CS Comment: Draft Permit Condition III.2.B.p. is overly burdensome and imposes training requirements not needed by all personnel covered by the requirement.

Requested Action: Delete the last two sentences of this condition. Add that footnote 4 shall read: "[4]Required for staff directly responsible for radioactive material shipments."

Justification: This renders the condition easier to implement because the 305-B does not designate its technicians and technical specialists as "RMW" and "non-RMW".

18.
156 **Condition:** III.2.B.u. **Key Comment:** Permit Implementation
Page, lines: Page 64, line 34
CS Comment: Draft Permit Condition III.2.B.u. references the wrong page of the permit application.

Requested Action: Change "Page 11-14" to read "Page 11-13".

Justification: There is no line 39 on page 11-14. The condition is understandable if the page number is corrected to "11-13".

18.
157 **Condition:** III.2.B. **Key Comment:** Permit Implementation
Page, lines: Page 65, line 17
CS Comment: Add a condition defining critical systems for the 305-B.

Requested Action: Add the following Permit condition:

The following are defined as critical systems for the 305-B:

1. Unit secondary containment systems consisting of the epoxy floor coating used in the storage cells, and on the secondary containment trenches in the high bay.

2. Unit fire suppression system.

Justification: These systems have been identified as those specific systems of the 305-B Storage Unit's structure or equipment wherein failure could lead to the release of dangerous waste into the environment.

18.
158 **Condition:** V.1., V.2., V.3. **Key Comment:** Permitting Approach
Page, lines: Pages 67-75
CS Comment: The Department lacks regulatory authority for directly placing an interim status unit into a final status Permit except by the provision of WAC 173-303-805(8)(a). This provision identifies "final administrative disposition of a final facility permit application" pursuant to WAC 173-303-806 as the appropriate vehicle for attaining final status. The permit application requirements of WAC 173-303-806 include the submittal of a Part B permit application. According to WAC 173-303-840(1)(a), the Department cannot begin processing a permit until the applicant has fully complied with the application requirements for the permit. The TSD units addressed in Part V of the Draft Permit have not gone through the final status permitting process and, consequently, cannot be addressed by final status permit conditions.

Requested Action: Eliminate Part V from the Permit, DW Portion.

Justification: Refer to comment on Introduction, DW Portion (page 6, lines 16-28).

18. ***** THE FOLLOWING ARE ADDITIONAL COMMENTS ON PART V OF THIS DRAFT PERMIT *****

159 **Condition:** V.1.B.f. **Key Comment:** Permit Implementation
Page, lines: Page 68, lines 44-46
CS Comment: It is believed that this requirement is substantively redundant with paragraphs 138 and 139 of the revised FFACO (January 1994).

Requested Action: Delete this condition.

Justification: Refer to comment on Conditions II.H.1. and II.H.2., DW Portion (page 36, lines 36-49; page 37, lines 1-2, respectively).

18. 160

Condition: V.1.B.m. **Key Comment:** Permit Implementation
Page, lines: Page 70, lines 9-11
CS Comment: This additional restriction on the schedule for 183-H Solar Evaporation Basins closure is unnecessary and precludes scheduling decisions that should be made among the Department's and Permittees' unit managers.

Requested Action: Delete the phrase "; however, the date of final closure shall not exceed six months after the effective date of this Permit."

Justification: The closure schedule in the closure plan is an enforceable part of the closure plan, as stated in this Draft Permit condition, subject to the approval of the regulatory agencies. It is redundant to address the length of closure in this Draft Permit condition, and it precludes a cooperative effort by the cognizant TSD unit personnel and the Department's unit manager to achieve a reasonable schedule (e.g., during FFACO Unit Manager Meetings).

18. 161

Condition: V.1.B.r. **Key Comment:** Permit Implementation
Page, lines: Page 70, lines 46-50
CS Comment: Modified closure is not the same as a landfill closure. The rationale for choosing a modified closure only allows for very small quantities of contamination to be present. These quantities are well within protection standards for human health and the environment in an industrial setting. Documentation already is proposed in the Draft Permit (i.e., Condition II.K., DW Portion).

Requested Action: Replace the sentence with the following language:

> If a modified closure is chosen, the Permittees shall comply with Permit Condition II.K.3.

Justification: Landfill requirements are only applicable to landfills. A modified closure is not a landfill closure. This condition implies that modified closure requirements are those of landfills by default. Draft Permit Condition II.K.3 has the requirements for a modified closure.

18. 162

Condition: V.1.B.u. **Key Comment:** Permit Implementation
Page, lines: Page 71, line 17
CS Comment: Modified closure is not the same as a landfill closure. The rationale for choosing a modified closure only allows for very small quantities of contamination to be present. These quantities are well within protection standards for human health and the environment in an industrial setting. A postclosure permit application is redundant with the documentation already being proposed in the draft closure plan to be provided to the regulators.

Requested Action: Delete the phrase "a modified closure" in the first sentence of line 17.

Justification: A modified closure is not a landfill closure. A postclosure permit application is not required for a modified closure, only for a landfill closure. This condition implies that modified closure requirements are those of landfills by default. Draft Permit Condition II.K.3 has the requirements for a modified closure. It would not be cost effective to revise and submit a postclosure permit application that will contain exactly the same information in the compliance monitoring plan to be submitted under Draft Permit Condition II.K.3.b.

18.
163 **Condition:** V.2.B.d. **Key Comment:** Permit Implementation
Page, lines: Page 73, lines 23-25
CS Comment: The Commenters contend that this requirement is substantively redundant with paragraphs 138 and 139 of the revised FFACO (January 1994).

Requested Action: Delete this condition.

Justification: Refer to comment on Conditions II.H.1. and II.H.2., DW Portion (page 36, lines 36-49; page 37, lines 1-2, respectively).

18.
164 **Condition:** V.3.B.d. **Key Comment:** Permit Implementation
Page, lines: Page 75, lines 23-25
CS Comment: The Commenters contend that this requirement is substantively redundant with paragraphs 138 and 139 of the revised FFACO (January 1994).

Requested Action: Delete this condition.

Justification: Refer to comment on Conditions II.H.1. and II.H.2., DW Portion (page 36, lines 36-49; page 37, lines 1-2, respectively).

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.8.
165 **Conditions:** Definitions **Key Comment:** Permitting Approach
Page, lines: Page 5, line 50; Permit Implementation
page 6, line 4

CS Comment: The existing definition of "facility" or "site" is ambiguous because it refers to the Department's DW Portion of the Permit Attachment 2 and refers to a "parcel C". There is no parcel C in Attachment 2. The Commenters therefore are unsure of the intent of this definition. The definition also is overly broad because it includes noncontiguous land north and east of the Columbia River (the North Slope land) and might include land leased to the state of Washington and subleased to US Ecology, Inc. The DOE-RL does not retain sufficient control of the US Ecology site for it to be considered contiguous land under the control of the owner or operator. The Department's existing Attachment 2 also includes the Bonneville Power Administration Midway site as part of the Hanford Facility. In contrast, the Agency's February 9, 1994 Response to Comments indicates in Response #5 that the BPA Midway Substation and Community lands are not considered part of the Hanford Facility.

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Requested Action: Revise the wording of the definition of "facility" or "site" to exclude the North Slope lands, the 100 acre site leased to the state of Washington and subleased to US Ecology, Inc. (Parcel C of Commenters proposed Hanford Facility Site Legal Description (Comment Attachment 8) and the BPA-owned Midway site.

Replace Attachment 2, DW Portion, with the revised Hanford Facility Site Legal Description (Comment Attachment 8). (Because of errors in the Department's Facility description, Commenters request that Attachment 2, DW Portion, be replaced by Commenters' proposed revision of Attachment 2, Hanford Facility Site Legal Description, Comment Attachment 8).

Justification: The definition is ambiguous as currently written and includes noncontiguous lands, and lands not under the control of WHC, PNL, or the DOE-RL. The North Slope area is not subject to corrective action pursuant to issuance of a hazardous (dangerous) waste permit because it is not part of the permitted facility and is not on contiguous land to the permitted Hanford Facility. The North Slope area is separated from the Hanford Facility by the state-owned Columbia River bed, and the Columbia River itself, which is a major natural barrier to contiguity of the sites. However, the North Slope is covered by the FFACO and will be addressed appropriately under the FFACO. The Agency confirms the exclusion of the North Slope in the Response to Comments, HSWA Portion, Response #1.

The North Slope area already has been included in the FFACO as operable unit 100-IU-3. Cleanup of the North Slope currently is being undertaken under the FFACO and cleanup activities are expected to be completed by October 1994. There is no benefit to be received by any parties by including the North Slope in the Permit.

Also refer to comment on HSWA Portion, Condition III.B.1.a. (page 25, lines 20-24) and comment on DW Portion, Definition of Facility (page 10, lines 18-23).

18.
166

Conditions: I.C.3; III.A.2.a; III.A.2.f.(vi) **Key Comment:** Permit Implementation

Page, lines: Page 9, lines 52-55; page 23, lines 26-35; page 24, lines 33-34

CS Comment: The Draft Permit Condition as written ignores the intent of the three parties to the FFACO to maintain RCRA/CERCLA integration, and to ensure that the work is properly prioritized and carried out based on environmental significance, and the overall strategy towards cleanup on the Hanford Site.

Requested Action: (1) Draft Permit Condition I.C.3.: Delete the words "and schedules for implementation". Add the following sentence at the end of the paragraph:

> Schedules for implementation shall be established and maintained within the FFACO.

(2) Draft Permit Condition III.A.2.a: On line 27, replace "work plans" with "activities"; on lines 32 and 33 delete "and schedules for implementation."

(3) Draft Permit Condition III.A.2.f.(vi): Delete this condition.

Justification: It is the intent of the FFACO to maintain RCRA/CERCLA integration, and to ensure that the work is properly prioritized and carried out based on environmental significance, and the overall strategy towards cleanup of the Hanford Site. This cannot be effectively achieved if the cleanup schedules, and the ability to modify such schedules for RCRA corrective action operable units, are controlled through a separate process from the CERCLA response action operable units. The response in the Responsiveness Summary, HSWA Portion (Comment 3) is unfounded. It states:

> "EPA agrees that the change control process governs schedule extensions and other actions for RPPs prior to incorporation into the permit. However, the FFACO is ambiguous about the change process for RPPs when the CMI workplans have been incorporated into the permit. EPA interprets that Section 9.3, of the FFACO, "Modifications to Permits", will be conducted in accordance with applicable permit modification procedures found in state and EPA regulations".

Once the remedy decision is made and incorporated into the Permit, the DOE-RL will propose milestones and target dates from the CMI plan for inclusion in the FFACO. Once incorporated, these milestones and target dates will be controlled through the FFACO change process. This is consistent with the newly negotiated change to Section 11.4 of the FFACO Action Plan (January 1994), as well as the description of Part IV contained on pages 5 and 6 of the Draft Permit, DW Portion.

The Agency should realize that by using the permit modification process for RCRA corrective action schedules of compliance that it would be a two party process for negotiating changes (currently DOE-RL/Agency and eventually DOE-RL/Department), whereas other cleanup activities under the FFACO will be a three party process. This in itself would make RCRA/CERCLA integration difficult, if not impossible. Finally, it is unclear what happens if the Lead Regulatory Agency for the RCRA Past-Practice

operable unit is not the permitting organization. The Agency should reconsider their position, and rely on the FFACO for the establishment and control of all cleanup schedules. This will allow for more effective integration and prioritization of Hanford Site cleanup activities.

18.
167 **Condition:** I.I.1 **Key Comment:** Regulatory Agency Authority
Pages, lines: Page 11, lines 30-38
CS Comment: The last sentence of this condition is inconsistent with the regulatory language of 40 CFR 270.30(d).

Requested Action: Delete the last sentence.

Justification: The Draft Permit language is consistent with 40 CFR 270.30(d) until the last sentence. The Agency does not have the regulatory authority to prohibit permittees use of any legal defense to which they are entitled by law. Jurisdiction to determine legal defense rests with the courts and the legislature, not administrative agencies.

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18.
168 **Condition:** I.L.5 **Key Comment:** Permit Implementation
Page, lines: Page 14, lines 1-17
CS Comment: It is unclear whether the specific information to be included in the Permit information repository would be included in one repository near the Hanford Facility, or in all four repositories. The last sentence of this Draft Permit condition describes the inclusion of raw data with all corrective action reports and investigations included in the information repository. The raw data should not be included in the information repository, unless it is part of the report. Adding raw data to the information repository collection could increase the size to a level that will become unmanageable.

Requested Action: Rewrite this condition to clearly state whether the information repository created by this Draft Permit condition is in addition to the four information repositories established in support of the FFACO, or if the repositories are the same. If the repositories are the same, the discussion of the information repository throughout the Draft Permit should be describing all four repositories.

It also is unclear whether the specific information to be included in the Permit information repository would only be included in the repository near the Hanford Facility, or in all four repositories.

Justification: The FFACO and the FFACO Community Relations Plan state the documents to be included in the information repositories. If a large volume of additional information is to be included in the repository collection, this will add a significant cost to this activity. Because the raw data would be publicly available, it is not necessary for this raw data to reside in the information repository collection.

The EPA Proposed Rule 40 CFR 270.36 describes RFI and CMS plans and reports, relevant RCRA regulations, and press releases as the types of documents included in an information repository. It does not state that raw data be included.

18.
169 **Condition:** I.M.1 **Key Comment:** Regulatory Agency Authority
Pages, line: Page 14, lines 22-26
CS Comment: Draft Permit Condition I.M.1 is unnecessary.

Requested Action: Delete this condition.

Justification: As written, this Draft Permit Condition is only relevant to the Draft Permit, DW Portion.

18.
170 **Condition:** I.T.2 **Key Comment:** Regulatory Agency Authority
Page, lines: Page 15, lines 50-53
CS Comment: The specific regulation, 40 CFR 264.73(b)(9), relates to waste minimization certification. To require all the information defined under I.T.2 to be signed or certified (e.g., strip charts) is unrealistic.

Requested Action: Delete this condition, or change the reference to waste minimization Condition II.F.

Justification: There is no regulatory basis to sign or certify all the data addressed under Condition I.T.2.

18.
171 **Condition:** I.V.1. **Key Comment:** Permit Implementation
Page, lines: Page 16, lines 8-35
CS Comment: The Department's Project Manager has provided direction for distribution of documentation under the FFACO, which is inconsistent with this condition.

Requested Action: Change sentence starting on line 8 to read: "All reports, notifications, and submissions that are required by this HSWA permit, for those actions not governed by the FFACO, to be sent or given to the administrator should be sent or given to :". Change sentence starting on line 24 to read: "All reports, notifications, and submissions that are required by this Permit for activities under the FFACO should be sent in accordance with transmittal provisions established under the FFACO." Delete address found on lines 28 through 32.

Justification: The FFACO Project Managers have established protocol for transmittals under the FFACO that is different than listed. For example, the Department's Project Manager has requested that most transmittals go directly to the appropriate Lacey or Kennewick office. Reference to the protocol under the FFACO will ensure the needs of the Project Managers are met.

18.
172 **Condition:** I.V.2 **Key Comment:** Permit Implementation
Page, lines: Page 16, lines 37-43
CS Comment: If the information repository discussed under this condition and previously discussed under Draft Permit Condition I.L.5 is intended to be the same as one, or all, of the public information repositories defined under the FFACO, it is not realistic to place all reports, or notifications, and submissions in the repository.

Requested Action: Delete last sentence starting on line 40, or add at the end of sentence: ", or made available to the public on request".

Justification: The current public information repositories cannot handle all information submitted. For example, early drafts of reports for regulatory review are not placed in the repositories, but drafts for public comment, or final approved versions are. The public also is provided access to the Administrative Records file, which contains the additional information.

18.

173 **Condition:** II.C.1 **Key Comment:** Regulatory Agency Authority
Page, lines: Pages 18, lines 50-55; page 19, lines 1-5 Permit Implementation
CS Comment: The Commenters request that the Agency reword this condition to eliminate the specified period of time for submittal of permit applications.

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Requested Action: Revise Draft Permit Condition II.C.1 to read as follows:

> The Permittees are responsible for obtaining all other applicable federal, state, and local permits necessary for conduct of correction action activities.

Justification: Refer to comment on Condition II.W.1., DW Portion (page 49, lines 23-35).

8,

174 **Condition:** II.D **Key Comment:** Regulatory Agency Authority
Page, lines: Page 19, lines 8-46 Permit Implementation
CS Comment: This condition exceeds regulatory requirements without sufficient justification and is ambiguous.

Requested Action: Delete Conditions II.D.1 and II.D.1.a. Revise lines 34 and 35 to read as follows:

> writing, as soon as possible after the Permittee determines that the schedules of this Permit

Justification: Condition II.D.1.a arbitrarily defines "best efforts". This condition does not recognize the DOE-RL's right under the FFACO to raise the defense that proper operation or maintenance could not be achieved because of a lack of appropriated funds. The DOE-RL cannot violate the provisions of the Anti-Deficiency Act. The Agency is exceeding its regulatory authority by attempting to arbitrarily define the term "best efforts" in the Draft Permit. Condition II.D.2, as revised, is a standard regulatory provision. Conditions II.D.1 and II.D.1.a, however, are unique to this Draft Permit and are arbitrarily drafted. There is no explanation in the Responsiveness Summary, HSWA Portion, for the uniqueness of this Draft Permit condition.

"Best efforts" should be evaluated on a case-by-case basis, as is done for other Agency permittees. Many of the terms in this arbitrary definition are undefined elsewhere in the Draft Permit, such as the terms "outside contractors". This leads

to ambiguity as to what the Department expects the Permittees to do to satisfy this Permit condition.

The Draft Permit does not recognize that the DOE-RL may raise as a defense that proper operation or maintenance was not possible because of the lack of appropriated funds. The FFACO in Article XLVIII, paragraph 143, preserves the DOE-RL's right to raise this defense and the Department's right to dispute it. The Permit needs to parallel the FFACO on this issue.

18.
175 **Condition:** III.A.1 **Key Comment:** Permit Implementation
Page, lines: Page 23, lines 16-22
CS Comment: DOE-RL and its contractors should always be governed by the methods and procedures established in support of the FFACO, and not conditions III.B through III.J Also III.I should be III.J at the end of the paragraph.

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Requested Action: Add the following sentence at the end of the paragraph:

> If DOE assumes the management of corrective action activities through its contractors for a SWMU(s) listed under Condition III.B.1, the SWMU(s) will be incorporated into the FFACO and corrective actions will be satisfied as specified in the FFACO, and not through conditions III.B through III.J and the supporting attachments.

Change III.I to III.J at the end of the existing paragraph.

Justification: To apply two separate processes to the DOE-RL and its contractors for conducting cleanup activities on the Hanford Site would result in confusion and unnecessary added costs. Methods, plans, and procedures would have to be significantly revised to address the few SWMUs for which the DOE-RL might assume responsibility.

18.
176 **Condition:** III.B.1.a **Key Comment:** Regulatory Agency Authority
Page, lines: Page 25, lines 20-24
CS Comment: No benefit will be gained by including the US Ecology, Inc. (US Ecology) site in the Permit, HSWA Portion, because the US Ecology site will be closed in accordance with a license issued by the state of Washington pursuant to the Nuclear Energy and Radiation Control Act, RCW 70.98.

Requested Action: Delete Section III.B.1.a and its subconditions, the SWMUs at US Ecology from the Permit, HSWA Portion.

Justification: Item 66 of US Ecology's license includes provisions for closure of this site in accordance with the Facility Closure and Stabilization Plan (Closure Plan). Therefore, the site-specific permitting and closure process specified in the US Ecology radioactive materials licenses should take precedence over an investigation of corrective action SWMUs undertaken in accordance with Section 3004(u). The Commenters recommend that any requirements related to SWMUs on the US Ecology site be incorporated in the Closure Plan. Such an approach can be pursued without resorting to the inclusion of the SWMUs on the US Ecology site in the Permit, HSWA Portion.

While the land under the US Ecology site is owned by the Federal Government, the land is leased to the state of Washington under a 99-year lease. Because of the broad terms of this lease, the property is not under the "control of the owner or operator" (refer to 58 FR 8664, February 16, 1993), which is a necessary predicate for including corrective action provisions in a permit. As noted in the US Ecology comments submitted by Perkins Coie dated March 16, 1992 to the Agency on the initial Draft RCRA Permit, it is the US Ecology's position that the DOE-RL has no real measure of control over the US Ecology site and that US Ecology and the state of Washington have responsibility for all environmental cleanup activities at the US Ecology site. The DOE-RL should not be placed in a position where it has permit requirements placed on it for an AEA licensed activity where it has absolutely no responsibility for those activities. Because the state of Washington is both US Ecology's landlord and regulatory authority and since the purpose of the AEA license is to assure the site is operated and closed in a manner that is protective of public health and the environment, it is reasonable to expect that the state and NRC will require the US Ecology site to be closed in an environmentally appropriate manner. From a policy standpoint, the DOE-RL and the federal taxpayers should not be required or requested under a RCRA permit to take corrective actions at a licensed commercial radioactive low-level waste disposal site. While the DOE-RL will seek to obtain compensation from the state of Washington and US Ecology for any costs DOE-RL is required to incur, this process is inefficient to all parties; any necessary corrective actions should be taken solely under US Ecology's radioactive materials licenses.

It would appear to be inconsistent with the requirements of the AEA to require investigation and cleanup under RCRA of the US Ecology site when these obligations will be addressed under the US Ecology, Inc. site license and closure plan.

18.
177 **Condition:** III.C through III.J and Attachments A through E **Key Comment:** Permit Implementation
Page, lines: Pages 26-77
CS Comment: If US Ecology SWMUs are removed from Condition III.B, then there would be no SWMUs identified to which these conditions would apply.

The Commenters propose that these conditions be deleted and deferred at this time, as the conditions are not expected to be applied to a corrective action activity conducted by the DOE-RL and its contractors. Refer to comment on Condition III.A.1, HSWA Portion (page 23, lines 16-22).

Requested Action: Delete these conditions from the Permit.

Justification: It is expected that all remaining corrective action activities will be performed in accordance with the FFACO. To maintain these conditions in the Permit, when the conditions have no application, will be confusing to the public, and those responsible for administrating or adhering to the permit conditions. Even the Agency has proposed to defer corrective action at the only location (US Ecology site) that would be covered by these conditions. If the deferral of corrective action at this site is not changed to a deletion, as the Commenters have requested, it still would be appropriate to defer issuance of these conditions until the time at which corrective action is required.

For example, Attachment B, which addresses sampling and analysis activities for corrective actions, does not reflect agreements previously reached with the regulators concerning preparation of SAPs. As specified in Section 7.8 of the FFACO Action Plan, the QA/QC concerns on sampling and analysis will be addressed during the DQO process. In accordance with the FFACO Action Plan, the DQO process is required to be used to develop SAPs for RFI/CMS work plans. Items like number of sampling sites, frequency of sample collections, and number and types of field measurements will all be specified during the DQO process. In addition, the QA/QC requirements are also identified in the QAPjP section of the work plans. After the DQO process is completed, the SAP and QAPjP are finalized and included in the past practice documentation. This approach is not reflected in Attachment B. In addition, a number of other items in Attachment B are inconsistent with QA/QC conditions contained in the DW Portion of the Draft Permit. Refer to comment on Condition II.E., DW Portion (page 28, lines 49-50 through page 35, lines 1-15). These inconsistencies should be addressed to preclude permit implementation costs that have no benefit to the protection of human health and the environment.

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COMMENT 19.0

U.S. Department of Energy, Richland Operations Office;
Westinghouse Hanford Company;
Pacific Northwest Laboratories

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COMMENT 19.0

Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

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MAY 12 1994

MAY 11 1994

94-RPS-220

Mr. Randall F. Smith, Director
Hazardous Waste Division
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

Ms. Dru Butler, Program Manager
Nuclear Waste Program
Washington State Department of Ecology
P.O. Box 47600
Olympia, Washington 98504

Dear Mr. Smith and Ms. Butler:

SUPPLEMENTAL HANFORD SITE COMMENTS ON THE SECOND DRAFT OF THE RESOURCE CONSERVATION AND RECOVERY ACT PERMIT FOR THE TREATMENT, STORAGE, AND DISPOSAL OF DANGEROUS WASTE FOR THE HANFORD FACILITY

The U.S. Department of Energy, Richland Operations Office (RL), Westinghouse Hanford Company (WHC), and Pacific Northwest Laboratory (PNL) jointly have prepared and formally are submitting the enclosed document entitled "Supplemental Hanford Site Comments on the Second Draft of the Resource Conservation and Recovery Act (RCRA) Permit for the Treatment, Storage, and Disposal of Dangerous Waste for the Hanford Facility" (hereinafter termed the Supplemental Comment Document). This Supplemental Comment Document is being submitted to meet the respective obligations of 40 CFR Part 124 and WAC 173-303-840(6). The enclosure supplements our comments on the Second Draft RCRA Permit dated April 11, 1994, and is divided into two parts: (1) additional comments on the Second Draft RCRA Permit, and (2) changes to the April 11, 1994, Comment Document.

The Supplemental Comments are consistent with discussions held at a meeting on April 29, 1994, among State of Washington Department of Ecology (Ecology), RL, WHC, PNL, and Bechtel Hanford, Inc. (BHI) representatives. At this meeting, progress was made on addressing 5 of our 11 Key Comments: (1) Mapping and Marking, (2) Receipt of Offsite Waste, (3) Permittee Responsibilities, (4) Financial Assurance and Liability, and (5) Permitting Approach. Based on this meeting, we understand that Ecology will consider revising the Mapping

and Marking conditions of the RCRA Permit to include a 12-month cost-efficiency study, extend the timetable for associated permit conditions by 12 months, and allow for adjustments of the permit conditions to reflect the results of the study. We also understand that the receipt of offsite waste will not be restricted or prohibited by the RCRA Permit. With regards to permittee responsibilities, we encourage you to consider issuing the RCRA Permit, Dangerous Waste Portion, to "DOE-RL (Owner/Operator), and its designated contractors (co-operators)" as was discussed in earlier meetings. Consistent with Ecology's suggestion, in the enclosed Supplemental Comments we formally have proposed permit language for your consideration. As discussed in earlier meetings, this approach will provide greater flexibility to accommodate contractor changes. As has also been noted in recent meetings, a permitting mechanism must be in place in the very near future that will accommodate the transference of management responsibilities for environmental restoration work from WHC to BHI. Our proposal for permittee designation, as well as our financial assurance and liability concerns, are being discussed in follow-up meetings arranged among our respective legal representatives.

The April 29, 1994, discussions on the Permitting Approach helped us to understand Ecology's intent, but we still need to resolve concerns regarding implementation and compliance ambiguity. We believe that the implementation and compliance ambiguity for interim status closure plan inclusion can be mitigated by using the approach proposed in the enclosed Supplemental Comments and in the Suggested Revised Draft Permit Language transmitted to you at the April 29, 1994, meeting. We request that this Suggested Revised Draft Permit Language be the topic of future meetings, in conjunction with a discussion of the "graded" implementation approach mentioned by Ecology staff. We remain concerned about the pragmatics of such an approach with regards to RCRA Permit compliance. We further believe that the best understanding of the "graded" implementation approach can be gained by a "walk-through" of the entire Draft Permit at future meetings. Other Key Comments that also need to be addressed during this "walk-through" include Groundwater Monitoring, Regulatory Agency Authority, and Quality Assurance and Quality Control provisions.

We request that the meetings be held before issuance of the final RCRA Permit, and that a firm date for the first of these meetings be established by May 13, 1994. We believe that the progress made at the April 29, 1994, meeting, indicates that we can work effectively toward avoiding the appeal process. We will continue to support open and responsive communication with you as your organizations address review comments received from us, and others, on the Second Draft Permit.

If you have any questions, please contact Mr. C. E. Clark of RL on (509) 376-9333, Mr. R. C. Brunke of WHC on (509) 376-2663, or Mr. H. T. Tilden II of PNL on (509) 376-0499.

Sincerely,

James E. Rasmussen

for Steven H. Wisness, Acting Program Manager
Office of Environmental Assurance,
Permits and Policy
DOE Richland Operations Office

EAP:CEC

W. T. Dixon

W. T. Dixon, Manager
Regulatory Support
Westinghouse Hanford Company

T. D. Chikalla

T. D. Chikalla, Director
Facilities and Operations
Pacific Northwest Laboratory

Enclosure:
Supplemental Hanford Site
Comments

cc w/encl:
J. Atwood, Ecology
M. Jaraysi, Ecology
D. Nylander, Ecology
R. Stanley, Ecology
J. Stohr, Ecology
J. Witzcak, Ecology
D. Duncan, EPA
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C. Sikorski, EPA
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cc w/o encl:
T. Chikalla, PNL
H. Tilden, PNL
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J. James, BHI
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SUPPLEMENTAL COMMENTS ON THE SECOND DRAFT OF THE RESOURCE CONSERVATION AND RECOVERY ACT PERMIT FOR THE TREATMENT, STORAGE, AND DISPOSAL OF DANGEROUS WASTE FOR THE HANFORD FACILITY*

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*Place the Supplemental Hanford Site Comments at the end of Attachment 1 of the Hanford Site Comments on the Second Draft Permit dated April 11, 1994.

SUPPLEMENTAL COMMENTS ON DANGEROUS WASTE PORTION OF DRAFT PERMIT[1]

SC Category[2]: Permittee Designation **Key Comment[3]:** Permittee Responsibilities Permit Implementation

19.1 **Comment:** The Draft Permit requires greater flexibility in accommodating a change in DOE-RL contractors. Consider, as alternative language, the following changes to the Draft Permit:

Condition: Title Page
Page, lines: Page 1, line 26
Requested Action: After "(Owner/Operator)" add the following language, ", and its designated contractors (co-operators)".

Condition: Title Page
Page, lines: Page 1, lines 31-35
Requested Action: Delete reference to Westinghouse Hanford Company and Pacific Northwest Laboratory.

Condition: Introduction
Page, lines: Page 4, lines 13-14
Requested Action: On line 13, add the term "(co-operators)" after word "contractors" and delete the following language.
"; Westinghouse Hanford Company (Westinghouse Hanford) (co-operator), and Pacific Northwest Laboratory (PNL) (co-operator)".

Condition: Definitions
Page, lines: Page 9, lines 40-43
Requested Action: Replace the definition for "Contractor(s)" with the following language:

The term '**contractor(s)**' means those DOE-RL designated contractors who have certified RCRA Part A and Part B permit application documents for TSD units that have been incorporated into this Permit, unless specifically identified otherwise in this Permit or its attachments.

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[1]Supplemental to Hanford Site Comments dated April 11, 1994. Supplemental comments have been made only on the Dangerous Waste Portion of the Second Draft Permit. The referenced "Condition" and "Page, lines" refer to locations within the Second Draft Permit that was issued for public comment on February 9, 1994.

[2]SC = Supplemental Comment.

[3]Table 1 of the Hanford Site Comments dated April 11, 1994, provides a listing of Key Comments.

Condition: Definitions
Page, lines: Page 11, lines 1-3
Requested Action: Replace the definition for "Permittees" with the following language:

The term 'Permittees' means the United States Department of Energy, Richland Operations Office (Owner/Operator) and its designated contractors (co-operators).

Condition: Acronyms
Page, lines: Page 12, line 37; page 13, lines 8-9
Requested Action: Delete the references to PNL and Westinghouse Hanford.

Condition: I.A.2.
Page, lines: Page 14, lines 35-43
Requested Action: Delete the second and third paragraphs of this Condition. Add the following paragraph:

A DOE-RL contractor (co-operator) is identified as a Permittee for activities subject to the Conditions of this Permit where its agents, employees, or subcontractors have operational and/or management responsibilities and control.

Justification: The Draft Permit appears to require a Class 3 modification to accommodate a change in DOE-RL contractors managing TSD units. Either the change in DOE-RL contractors, or the Permit schedule, could be adversely impacted by the timing of the Class 3 modification process. Greater Permit flexibility is required to accommodate contractor changes, as the approach to Hanford Site cleanup is trending toward an expansion in the number of DOE-RL contractors who may manage TSD units. This comment outlines an approach that would enable contractor co-operators to be identified on the Part A, Form 3 certification page. A change in contractors could be accommodated through the submittal of a revised Part A, Form 3, rather than through a Permit modification.

In an April 1, 1994 meeting, the Department expressed an interest in exploring more flexible permitting options for accommodating a change in DOE-RL contractors. The approach outlined in this comment was proposed to the Department at a follow up meeting held on April 29, 1994. A permitting mechanism must be in place in the very near future that will accommodate the transference of management responsibilities for environmental restoration work from Westinghouse Hanford Company to Bechtel Hanford, Inc.

19.2 **SC Category:** Inclusion of Interim Status Closure Plans **Key Comment:** Permitting Approach Permit Implementation

Comment: As noted in the Comment Package submittal dated April 11, 1994, the Commenters requested action is to eliminate Part V from the Draft Permit. The Commenters contend that the Department lacks regulatory authority to place an interim status unit that cannot meet final status standards into a final

status permit. In the event that the Department nevertheless decides to retain Part V in the Draft Permit, specific comments have been provided to mitigate the implementation problems. In providing these specific comments, the Commenters do not waive their objections to a Permit containing interim status units. If Part V is not deleted, delete all Part V references from Part II; make specific reference in Part V to the very limited Part II conditions that may be relevant. Retitle Part V as "Unit-Specific Conditions for Interim Status Closures Under Final Status Standards". Specifically, incorporate the following changes:

Condition: Introduction
Page, lines: Page 6, lines 16-28
Requested Action: Replace this paragraph with the following language:

Part V, Unit-Specific Conditions for Interim Status Closures Under Final Status Standards, contains those Permit requirements that apply to each individual TSD unit undergoing interim status closure. Conditions for each interim status TSD unit undergoing closure are found in a Chapter dedicated to that TSD unit. These unit-specific Chapters may contain references to General Conditions (Part II), as well as additional requirements that are intended to ensure that each TSD unit is closed in an efficient and environmentally protective manner.

Condition: Attachments
Page, lines: Page 7, line 6
Requested Action: Delete the reference to Part V from this Condition. Rewrite "Parts I through V" to read "Parts I through IV".

Condition: II.B.1.
Page, lines: Page 26, line 36
Requested Action: Delete the reference to Part V from this Condition. Rewrite "Parts III and V" to read "Part III".

Condition: II.C.3.; II.J.2.; II.K.2.; II.K.3.; II.K.3.a.; II.K.5.; II.L.2.d.; II.O.1.; II.Q.1
Page, lines: Page 27, line 29; page 39, line 29; page 40, lines 22, 30, 39; page 41, line 23; page 43, line 18; page 44, line 27; page 45, line 49
Requested Action: Delete the reference to Part V from these Conditions. Rewrite "Parts III or V" to read "Part III".

Condition: II.I.1.
Page, lines: Page 37, lines 15 and 19
Requested Action: Delete the reference to Part V from this Condition. On line 15, rewrite "Parts III and V" to read "Part III". On line 19, rewrite "Part III or V" to read "Part III".

Condition: II.J.1.
Page, lines: Page 39, line 22
Requested Action: Delete the reference to Part V from this Condition. Rewrite "Parts III, IV, or V" to read "Parts III or IV".

Condition: II.K.3.b.
Page, lines: Page 40, line 45; page 41, lines 3 and 6
Requested Action: Delete the reference to Part V from this Condition. On lines 45 and 6, rewrite "Parts III or V" to read "Part III". On line 3, rewrite "Parts III of V" to read "Part III".

Justification: The Commenters contend that the Department lacks regulatory authority for directly placing an interim status unit that cannot meet final status standards into a final status permit. Based on this rationale, the Commenters further contend that the permitting approach that should be followed is to eliminate Part V from the Draft Permit. However, if Part V is included, this part should be retitled as requested in this Comment Supplement to indicate that these units are being handled as interim status closures using final status standards. Reference to applicable Part II Conditions only in Part V also will help to mitigate permit implementation ambiguity for both the regulators and the Permittees.

SC Category: Quality Assurance and Quality Control **Key Comment:** Quality Assurance and Quality Control

19.3 **Comment:** The Draft Permit contains too great a level of detail in the Quality Assurance and Quality Control area. The preferred course of action by the Commenters is to implement the following changes.

Condition: II.E.2.a.; II.E.2.b.; II.E.2.c.; II.E.2.d.
Page, lines: Page 29, lines 15-50; page 30, lines 1-50; page 31, lines 1-49; page 32, lines 1-50; page 33, lines 1-3
Requested Action: Delete Conditions II.E.2.a. - II.E.2.d.

Condition: II.E.3.; II.E.3.a.; II.E.3.b.; II.E.3.c.
Page, lines: Page 33, lines 11-49; page 34, lines 1-36
Requested Action: Delete the last sentence in Condition II.E.3. Delete Conditions II.E.3.a. - II.E.3.c.

Justification: Refer to justification provided for Condition II.E. on ATT 1, page 31 of the Hanford Site Comments dated April 11, 1994.

SC Category: Onsite Transportation **Key Comment:** Onsite Waste Movement

19.4 **Comment:** As noted in the Hanford Site Comments dated April 11, 1994, the Commenters requested action is to eliminate Condition II.Q.1. The Commenters contend that there is no regulatory basis requiring the documentation of onsite waste shipments. In the event that the Department nevertheless decides

to retain Condition II.Q.1. in the Draft Permit, specific comments have been provided to mitigate the implementation problems. In providing these specific comments, the Commenters do not waive their objections to a Permit containing requirements for onsite waste shipments. If Condition II.Q.1. is not deleted, the following changes are requested to be made.

Condition: II.I.1.a.
Page, lines: Page 37, lines 23-25
Requested Action: Delete this Condition and rewrite as follows:

Documentation (e.g., waste profile sheets) of all dangerous waste transported to or from any TSD unit subject to this Permit. This documentation shall be maintained in the receiving TSD unit's operating record from the time the waste is received;

Condition: II.I.1.b.
Page, lines: Page 37, lines 26-28
Requested Action: Move this Condition to II.I.1.c. and add a new condition as follows:

The location and quantity of dangerous waste at each final status TSD unit within the Hanford Facility. For final status disposal units on the Hanford Facility, the location and quantity of each dangerous waste must be recorded on a map or diagram of each cell or disposal area. This information must include cross-references to specific manifest document numbers, if the waste was required to be accompanied by a manifest.

Condition: II.Q.1.
Page, lines: Page 45, lines 37-49;
Requested Action: Rewrite this Condition to read as follows:

Documentation must accompany any onsite dangerous waste that is transported to or from any TSD unit through or within the 600 Area, unless the roadway is closed to general public access at the time of shipment. Waste transported by rail or by pipeline is exempt from this Condition. This documentation shall include the following information, unless other unit-specified provisions are designated in Part III.

Justification: The Commenters contend that the Department lacks regulatory authority for imposing conditions regulating the movement of waste onsite. Based on this rationale, the Commenters requested action is to eliminate Condition II.Q.1. from the Draft Permit. The alternative language is most closely aligned with "best management practices" used to manage waste movement on the Hanford Facility.

19.5 **SC Category:** Permit Consistency **Key Comment:** Permit Implementation
Comment: Make the following changes to promote consistency and ease of permit implementation:

Condition: Introduction; I.A.2.
Page, lines: Page 5, lines 12-14; page 6, lines 1-6; page 14, line 31
Requested Action: Replace "USDOE" with "DOE-RL" in each of the seven occurrences.

Condition: List of Attachments
Page, lines: Page 7, lines 16-17
Requested Action: For Attachment 1, delete "May 1989" and replace "(As Amended)" with "as amended".

Condition: List of Attachments
Page, lines: Page 7, lines 23-24; 34-36; 43-48; Page 8, lines 1-19
Requested Action: For Attachments 4, 8, and 11 through 18, delete the date and the revision reference and replace with "as amended".

Condition: List of Attachments
Page, lines: Page 7, lines 28-29
Requested Action: For Attachment 6, replace "Revision 0" with "as amended".

Condition: List of Attachments
Page, lines: Page 7, lines 43-44
Requested Action: For Attachment 11, delete "Part A Application and the".

Condition: Acronyms
Page, lines: Page 12, line 5
Requested Action: Add ", Region 10" to the end of the acronym definition for AGENCY.

Condition: Acronyms
Page, lines: Page 12, lines 17-18
Requested Action: Rewrite the Acronym definition for DOE-RL to read "U.S. Department of Energy, Richland Operations Office".

Condition: Acronyms
Page, lines: Page 12, lines 28 and 30
Requested Action: On line 28, add "of 1976" to the acronym definition of HWMA. On line 30, add "(WAC-173-340)" to the acronym definition of MTCA.

Condition: Acronyms
Page, lines: Page 12, line 45
Requested Action: Add the acronym definition for "SAP"; "sampling and analysis plan".

Condition: Acronyms
Page, lines: Page 13, lines 4-5
Requested Action: Delete the acronym "USDOE" from this list.

Condition: II.E.1.
Page, lines: Page 29, lines 1-10
Requested Action: Beginning on line 1, rewrite the first sentence to read as follows:

"All WAPs and sampling and analysis plans (SAPs) required by this Permit shall include a quality assurance and quality control (QA/QC)..."

Rewrite the last sentence to read as follows:

"The QA/QC plan may be part of a WAP or a SAP."

Condition: II.F.2.b.; II.L.2.d.; II.R.2.
Page, lines: Page 35, line 38; page 43, line 15; page 46, line 31
Requested Action: Insert "Facility" in front of "operating".

Condition: III.1.B.s.
Page, lines: Page 56, line 19
Requested Action: Insert "TSD unit-specific" in front of "Operating Record".

Condition: II.I.1.; II.L.2.b.; II.N.3.
Page, lines: Page 37, lines 13, 15, 18; page 42, line 31; page 44, line 16
Requested Action: Insert "TSD" in front of "unit-specific".

Condition: II.K.6.; II.L.2.b.; II.L.2.c.
Page, lines: Page 41, line 33; page 42, lines 24, 44
Requested Action: Change "unit" to "unit-specific".

Justification: These changes will promote consistency and ease of Permit implementation.

19.6 **SC Category:** Part III Changes **Key Comment:** Permit Implementation
Comment: Make the following changes to Part III:

Condition: III.1.A.
Page, lines: Page 51, line 16
Requested Action: Replace "Rev. 2" with "as amended".

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Condition: III.1.A.
Page, lines: Page 51, lines 29-32, 45-46; page 52, lines 1-4, 8-9
Requested Action: Delete references to Sections 2.5 and 2.7, Chapter 10.0, Sections 13.7 and 13.8, and Appendix 4A.

Condition: III.1.A.
Page, lines: Page 52, lines 7 and 17
Requested Action: On line 7, insert reference to Appendix 3A, *616 Nonradioactive Dangerous Waste Storage Facility Waste Analysis Plan*. On line 17, insert references to Appendix 8A, *RCRA Training*; Appendix 8C, *Training Course Descriptions*; and Appendix 8D, *Dangerous Waste Training Requirements Listed by Employee Worker Category and Name*.

Condition: III.1.B.a., y., ff., and gg.
Page,lines: Page 52, lines 22-24; page 56, lines 48-49; page 57, lines 33-50
Requested Action: Delete these conditions.

Condition: III.2.A.
Page, lines: Page 59, line 14
Requested Action: After the words "Permit Application," insert the words "as amended,".

Condition: III.2.A.
Page, lines: Page 59, lines 26-31, 44-45; page 60, lines 1-4
Requested Action: Delete references to Sections 2.5, 2.6, and 2.7, Chapter 10.0, and Sections 13.8 and 13.9.

Condition: III.2.A.
Page, lines: Page 60, line 7
Requested Action: On line 7, insert reference to Appendix 3A, *305-B Storage Unit Waste Analysis Plan*.

Condition: III.2.B.w.; III.2.B.y.; III.2.B.z.; III.2.B.aa.
Page, lines: Page 64, lines 42-45; page 65, lines 1-16
Requested Action: Delete these conditions.

Justification: The requested changes will update the Conditions, promote consistency with incorporated portions of the TSD unit-specific permit applications, and facilitate permit implementation. The recordkeeping requirement in WAC 173-303-145 was deleted in 1992 by the Department.

SC Category: Part V Changes **Key Comment:** Permitting Approach
Permit Implementation

19.7 **Comment:** As noted in the Comment Package submittal dated April 11, 1994, the Commenters requested action is to eliminate Part V from the Draft Permit. The Commenters contend that the Department lacks regulatory authority to place an interim status unit that cannot meet final status standards into a final

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status permit. In the event that the Department nevertheless decides to retain Part V in the Draft Permit, specific comments have been provided to mitigate the implementation problems. In providing these specific comments, the Commenters do not waive their objections to a Permit containing interim status units. If Part V is not deleted, make the following changes to Part V:

Condition: Part V.
Page, lines: Page 67, line 1
Requested Action: Change the section heading to read as follows:

PART V - UNIT-SPECIFIC CONDITIONS FOR INTERIM STATUS CLOSURES UNDER FINAL STATUS STANDARDS

Part V contains those Permit requirements that apply to each individual TSD unit undergoing interim status closure. Conditions for each interim status TSD unit undergoing closure are found in a Chapter dedicated to that TSD unit. These unit-specific Chapters may contain references to General Conditions (Part II), as well as additional requirements that are intended to ensure that each TSD unit is closed in an efficient and environmentally protective manner.

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Condition: V.1.A.
Page, lines: Page 67, lines 14-50;, page 68, lines 1-15
Requested Action: Replace this condition with the following language:

V.1.A. COMPLIANCE WITH APPROVED CLOSURE PLAN

The Permittees shall comply with all the requirements in the 183-H Solar Evaporation Basins Closure Plan/Postclosure Plan (Plan) portions incorporated into the Permit, as amended, in Section V.1.B of this Permit. Portions of the Plan incorporated into this Permit are as follows:

V.1.A.a. Facility Description and Maps of Facility Location, consisting of:

Subsection I.1, pages I-1 and I-2

Figure I.A-1, page I-3

Figure I.A-2, page I-4

Figure I.A-3, page I-5

Appendix A, page A-1, and maps.

V.1.A.b. Security Procedures, consisting of:

Subsection I.1, page I-2.

V.1.A.c. Personnel Training Plan, consisting of:

Appendix N, including all figures and tables, pages APP N-1 through APP N-7.

V.1.A.d. Closure Plan, consisting of:

Chapter I.B, including all figures and tables, pages I-67 through I-150.

V.1.A.e. Closure Plan Schedule, consisting of:

Subsection I.B-7, pages I-143 through I-147

Figure I.B-20, page I-144.

Condition: V.1.B.d.
Page, lines: Page 68, line 34
Requested Action: Replace the telephone number (509) 376-7277 with (509) 376-6628.

Condition: V.1.B.e.
Page, lines: Page 68, lines 36-43
Requested Action: Delete this condition.

Condition: V.1.B.i.
Page, lines: Page 69, lines 15-16
Requested Action: Delete "the Westinghouse Hanford Company document" from this paragraph.

Condition: V.1.B.j.
Page, lines: Page 69, lines 22-28
Requested Action: On lines 23-24, replace "within 30 days of the effective date of this Permit" with "within 30 days after data validation".

Condition: V.1.B.k.
Page, lines: Page 69, lines 29-35
Requested Action: On lines 31-32, replace "within 30 days of the effective date of this Permit" with "within 30 days after data validation".

Condition: V.1.B.m.
Page, lines: Page 70, lines 6-7
Requested Action: Beginning on line 6, delete "documentation including, if necessary, the result of sampling per Conditions V.1.B.h through V.1.B.l." and replace with "documentation".

Condition: V.1.B.u.
Page, lines: Page 71, lines 17-21
Requested Action: Rewrite this condition to read as follows:

If landfill closure is necessary, a revision to the "Final Status Postclosure Permit Application, 183-H Solar Evaporation Basins," as amended, shall be submitted pursuant to Condition I.C.3. A schedule for submitting this postclosure permit application will be established in the FFACO Action Plan, M-20-00 milestone.

Condition: V.2.A.
Page, lines: Page 72, lines 11-46
Requested Action: Replace this condition with the following language:

V.2.A. COMPLIANCE WITH THE APPROVED CLOSURE PLAN

The Permittees shall comply with all the requirements in the 300 Area Solvent Evaporator Closure Plan (Plan) portions incorporated into the Permit, as amended, in Section V.2.B of this Permit. Portions of the Plan incorporated into this Permit are as follows:

V.2.A.a. Facility Description and Maps of Facility Location, consisting of:

Subsection 1.1.1, page 1-3

Figure 1-1, page 1-4

Figure 1-2, page 1-5

Figure 1-3, page 1-6.

V.2.A.b. Security Procedures, consisting of:

Subsection 1.2, pages 1-21.

V.2.A.c. Personnel Training Plan, consisting of:

Chapter 8.0, including all figures and tables, pages 8-1 through 8-6.

V.2.A.d. Closure Plan, consisting of:

Chapter 3.0, including all figures and tables, pages 3-1 through 3-14

Chapter 4.0, page 4-1

Chapter 5.0, page 5-1

Chapter 6.0, pages 6-1 through 6-4

Appendix E, including all figures and tables, pages APP E-1 through E-42.

V.2.A.e. Closure Plan Schedule, consisting of:

Subsection 3.5, pages 3-9 and 3-13

Table 3-3, page 3-13.

Condition: V.2.B.
Page, lines: Page 73, line 46
Requested Action: Add a new condition with the following language:

Page 5-2, line 6. The date of "October 1992" is deleted and replaced with "the first October after the effective date of this Permit.

Condition: V.2.B.e.
Page, lines: Page 73, line 28
Requested Action: Insert "levels above MTCA health-based" in front of "action" and behind "levels" on line 28.

Condition: V.3.A.
Page, lines: Page 74, lines 11-46
Requested Action: Replace this condition with the following language:

V.3.A. COMPLIANCE WITH THE APPROVED CLOSURE PLAN

The Permittees shall comply with all the requirements in the 2727-S Nonradioactive Dangerous Waste Storage Facility Closure Plan (Plan) portions incorporated into the Permit, as amended, in Section V.3.B of this Permit. Portions of the Plan incorporated into this Permit are as follows:

V.3.A.a. Facility Description and Maps of Facility Location, consisting of:

Subsection 1.1, pages 1-1 and 1-3

Subsection 1.3, pages 1-7 and 1-9

Figure 1, page 1-2

Figure 2, page 1-4

Figure 3, page 1-5

Figure 4, page 1-6

V.3.A.b. Security Procedures, consisting of:

Section 1.2, pages 1-3 and 1-7.

V.3.A.c. Personnel Training Plan, consisting of:

Chapter 6.0, including all figures and tables, pages 6-1 through 6-2

Appendix H, including all figures and tables, pages APP H-1 through APP H-6.

V.3.A.d. Closure Plan, consisting of:

Chapter 4.0, including all figures and tables, pages 4-1 through 4-13

Appendix F, including all figures and tables, pages APP F-1 through F-12

Appendix G, including all figures and tables, pages APP G-1 through G-22.

V.3.A.e. Closure Plan Schedule, consisting of:

Chapter 7.0, including all figures and tables, pages 7-1 through 7-2

Appendix F, including all figures and tables, pages APP F-1.

Condition: V.3.B.e.
Page, lines: Page 75, lines 27-31
Requested Action: On line 28, insert "as specified in Condition II.K.," between the words "concentrations" and "cannot".

Justification. Refer to justification for "Inclusion of Interim Status Closure Plans" Supplemental Comment.

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Comment Location: ATT 1, page 38
Change: In Justification section, paragraph 3, item "(3)", change "$7M" to "$7K".

Comment Location: ATT 1, page 41, Condition II.H.
Change: In Justification section, within the quotation, change "WAC 173-303-620(1)(b)" to "WAC 173-303-620(1)(c)".

Comment Location: ATT 1, page 52, Condition II.N.1.
Change: In Justification section, paragraph 3, delete "Federal Building and the".

Comment Location: ATT 1, page 66, Condition III.1.A. (First Listing)
Change: From CS Comment section, remove the word "many".

Comment Location: ATT 1, page 67, Condition III.1.B.
Change: Under Requested Action section, item "1.", change "H-6-1566" to "H-6-1556)".

Comment Location: ATT 1, page 75, Condition I.I.1.
Change: In Justification section, remove "not administrative agencies" from end of sentence.

Comment Location: ATT 1, page 77, Condition II.C.1
Change: In Requested Action section, change "Permittees are" to "Permittee is".

Comment Location: ATT 1, page 78, Condition II.D.
Change: In the first line of this page, change "Permittees" to "Permittee".

Comment Location: ATT 1, page 78, Condition III.A.1.
Change: In Justification section, delete "and its contractors".

Comment Location: ATT 1, page 79, Condition III.C through III.J and Attachments A through E
Change: In CS Comment section, paragraph 3, remove "and its contractors".

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19.8 CHANGES TO HANFORD SITE COMMENTS DATED APRIL 11, 1994[4]

Comment Location: Page 4
Change: In paragraph 1, replace "WAC 173-303-805(8)(c)" with "WAC 173-303-805(8)(a)".

Comment Location: Page 6
Change: In paragraph 7, replace "Definitions Comments, pages 103-104" with "Definitions Comments, pages 102-103".

Comment Location: Page 8
Change: In paragraph 1, replace "Facility-wide Groundwater Monitoring" with "Groundwater Monitoring".

In paragraph 4, replace "(Appendix 1, A.3 and B.6.A)]" with "(Appendix 1, A.3 and B.6.b)]". Replace "has been estimated to in excess" with "has been estimated to be in excess".

Comment Location: Page 9
Change: In paragraph 3, replace "(in Sections 6.5 and 7.8)" with "(in Sections 6.5 and 7.8 of the Action Plan)".

In last paragraph, delete "Federal" on page 9 and "Building and the" on page 10.

Comment Location: ATT 1, page 3, Table of Contents
Change: In CS Comment section, delete "and WAC 173-303-805(8)(c)".

Comment Location: ATT 1, page 7, Introduction
Change: In CS Comment section, sentence 1, replace "WAC 173-303-805(8)(c)" with "WAC 173-303-805(8)(a)".

Comment Location: ATT 1, page 8
Change: Remove the quotation marks from paragraph 2.

In paragraph 4, replace "(General Comment 72, page 73)" with "(General Comment 71, page 73)".

Comment Location: ATT 1, page 10, Definitions
Change: Replace Requested Action section with:

Requested Action: Add the words "the dangerous component of" before the word "mixed." Add the following sentence to the end of the definition:

Dangerous waste does not include the source, special nuclear, and byproduct material components of mixed waste.

---

[4]"Comment Location" refers to location within Hanford Site Comments on the Second Draft Permit dated April 11, 1994.

Alternatively, incorporate a definition for mixed waste from either the FFACO or WAC 173-303-040.

Comment Location: ATT 1, page 14, Definitions (First Listing)
Change: Replace Requested Action section with:

Requested Action: Delete the existing text.

Comment Location: ATT 1, page 15, Condition I.A.1.a.
Change: In Justification, replace "Environmental, Inc: Washougal, Georgetown," with "Environmental, Inc: Georgetown, Washougal".

Comment Location: ATT 1, page 20, Condition I.E.10.c.
Change: In "i.", change "The date, specific location," to "The date, exact place,".

Comment Location: ATT 1, page 23, Condition I.E.14.
Change: In Justification section, change "WAC 173-303-830(3)(c) to "WAC 173-303-830(3)(a)".

Comment Location: ATT 1, page 25, Condition I.E.18.
Change: In Requested Action section, change the revision of the last sentence to read:

Whenever dangerous waste received from offsite sources without a manifest, the Permittees shall submit a report ...

Comment Location: ATT 1, page 31, Condition II.D.3.(vii)
Change: In Requested Action section, replace "y A procedure for identifying..." with "y A procedure for identifying each offsite waste movement arriving at the TSD unit; and,".

Comment Location: ATT 1, page 32
Change: In Justification section, paragraph 2, change "Condition II.E.2.b.xxi" to "Condition II.E.2.b.xii".

Comment Location: ATT 1, page 33, Condition II.E.2.
Change: In Requested Action section, change the revision of the Condition to read:

Each QA/QC plan shall contain a data quality assurance plan or equivalent information. The level of QA/QC for the collection, preservation, transportation, and analysis of each sample that is required for implementation of this Permit may be based on Department approved data quality objectives for the sample. These data quality objectives shall be approved by the Department, in writing, or through incorporation of TSD unit QA/QC plans into Part III of this Permit.

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COMMENT 20.0

Davis Wright Tremaine Law Offices
(for Envirocare of Utah, Inc.)

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COMMENT 20.0

DAVIS WRIGHT TREMAINE
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RECEIVED MAY 13 1994

LYNDA L. BROTHERS

COPY

May 11, 1994

VIA MESSENGER

Mr. Daniel Duncan
Hanford RCRA Permit Coordinator
EPA Region 10, HW-106
1200 Sixth Avenue
Seattle, Washington 98101

Re: Comments on HSWA Portion of Draft Hanford Sitewide Permit

Dear Dan:

Please find enclosed the Comments of Envirocare of Utah, Inc., on the HSWA portion of the Draft Hanford Sitewide Permit. This letter briefly summarizes the main points contained in the Comments. We refer you to the Comments for a detailed discussion of the justification for each revision requested by Envirocare.

We support the efforts of the U.S. Environmental Protection Agency ("EPA") and the state Departments of Ecology and Health, as reflected in the draft Memorandum of Understanding ("MOU"), to develop a coordinated approach to Resource Conservation and Recovery Act ("RCRA") actions at the US Ecology disposal site whereby corrective action will be implemented by US Ecology under State authorities. The focus of our Comments is that the Draft Permit and MOU should be revised to better facilitate this approach.

The Draft Permit should address all Solid Waste Management Units ("SWMUs") at the US Ecology site where there have been potential releases of hazardous constituents warranting further investigation. The RCRA Facility Assessment ("RFA") identifies the former resin tank farm area as a SWMU. The Draft Permit should therefore be revised to add the tank farm area as an additional SWMU subject to a RCRA Facility Investigation ("RFI") and corrective action.

As currently written, Condition III.B.2 of the Draft Permit provides too many administrative options, none of which ensure expeditious and complete satisfaction of RCRA requirements at the US Ecology site. We agree with the intent of the Condition that

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US Ecology should implement corrective action at the site. However, the Condition fails to establish a definitive procedure for accomplishing this goal and fails to integrate corrective action with other RCRA requirements. We therefore propose the following revisions:

First, the onus for satisfying corrective action requirements should more clearly be taken off the Department of Energy ("Energy") and placed on US Ecology. Under the current Condition, the responsibility could fall back on Energy after one year, if US Ecology and the State agencies are not making satisfactory progress toward accomplishing corrective action. The likely result would be protracted litigation between the United States and the State of Washington over responsibilities under the 1964 lease. The Draft Permit should explicitly state that US Ecology will be responsible for implementing corrective action under the Memorandum of Understanding ("MOU") between EPA and the Departments of Ecology and Health.

Second, the Draft Permit should explicitly assign the Department of Ecology the primary oversight role for all RCRA actions at the US Ecology site. Ecology has extensive experience implementing the State's hazardous waste cleanup program under the Model Toxics Act ("MTCA"). MTCA provides a ready-made procedure for accomplishing corrective action. Cleanup of the site should be accomplished according to MTCA cleanup standards under a consent decree, subject to public comment and hearing.

Third, the MOU currently under negotiation between EPA and the Departments of Ecology and Health should be utilized as the vehicle for coordinating all aspects of RCRA corrective action required by the Draft Permit. We concur with the general approach taken by the agencies in the MOU but believe that the MOU should be expanded to encompass all required RCRA actions. The draft MOU only provides for a RCRA Facility Investigation and does not address subsequent corrective actions or the closure/postclosure plan. The MOU should recognize the primary responsibility of Ecology in establishing and enforcing all RCRA requirements at the site, including corrective action and closure/postclosure requirements. There must be close coordination between all RCRA activities, and this coordination should be achieved through the MOU.

Fourth, the closure/postclosure plan being prepared by US Ecology must meet all requirements under RCRA and Ch. 173-303 WAC for closure/postclosure of a hazardous waste landfill. The record is clear that hazardous and radioactive mixed wastes were disposed of at the facility over an extended period of years.

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These practices and the need for a multilayer cap design are well documented in a series studies commissioned by Ecology and performed by A.T. Kearney. Under the Washington Radioactive Waste Act and US Ecology's Radioactive Waste License, the Department of Ecology has the authority to define and establish standards for closure. Ecology has clearly taken the position that hazardous waste standards apply to closure of the facility. The Draft Permit should reflect this position.

Fifth, the Radioactive Materials License issued by Health to US Ecology should be amended to incorporate all required RCRA actions. The RCRA requirements will therefore become additional License conditions imposed by the Health Department under its statutory powers as the State's radiation control agency. This will provide an additional legal basis for requiring US Ecology to accomplish the actions.

We appreciate the opportunity to comment on the Draft Permit and trust that EPA and Ecology will find these comments useful. Please feel free to call if you have any questions.

Very truly yours,

DAVIS WRIGHT TREMAINE

Lynda L. Brothers
Richard W. Elliott

cc: Mr. Khosrow Semnani
Mr. Joe Witczak, WDOE
Mr. Gary Robertson, WDOH

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ENVIROCARE OF UTAH, INC., COMMENTS ON SECOND DRAFT OF HSWA PORTION OF HANFORD SITEWIDE RCRA PERMIT

I. INTRODUCTION

This document contains Comments of Envirocare of Utah, Inc., on the Hazardous and Solid Waste Amendments ("HSWA") portion of the second draft of the Hanford Sitewide Resource Conservation and Recovery Act ("RCRA") Permit (the "Draft Permit"). The Draft Permit was issued on February 9, 1994, for a 60-day public review and comment period that was extended to May 11, 1994. In accordance with the formal review process, these Comments are submitted to the Environmental Protection Agency ("EPA") and the Washington Department of Ecology ("Ecology") to be formally entered into the administrative record. These Comments relate to the corrective actions requirements in Condition III.B.1.a of the Draft Permit applicable to the low-level radioactive waste disposal facility operated by US Ecology, Inc.

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20.1

II. IDENTIFICATION OF SOLID WASTE MANAGEMENT UNITS

A. Affected Condition

Conditions III.B.1.a.(i) and III.B.1.a.(ii) identify the Solid Waste Management Units ("SWMUs") subject to corrective action requirements at the US Ecology site as the Chemical Trench (SWMU 1) and Low-Level Radioactive Waste Trenches 1 through 11A (SWMUs 2 through 13).

B. Requested Action

The underground resin tank farm should be added as SWMU 14.

C. Justification

The SWMUs identified in the Draft Permit should include all waste units at the US Ecology site where past disposal practices may have included the disposal of radioactive mixed waste or hazardous waste. Based on available information in Department of Ecology and Health files, the facility disposed of unknown quantities of radioactive mixed waste and hazardous waste in addition to low-level radioactive waste ("LLRW").[1] The Chemical Trench was used for disposal of phenolic waste, drums of unidentified chemical waste and phenolic resin wastes. At least 1047 55-gallon drums of chemical waste were buried in the unlined trench from 1968 to 1972. Id. There is also evidence in the agency files from interviews of former US Ecology employees that an unknown quantity of free liquid chemical waste was disposed of in trenches at the facility. In addition, the facility accepted for disposal large quantities of waste scintillation fluids and vials which contained toluene, xylene and possibly other solvents, therefore making them radioactive mixed waste. Scintillation vials, packed in absorbents or packed as absorbed or solidified liquids in 55-gallon drums, constituted a large fraction of the solvent wastes accepted by the facility. Scintillation wastes continued to be accepted by the facility until October 28, 1985 and were disposed of in Trenches 1 through 11A. The facility also received other potentially hazardous

[1] See A.T. Kearney, Commercial Hanford Facility Site Closure/Perpetual Care, Phase One Final Report, Sept. 1987 ("Kearney Phase One Report").

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wastes, including elemental mercury and lead containers that were disposed of in the trenches. The Chemical Trench and Trenches 1 through 11A have been appropriately identified by the Draft Permit as SWMUs.

There is, however, an additional area on the site where probable releases of radioactive mixed wastes or hazardous wastes have occurred. The RCRA Facility Assessment Final Report prepared for EPA by PRC Environmental Management, Inc. ("RFA Report") identifies the underground resin tank farm located at the US Ecology site as a SWMU. Documents contained in the files of EPA, Ecology and the Washington Department of Health ("Health") indicate that five underground steel tanks ranging in size from 1000 to 20,000 gallons were installed on site during the late 1960s for the treatment and disposal of liquid resin wastes by solar evaporation and solidication. When this method failed to produce the desired result, US Ecology terminated the disposal of liquid resin wastes in the tanks in the early 1970s.

The underground tanks and associated wastes were left in place with little attention until early 1985 when leaks in the tanks and contamination of adjacent soils were discovered. Testing of the tanks indicated that the tanks contained both low-level radioactive waste ("LLRW") and organic wastes. US Ecology removed the liquid waste from the tanks; absorbed, containerized and disposed of the waste by on-site trench burial; and subsequently removed and disposed of two of the five tanks. The remaining three tanks were left in place and filled with

concrete. The history of the resin tank farm is discussed in various reports and documents, including the A.T. Kearney Phase One Report

The Draft Permit should address all SWMUs at the US Ecology site where there have been potential releases of hazardous constituents warranting further investigation. According to the RFA and other reports, the resin tank farm is such an area. Corrective action is required regardless of the time at which waste was managed at the facility or placed into a waste unit, and regardless of whether the facility or waste unit was intended for management of solid or hazardous waste. 40 CFR § 264.101; WAC 173-303-646.

In conclusion, the Draft Permit should be revised to add the resin tank farm area, and any other areas where there have been potential releases of hazardous constituents, as additional SWMUs subject to a RCRA Facility Investigation ("RFI") and other corrective action requirements.

20.2 III. CORRECTIVE ACTION REQUIREMENTS

A. Affected Condition

Condition III.B.2 defers RCRA corrective action requirements for SWMUs identified in the previous Section for one year from the effective date of the HSWA Permit pending evaluation by Ecology and Health of progress made on SWMU investigation and/or remediation pursuant to these agencies' statutory powers. If, within the one-year period, the identified SWMUs have not either been:

(a) remediated to cleanup standards suitable for RCRA corrective action purposes;

(b) determined appropriate for no further action by comparison of contaminant concentrations to Washington Model Toxics Control Act ("MTCA") cleanup standards and RCRA corrective action cleanup standards; or

(c) "administratively addressed" by either: (1) an amendment to the Radioactive Materials License issued by Health to US Ecology; (2) a filed Department of Health Order; (3) a filed MTCA Consent Decree; (4) a final MTCA Agreed Order; or (5) a MTCA Enforcement Order;

EPA will, in consultation with Ecology, either extend the schedule for completion of activities listed in (a) through (c) or notify the U.S. Department of Energy ("Energy") as Permittee that the RCRA corrective action conditions for the SWMUs will no longer be deferred and are henceforth activated.

B. Requested Action

Condition III.B.2 should be revised as follows:

Implementation by the Permittee of RCRA corrective action requirements for SWMUs identified in HSWA Permit condition III.B.1.a will be deferred. Satisfactory completion of the actions set forth in this condition shall satisfy the HSWA corrective action requirements of this Permit and shall stand in lieu of compliance by the Permittee with Sections III.C (RCRA Facility Investigation), III.D (Corrective Measures Study and Implementation) and III.E (Interim Measures) at the US Ecology site.

The Agency and the Department of Ecology shall enter into a Memorandum of Understanding ("MOU") with the Department of Health requiring US Ecology to implement a RCRA Facility Investigation ("RFI"), a Corrective Measures Study ("CMS"), and implementation of Corrective and Interim Measures that meet all applicable requirements under RCRA and Chapter 173-303, Washington Administrative Code. All corrective action determined to be necessary as a result of the RFI and CMS shall be accomplished by application of Washington Model Toxics Control Act ("MTCA") procedures to US Ecology. The Department of Ecology shall require US Ecology to implement the corrective action through a filed MTCA consent decree (WAC 173-340-520), subject to public comment. The corrective action shall comply with the cleanup procedures

and achieve the MTCA cleanup standards specified in WAC 173-340-700 through WAC 173-340-750. The Radioactive Materials License shall be amended by the Department of Health to incorporate the corrective action requirements, as determined by the Department of Ecology. The Department of Ecology shall ensure that the final closure and postclosure plan prepared for the US Ecology site conforms to RCRA closure/postclosure standards, WAC 173-303-610 and is consistent in all respects with the foregoing RCRA corrective action requirements. The Department of Ecology and Department of Health shall require US Ecology to provide financial assurance for closure/postclosure that satisfies or is the equivalent of WAC 173-303-620. The Radioactive Materials License issued by the Department of Health to US Ecology shall be amended to incorporate these requirements of this Condition.

The Administrator, in consultation with the Director of the Department of Ecology, shall review and evaluate the progress of the foregoing actions on an annual basis from the effective date of the HSWA Permit.

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C. Justification

1. Summary

The proposed revision will provide for more expeditious investigation and cleanup of the US Ecology site and is more in conformance with the Memorandum of Understanding ("MOU") process currently underway involving EPA, Ecology and Health. Existing condition III.B.2 goes part way toward accomplishing these goals but provides too many options and loopholes, some of which do not guarantee satisfaction of applicable RCRA corrective action requirements. For example, the existing Condition allows the identified SWMUs to be "administratively addressed" by an amendment to the Radioactive Materials License or by a filed Department of Health order. Such ambiguities should be removed and replaced by the more explicit procedure proposed above.

Accomplishment of RCRA corrective action at the US Ecology site will be achieved much sooner if the onus is taken off the Department of Energy and placed on US Ecology through the legal authorities of EPA, Ecology and Health. Requiring Energy to directly implement corrective action at the US Ecology site is likely to lead to legal delays, due to issues raised by the lease between the United States and State of Washington and the sublease to US Ecology as to who is ultimately responsible for bearing the cost of cleaning up contamination. It is appropriate to place this cost and responsibility on US Ecology as the company that imported the waste and controlled all aspects of its management and disposal at the site.

The revision proposed by these Comments would more clearly empower the Departments of Ecology and Health to oversee corrective action to be accomplished by the site operator, US Ecology. Negotiations involving EPA, Ecology and Health are already underway with the objective of finalizing an MOU for accomplishing RCRA requirements at the US Ecology site. The MOU will provide the natural vehicle for each agency to exercise its statutory powers by requiring US Ecology to meet all applicable RCRA requirements relating to site closure/postclosure and corrective action. As discussed below, however, the scope of the MOU should be expanded to include all aspects of RCRA compliance at the US Ecology site.

US Ecology is licensed to operate a LLRW disposal facility under a Radioactive Materials License issued by Health. Health

is designated by the Washington Nuclear Energy and Radiation Act, RCW Ch. 70.98, as the State radiation control agency with responsibility for licensing of radioactive materials and implementing the agreement between the State and the Nuclear Regulatory Commission. Health's participation in the MOU will allow for amendments to US Ecology's license that reflect RCRA requirements as determined by the state agency responsible for RCRA -- Ecology. Incorporation of these requirements into the license should defuse any legal arguments regarding the applicability of RCRA to a licensed LLRW disposal facility. The MOU should resolve any potential conflicts regarding the application of RCRA corrective action standards to a facility regulated under a Radioactive Materials License.

For the reasons stated below, Ecology should be given the lead oversight role in accomplishing all RCRA actions at the site. The procedures and cleanup standards of MTCA should be applied in satisfaction of RCRA corrective action requirements. All corrective action should be coordinated with the ongoing development of a closure/postclosure plan that should also conform to RCRA standards.

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2. US Ecology Should Be Responsible for Implementing RCRA Corrective Action

The Draft Permit should more clearly place the responsibility for carrying out corrective action on US Ecology, rather than the Department of Energy. As the owner of the Hanford Site, the Department of Energy has the underlying responsibility for carrying out HSWA corrective action at SWMUs located on the "facility," including the SWMUs at the US Ecology site.[2] Corrective action requirements are applicable to the US Ecology site, because it is part of the overall Hanford facility that is owned by Energy, the Permittee. Corrective action requirements also apply directly to US Ecology, however, because US Ecology has filed a Part B Application and Closure/Post Closure Plans for its LLRW disposal facility.[3] Facility owners or operators who are seeking a permit for the treatment, storage or disposal of hazardous waste must institute corrective action, as appropriate. 40 CFR § 264.101(a); WAC 173-303-646(1)(b). Although US Ecology made the RCRA filings under protest, it still

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[2] The term "facility" is expansively defined by RCRA and Washington's Dangerous Waste Management Act, RCW Ch. 70.105. See EPA Notice of Policy and Interpretation, 51 Fed. Reg. 7722 (March 5, 1986) (application of RCRA's broad definition of "facility" to federal agencies).

[3] See letter dated October 29, 1985, from Sidney V. Wright, Jr., of US Ecology to Charles E. Finley of EPA and Richard A. Burkhalter of WDOE, with enclosed RCRA Part B Application and Closure/Post Closure Plans for the Richland LLRW disposal facility. The company had earlier made a protective filing for a RCRA Part A application in November of 1980. Both applications were made on account of continuing regulatory concern over the potentially hazardous constituents contained in scintillation vials that US Ecology continued to accept for disposal until October 28, 1985.

falls within the category of facilities "seeking" permits and is therefore directly subject to corrective action requirements.

There are several practical reasons for making US Ecology primarily responsible for corrective action at its site. US Ecology operates its LLRW disposal facility on a 100-acre parcel at the Hanford Site pursuant to a 1976 sublease from the State of Washington to US Ecology's predecessor-in-interest. This sublease applies to a portion of 1000 acres that was leased by the United States to the State of Washington in 1964. In the event that the cost of cleaning up the site is imposed on Energy, the United States could well look to its lessee, the State of Washington, under the terms of the 1964 lease. The probable result would be litigation over the terms of the lease and sublease involving the United States, State of Washington and US Ecology as parties. This would significantly delay investigation and cleanup of the US Ecology SWMUs, and perhaps delay other aspects of the Sitewide Permit as well.

Moreover, US Ecology has profited from operation of the facility and is the logical party to bear the financial responsibility for its condition. Condition III.B.2 of the Draft Permit should therefore be revised to more clearly place the immediate responsibility on US Ecology, not Energy, for implementation of RCRA corrective action, including the investigation and cleanup of SWMUs. The current Draft Permit Condition contains too many options and does not assure accomplishment of RCRA requirements in a timely fashion. In

addition, the current Condition only provides for a one-year deferral of Energy's responsibility to conduct corrective action under the Permit, with extensions at the discretion of the Administrator. While the apparent basis of this deferral is to provide time for the RFI and envisioned amendments to the Radioactive Materials License, the mechanisms for achieving all of that in one year have not been explicitly set forth.

The proposed revision would provide a clear State mechanism that places direct responsibility on the site operator, US Ecology, for accomplishment of corrective action in a manner consistent with plans for closure and postclosure activities. As the party responsible for importing, managing and disposing of waste at the site, US Ecology should bear this responsibility and the resultant cost.

3. <u>The Department of Ecology Should Be Given the Primary Oversight Role for All RCRA Actions At US Ecology</u>

The primary oversight role for RCRA corrective action should be assigned to the Department of Ecology because of its statutory responsibilities as the State's hazardous waste regulatory agency and its experience with cleanup of contamination sites under MTCA. This would not denigrate from the Department of Health's authority under RCW Ch. 70.98 as the State's radiation control agency and the regulator of the US Ecology facility under its Radioactive Materials License. While Health is the designated State agency for licensing of radioactive materials, that agency does not have extensive experience with cleaning up contaminated

sites. Similarly Health is not empowered by State law to enforce hazardous waste regulation. The investigation and cleanup of contamination at the US Ecology SWMUs would proceed much more expeditiously if Ecology were granted the lead role for such actions. Again, the MOU provides the natural mechanism for coordination by the agencies of their different statutory responsibilities.

Ecology is legally responsible for the regulation of hazardous waste, including hazardous waste treatment, storage and disposal facilities, under the Washington Hazardous Waste Management Act, Ch. 70.105 RCW and the Dangerous Waste Regulations, Ch. 173-303 WAC. Ecology is authorized by EPA to implement the RCRA Subtitle C hazardous waste management base program in the State of Washington, in lieu of the federal program. Ecology is also responsible under Ch. 70.105D RCW for implementing and enforcing MTCA, the State's hazardous substances cleanup legislation. Ecology therefore possesses both the statutory authority and practical experience for dealing with investigation and cleanup of hazardous waste sites.

A further reason for assigning Ecology this role is the imminent authorization by EPA of the State's corrective action program. The public comment period on EPA's decision closed on April 29, 1994, and final authorization is expected within a matter of weeks. Under the authorization, Ecology will administer HSWA corrective actions, Part B information requirements for land disposal facilities, permit application

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requirements for corrective actions beyond facility boundaries, and corrective action management units and temporary units (that manage remediation waste from the corrective action). Ecology has already promulgated a corrective action rule, WAC 173-303-646, that parallels but is more detailed than the EPA rule, 40 CFR § 264.101.

The State corrective action rule expressly allows Ecology to require the owner or operator of a facility to satisfy corrective action responsibilities through MTCA and its implementing regulations. WAC 173-303-646(3)(a). Ecology's experience in implementing and enforcing MTCA will be directly applicable to investigation and cleanup of the US Ecology SWMUs.

Common sense and statutory authority therefore dictate that Ecology be assigned the lead oversight role for implementing corrective action at the US Ecology site.

4. Corrective Action Should Be Accomplished Under MTCA Procedures and Cleanup Standards

MTCA is the appropriate vehicle for investigation and cleanup of the US Ecology SWMUs. In the preamble to its corrective action rule, EPA gave express recognition to state cleanup programs and the need for EPA to work with states under cooperative agreements to minimize duplication of efforts. 55 Fed. Reg. 30860 (Feb. 19, 1993). EPA determined that, "in many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority." Id. In the instant case, there is already a cooperative agreement under negotiation which provides

for initiating the RCRA corrective action process through State authorities and preparation on an RFI by the site operator. The draft MOU should be expanded to include completion of the corrective action process through application of the State's hazardous substance cleanup program, as embodied in Ch. 70.105D RCW and the MTCA Regulations, Ch. 173-340 WAC. Such action would be consistent with the EPA policy discussed above and with the intent of the Draft Permit to defer to State authorities in implementing corrective action at the US Ecology site.

Further evidence of MTCA's appropriateness for this project can be found in Ecology's Dangerous Waste Regulations relating to releases from regulated units (WAC 173-303-645) and corrective action (WAC 173-303-646). In both instances, Ecology may require the owner or operator of a facility to fulfill his corrective action responsibilities using an enforceable action issued pursuant to MTCA. See WAC 173-303-645(12); WAC 173-303-646(3). This is precisely what Envirocare is recommending be done at the US Ecology site. Once Ecology receives final HSWA authorization for corrective action, Ecology will be able to apply WAC 173-303-645 directly to the US Ecology SWMUs identified in the Draft Permit.

MTCA provides procedures for enforcing remedial actions through consent decrees (WAC 173-340-520), agreed orders (WAC 173-340-530) and enforcement orders (WAC 173-340-540). Any one or a combination of these existing mechanisms could be applied to enforce corrective action requirements at the US Ecology site,

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although the consent decree process, with its public comment and hearing requirement, would be preferable. Moreover, there is no need to reinvent cleanup standards when the MTCA program already provides detailed cleanup standards for hazardous substances that can readily be incorporated into the US Ecology corrective action. See WAC 173-340-700 through WAC 173-340-750.

5. The US Ecology Closure and Post-Closure Plan Should Be Overseen by the Department of Ecology And Meet RCRA Standards

Development of a plan for closure and perpetual care and maintenance has followed a long and tortuous path at the US Ecology site. For the reasons stated below, all closure and postclosure actions must conform to RCRA standards and be closely coordinated with the corrective action required by the Draft Permit.

Both Health and Ecology have substantial statutory responsibilities regarding site closure and postclosure activities. As the Radiation Control Agency, Health is responsible for assuring that closure and postclosure procedures are adequate to protect the public health and safety. WAC 246-250-090. The licensee must contribute into two funds that are set aside for closure and perpetual care and maintenance respectively. Disposal site closure must meet technical standards protective of public safety, health and the environment. WAC 246-250-330. The licensee must take corrective action if the environmental monitoring program detects any

migration of waste that shows that the closure performance objectives may not be met. WAC 246-250-340(4).

However, State law also assigns Ecology a major role in the closure/postclosure process. Under the Washington Radioactive Waste Act, Ch. 43.200 RCW, Ecology essentially wears two hats: that of landlord and that of regulator. The statute empowers Ecology to fulfill all the responsibilities of the State of Washington under the 1964 lease between the United States and the State. RCW 43.200.080. Ecology is therefore US Ecology's landlord with respect to the Hanford LLRW disposal facility. Ecology is also designated as the State agency responsible for implementation of the federal Low-Level Radioactive Waste Policy Amendments Act of 1985. RCW 43.200.180. Specifically with respect to closure and post-closure activities, Ecology is directed to

> perform studies, by contract or otherwise, <u>to define site closure and perpetual care and maintenance requirements for the Hanford low-level waste disposal facility</u> and to assess the adequacy of insurance coverage for general liability, radiological liability, and transportation liability for the facility.

RCW 43.200.190 (emphasis added). Ecology is therefore the agency responsible under State law for defining and establishing closure and postclosure standards protective of public safety, public health and the environment at the US Ecology site. Other State agencies, such as Health, are directed to cooperate with Ecology in the furtherance of Ecology's responsibilities under the Radioactive Waste Act. RCW 43.200.030.

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Ecology's power over site closure and postclosure is reflected by Amendment 18 (Condition 66) to the US Ecology Radioactive Materials License which requires that "[a] final facility closure and stabilization plan be submitted for Department of Health approval, following issuance by the Department of Ecology of the final closure and stabilization requirements."

Pursuant to RCW 43.200.190, Ecology engaged a contractor, A.T. Kearney, to perform two studies aimed at defining site closure and postclosure requirements. These studies were finalized in September 1987 and February 1989, respectively, and are hereafter referred to as the Kearney Phase I and Phase II Reports.[4] Kearney summarized the history of the site and noted that, in addition to LLRW, the facility had received various types of chemical waste and radioactive mixed waste. Kearney Phase I Report, at 25-43.

> An additional weakness at this site is the lack of information concerning the nature of the waste, particularly waste buried during the early years of operation. This lack of information leads to uncertainty regarding the potential environmental hazard, and mandates a conservative approach to site closure.

Id. at 43 (emphasis added). Kearney therefore appropriately tailored its closure and postclosure performance objectives to meet applicable standards under 10 CFR Part 61 (NRC Licensing for

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[4] A.T. Kearney, Commercial Hanford Facility Site Closure/Perpetual Care, Phase One Final Report, Sept. 1987; A.T. Kearney, Closure and Perpetual Care and Maintenance of the Commercial Low-Level Radioactive Waste Disposal Facility on the Hanford Reservation, Phase Two Report, Feb. 1989.

Land Disposal of Radioactive Waste), 40 CFR Part 264, Subpart G (RCRA Closure and Post-Closure Requirements) and WAC 173-303-610 (Dangerous Waste Closure and Post-Closure Requirements).

A.T. Kearney followed up in 1989 with its Phase II Report which set forth design and technical specifications that would satisfy the performance objectives established in Phase I. At the core of the recommended design was a multiple-layer cover consisting, from bottom to top, of a cover foundation, hydraulic barrier, biotic barrier, capillary barrier, gravel top dressing and vegetative surface layer. Kearney's estimated cost (in 1988 dollars) for the multiple-layer system, including site closure and perpetual care and maintenance was $55.104 million. On the other hand, US Ecology proposed a backfill cover system whose total cost, including closure and perpetual care and maintenance, was estimated at $7.953 million.

In October of 1990, US Ecology submitted a draft Stabilization and Closure Plan to Health (the "Draft Closure Plan"). The Draft Closure Plan, which was supplemented by US Ecology in 1992, was based on a backfill design and failed to incorporate the multiple-layer design recommended by the Kearney Phase Two Report. On July 28, 1992, Ecology directed a letter to Health citing Condition 66 of US Ecology's License and setting forth minimum requirements for the closure plan. Ecology reiterated the necessity for a multilayer cover and assurance that subsidence would not affect the cover. Enclosures to the letter set forth detailed requirements under the State

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regulations governing closure and postclosure of dangerous waste landfills. Ecology also cited Health to EPA technical guidance documents regarding final covers on hazardous waste landfills and the design and construction of RCRA/CERCLA final covers.

Ecology has therefore clearly taken the position that RCRA standards should apply to closure of the US Ecology landfill, including design of the final cover. US Ecology has resisted with numerous technical arguments regarding the technical applicability of RCRA and the State Dangerous Waste Regulations. However, the existence of buried chemical waste and radioactive mixed waste makes it imperative that the closure design and perpetual maintenance and care requirements fully comply with RCRA and the State Dangerous Waste Regulations, as well as 10 CFR Part 61.

Negotiations involving Health, Ecology and US Ecology over the Draft Closure Plan continue to the present day, but there still is no assurance that RCRA standards will be met. A 1993 review of the Draft Closure Plan commissioned by Health and conducted by Rogers & Associates Engineering Corp. revealed that the Plan still suffered from numerous deficiencies ranging from cap design and subsidence to environmental monitoring.[5] These deficiencies are summarized in 36 detailed "interrogatories" appended to the RAE Report.

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[5] See Rogers & Associates Engineering Corp., Review of U.S. Ecology Inc.'s Draft Site Stabilization and Closure Plan for Low-Level Radioactive Waste Management Facility; Richland, Washington (April 1993)(the "RAE Report").

Closure of the US Ecology site is closely intertwined with the corrective action required by the Draft Permit for the identified SWMUs. Remediation of hazardous and radioactive mixed waste must be consistent with closure and postclosure plans. It is possible that closure actions may be used to satisfy MTCA remedial requirements for certain areas of contamination at the site. The point is that closure and corrective action activities must be coordinated, and the Draft Permit and MOU provide the natural vehicles for accomplishing this coordination and achieving compliance with RCRA and other applicable laws. Without this unified approach, the uncertain status of the Draft Closure Plan may provide an impediment to successful accomplishment of corrective action.

Ecology should be given direct and unfettered oversight responsibility in the development of the Plan to assure that it complies with RCRA requirements. The MOU should spell out how Health and Ecology will coordinate their respective responsibilities for all site closure and postclosure activities. The history of the Draft Closure Plan and US Ecology's resistance to applicable standards demonstrate the need for strong agency oversight of this project. Binding deadlines for the final closure plan should be established. Without such oversight, the ultimate Plan may fail to address the deficiencies identified in the RAE Report and fail to adequately protect public health, safety and the environment.

6. <u>The Radioactive Materials License Should Be Amended To Incorporate All Actions Required Under This Condition</u>

All actions required under Condition III.B.1.a, as revised in accordance with these Comments, should be incorporated into US Ecology's Radioactive Materials License. As discussed above, Health regulates the US Ecology facility under the terms and conditions of the License and under Health's statutory authority as the State's radiation control agency. RCW 70.98.050. The License is subject to amendment, revision or modification by Health. RCW 70.98.080(1)(d); WAC 246-250-100(4). Incorporation of all RCRA actions into the License will provide another legal basis for directly imposing these requirements on US Ecology. Once part of the license, the RCRA actions will become additional conditions imposed by Health under its statutory powers as the State's radiation control agency. This approach has already been taken by EPA, Health and Ecology in the Draft MOU, with respect to RFI implementation. The same approach of amending the license should be extended to all RCRA-required actions, including accomplishment of corrective action and finalization of the closure/postclosure plan.

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7. <u>The Draft MOU Should be Revised To Include All RCRA Actions Required at the US Ecology Site</u>

The following comments relate to the draft MOU (copy attached) for implementation of corrective actions at the US Ecology site by EPA and the Departments of Ecology and Health.[6]

<u>PURPOSE</u> (page 1): The purpose should be expanded to include all RCRA corrective action and closure/postclosure requirements for the LLRW disposal facility. As discussed above, corrective action and closure of the facility should be integrated, and the MOU provides the logical mechanism for coordination of these functions by the agencies with jurisdiction. It should be made clear that Ecology and EPA, not Health, will determine the specific RCRA requirements for corrective action and closure, and that Ecology and Health will share oversight responsibilities for implementation. The MOU should also expressly state that, once the required actions have been completed by US Ecology, the Department of Energy shall be relieved of any further corrective action responsibilities under the Draft Permit.

<u>BACKGROUND</u> (page 2): The second paragraph should be modified to include express mention of the Hanford RCRA Sitewide Permit as the basis for the corrective action requirements at the US Ecology facility. The second sentence of the third paragraph should be revised as follows: "This MOU is an effort to aid cooperation between the Agencies, to avoid conflicts resulting

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[6] We understand that there is a more recent version of the draft MOU in existence, but we are only able to comment on the attachment that we obtained from agency files.

from duplicative authorities, and to ensure proper application of RCRA corrective action and closure/postclosure requirements."

RESPECTIVE ROLES AND ACTIVITES OF THE AGENCIES (page 3): Numbered paragraph 2 at the top of page 3 should be revised to make clear that US Ecology, not the Department of Energy, shall be responsible for developing an RFI work plan and complying with all other RCRA corrective action and closure/postclosure requirements.

Numbered paragraph 2 (under "Health") at the bottom of page 3 should be revised as follows:

> Health, under WAC 246-232-070 and 246-250-100(7), will prepare a license amendment to require the operator of the LLRWDF to submit an RFI Work Plan that will comply with all corrective action procedures and criteria, which will take into account applicable RCRA and Chapter 70.98, Chapter 70.105 and Chapter 70.105D RCW requirements.

The remainder of paragraph 2, relating to a Confirmatory Sampling Work Plan ("CSWP"), should be deleted. There is no reason for a CSWP, because the RCRA Facility Assessment ("RFA") prepared by PRC Environmental Management, Inc., already contains sufficient justification for an RFI. Insertion of a CSWP into the process would only lead to unnecessary delay and regulatory ambiguity. There are no apparent criteria for evaluation of a CSWP.

Numbered paragraph 4 on page 4 should be renumbered 3 and revised as follows:

> Health will make the RFI Work Plan available to EPA and Ecology for evaluation and comment. After incorporation of EPA's and Ecology's comments, Health will modify and approve the RFI Work Plan. Health and Ecology will require that US Ecology, the operator of the LLRWDF, perform and complete all of the work under the RFI Work Plan, and any subsequent

work plans in order to ensure that the required corrective actions have been completed.

A new paragraph should be inserted after the preceding paragraph which sets forth all RCRA-related actions subsequent to the RFI, including preparation and implementation of a RCRA Corrective Measures Study and Work Plan, and incorporation of RCRA/WAC Ch. 173-303 requirements for closure/postclosure into the current Draft Closure and Perpetual Care and Maintenance Plan for the US Ecology facility. The current MOU is deficient in that it fails to adequately address any actions that would occur after preparation of an RFI Work Plan. The action steps should also clearly indicate Ecology's lead role in specifying all RCRA requirements for corrective action and closure/postclosure.

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DRAFT - FOR DISCUSSION PURPOSES ONLY!!

MEMORANDUM OF UNDERSTANDING

Between the

United States Environmental Protection Agency, Region 10
the
Washington State Department of Ecology
and the
Washington State Department of Health

Related to the

Respective Roles and Responsibilities Of The Three Agencies
In Coordinating Endeavors Concerning Remediation Activities
Under The Resource Conservation and Recovery Act, As Amended,
At The US Ecology
Commercial Low-Level Radioactive Waste Disposal Facility,
Located Within The Hanford Reservation, State of Washington

PURPOSE

This Memorandum of Understanding (MOU) is made and entered into by and between the United States Environmental Protection Agency, Region 10 (EPA), pursuant to authorities contained in the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. §§ 6901 et seq.; and the Washington State Department of Health (Health) and the Washington State Department of Ecology (Ecology) pursuant to authorities contained in Chapters 43.21A, 43.70, 70.98, 70.105 and 70.105D of the Revised Code of Washington (RCW). This MOU has been prepared in response to the three Agencies' recognition of the need to protect both the environment and human health from releases or the potential for releases of hazardous wastes or constituents, or a mixture of radioactive and hazardous waste or constituents (mixed waste), from the Commercial Low-Level Radioactive Disposal Facility (LLRWDF) located on the Hanford Reservation and currently operated by US Ecology, Incorporated (US Ecology). This MOU has also been prepared to avoid redundant or conflicting regulation of such wastes under the legal authorities for which the three Agencies' are charged with implementing. The purpose of this MOU is to identify cooperative processes to implement and enforce all appropriate RCRA corrective actions for the LLRWDF located on the Hanford Reservation. Specifically, this MOU addresses the circumstances and arrangements under which Health will incorporate and oversee RCRA corrective action requirements in

conjunction with Health's oversight responsibilities for the Radioactive Materials License held by US Ecology.

BACKGROUND

Health and Ecology have regulatory responsibility for the State's interests at the LLRWDF. Ecology holds a Prime Lease from the United States Department of Energy on 100 acres at the Hanford Reservation. Ecology subleases these 100 acres to the site operator of the LLRWDF. Health is responsible for regulatory oversight of the facility under Chapters 70.94 and 70.98 RCW, and issues the LLRWDF operator's radioactive materials handlers license, pursuant to the authority of Chapter 70.98 of the Revised Code of Washington (RCW), as amended, and its implementing regulations, codified in Title 246 of the Washington Administrative Code (WAC).

EPA has regulatory responsibility for implementing corrective action for releases of hazardous waste or constituents at or from solid waste management units (SWMUs) at a facility seeking a RCRA permit under Section 3004 of RCRA, 42 U.S.C. § 6924. EPA has completed a RCRA Facility Assessment (RFA) at the LLRWDF which indicated there is release or a potential for release of hazardous wastes or constituents at or from SWMUs located at the LLRWDF.

This MOU provides for the planning and coordination of activities which will lead to investigation and, if necessary, corrective action for releases of hazardous waste or constituents from SWMUs at the LLRWDF which will satisfy all regulatory authorities. This MOU is an effort to aid cooperation between the Agencies, to avoid conflicts resulting from duplicative authorities, and to provide better understanding of RCRA corrective action requirements among all interested parties.

RESPECTIVE ROLES AND ACTIVITIES OF THE AGENCIES

The parties to this MOU describe their responsibilities as follows:

EPA:

1. EPA regulates the detection, evaluation and corrective action efforts related to releases or threats of release of hazardous waste or constituents at or from SWMUs, regardless of the time at which waste was placed in such units, under Section 3004(u) of RCRA, 42 U.S.C. § 6924(u). *See also* 40 CFR § 264.101.

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2. EPA, under the authority of Section 3005 of RCRA, 42 U.S.C. § 6925, is in the process of establishing requirements under which the United States Department of Energy (Energy), if necessary, will develop a RCRA Facility Investigation (RFI) Work Plan for the releases or potential releases of hazardous waste or constituents from SWMUs identified in EPA's 1992 RFA at the LLRWDF.

ECOLOGY:

1. Ecology is the landlord of the 100 acres at the Hanford Reservation subleased to the LLRWDF operator for the disposal of low-level radioactive waste. Therefore, the State has a direct interest in ensuring that appropriate corrective actions under RCRA have occurred at the LLRWDF prior to the lease termination.

2. Ecology, under Chapter 173-303 WAC, is currently authorized by the EPA to operate the RCRA "base program" in lieu of the federal program to regulate hazardous wastes within the State. Ecology has applied for authorization from EPA for RCRA corrective action and expects to receive authorization from EPA in the near future.

3. Ecology has authority under state law, Chapters 70.105 and 70.105D RCW and 173-303 WAC, to require corrective action at SWMUs.

HEALTH:

1. Health, as authorized by Chapter 70.98 RCW, regulates all radiation-related activities of the operator of the LLRWDF, as established by the facility's license issued by Health to the operator of the LLRWDF pursuant to Chapter 70.98 RCW and WAC 246-232 and 246-250.

2. Health, under WAC 246-232-070 and 246-250-100(7), will prepare a license amendment to require the operator of the LLRWDF to submit an RFI Work Plan, or its equivalent, which will establish final corrective action procedures and criteria, which will take into account applicable RCRA and Chapter 70.98, Chapter 70.105 and 70.105D RCW requirements. Initially, Health will require the LLRWDF operator to submit a Confirmatory Sampling Work Plan (CSWP), which is a preliminary screening tool that will allow the three Agencies to determine the need for a RFI Work Plan (or

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its equivalent) at the LLRWDF. Health will make the CSWP available to EPA and Ecology for evaluation and comment. After incorporation of EPA's and Ecology's comments, Health will modify and approve the CSWP. Health will require that the operator of the LLRWDF perform and complete all of the work under the CSWP. Upon completion of the CSWP, the LLRWDF operator will submit a CSWP Final Report, which will summarize the findings of the CSWP, to Health. Health will provide copies of the CSWP Final Report to EPA and Ecology. After incorporation of EPA's and Ecology's comments, Health, EPA and Ecology will determine the need for the LLRWDF operator to prepare a RFI Work Plan (or its equivalent) at the LLRWDF.

4. Should Health, EPA and Ecology make the determination pursuant to paragraph 3, above, that further corrective action is required, Health will require the LLRWDF operator to submit a RFI Work Plan (or its equivalent). Health will evaluate the RFI Work Plan (or its equivalent), and incorporate the three Agencies' comments. Health will make the RFI Work Plan (or its equivalent) available to EPA and Ecology for evaluation and comment. After incorporation of EPA's and Ecology's comments, Health will modify and approve the RFI Work Plan (or its equivalent). Health will require that US Ecology, the operator of the LLRWDF, perform and complete all of the work under the RFI Work Plan (or its equivalent), and any subsequent work plans in order to ensure that the required corrective actions have been completed.

JOINT ROLES AND ACTIVITIES

1. The State of Washington Department of Ecology is currently seeking authority from EPA to administer RCRA corrective action under State law. Should Ecology become authorized for RCRA corrective action, EPA and Ecology will decide which Agency will be responsible for oversight and evaluation of corrective action under RCRA at the LLRWDF.

2. EPA and Ecology will collaborate to provide continuity in implementing RCRA corrective action at the LLRWDF in order to facilitate possible delegation of RCRA corrective action authorities from EPA to Ecology.

3. EPA, Ecology and Health will collaborate to assure that appropriate instructions are provided to the LLRWDF

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operator so that the operator is able to produce a proper RFI Work Plan (or its equivalent). Health will prepare a license amendment which incorporates those instructions into the license of the LLRWDF operator.

4. EPA, Ecology and Health will collaborate to verify that the criteria which shall be written into the RFI Work Plan (or its equivalent) meet each of the Agencies' requirements. This is necessary in order to ensure that corrective actions taken at the LLRWDF do not conflict with other regulatory requirements that apply at the LLRWDF, including closure requirements under Chapter 246-250 WAC.

5. EPA, Ecology and Health are committed to a cooperative effort and will share pertinent information in order to facilitate compliance with applicable regulations under RCRA and Chapter 70.98, Chapter 70.105 and 70.105D RCW, and to insure protection of both human health and the environment.

6. EPA and Ecology will maintain the LLRWDF SWMUs in the RCRA Permit issued to the United States Department of Energy until all necessary corrective actions have been deemed completed by EPA and Ecology.

RESOLUTION OF DISPUTES

Disputes arising from the implementation of this MOU will be resolved at the lowest level possible using standard agency chains of command. Elevation to EPA's Hazardous Waste Division Director, Ecology's Assistant Director for Waste Management and Health's Assistant Secretary for Environmental Health Programs shall occur only after reasonable efforts at the lower levels have failed. The agencies shall refrain from issuing a final determination until all disputes are resolved.

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EFFECTIVE DATE, MODIFICATION, AND TERMINATION

This Memorandum of Understanding shall be effective upon signature by the parties, may be amended by mutual consent, and may be terminated by any party by giving thirty (30) day written notice to the other parties.

Dan Silver
Assistant Director
Department of Ecology, State of Washington

Eric Sagel
Assistant Secretary
Department of Health, State of Washington

Randall F. Smith
Hazardous Waste Division Director
United States Environmental Protection Agency, Region 10

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COMMENT 21.0

Washington Public Power Supply System

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WASHINGTON PUBLIC POWER SUPPLY SYSTEM

P.O. Box 968 • 3000 George Washington Way • Richland, Washington 99352-0968 • (509) 372-5000

MAY 13 1994

May 11, 1994
G02-94-112

Joe Witczak
Nuclear & Mixed Waste Management
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

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Dear Mr. Witczak:

Subject: **DRAFT HANFORD FACILITY DANGEROUS WASTE PERMIT**

We have reviewed the subject draft permit (dated February 2, 1994) and the Department of Ecology (the Department) responses to comments on the January 1992 draft. As a result of this review we are offering additional comments for your consideration.

21.1 Condition I.E.11. This requirement to give notice regarding any planned physical changes to the facility may be unnecessarily and impracticably broad if the meaning of facility extends beyond the individual permitted units. The definition of "facility" (Draft Permit Page 10) could be construed to encompass all land contiguous to a dangerous waste management unit. In any case, the Department should make clear that it need only be informed regarding changes to the permitted waste management units and only in regard to changes which influence how the wastes are managed.

21.2 Condition I.E.15. This condition on incident reporting needs to be clarified such that it is understood to apply only to dangerous wastes and hazardous substances managed at permitted units. WAC 173-303-145 covers releases at other areas of the site. Also, the Department should delete the word "potentially" in Condition I.E.15.c or explain in the next responsiveness summary why it is increasing the scope of the regulatory language of Section 145.

21.3 Condition I.F. This condition effectively requires that everything submitted to the Department be certified in accordance with Sections 810(12) and (13). The Department should consider whether this is really a value-added requirement. The drafters of these sections of the regulations could not have intended that every piece of information should be certified. We recommend that the certification requirement be reserved for significant reports and modification requests.

21.4 Condition II.E. We recommend that this condition (six pages of detailed QA/QC requirements) be deleted. This is information that belongs in the waste sampling and analysis plan which is the subject of Condition II.D.

21.5 Condition II.I. This condition on the facility operating record is an example of the Department requiring more than it needs. It seems to us impracticable and unnecessary to require the permittees to map the locations of points of waste generation (II.I.1.a). Waste generation is not regulated through the permit and the permittee cannot anticipate where all the wastes will be generated. Neither is it necessary that spills unrelated to the permitted waste management units be recorded in the facility record (II.I.1.h). The Department should explain why the biennial report on waste minimization prepared pursuant to 40CFR264.75 is insufficient for its purposes before requiring a different and more frequent report. The condition also duplicates facets of the pollution prevention planning program (WAC 173-307).

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21.6 Condition II.W.3. This condition has been inserted because some " ... [c]ommenters requested that the Department address some State air regulations in the draft permit." (See Responsiveness Summary at Page 37.) In the absence of a better rationale than has been provided, we suggest the condition be deleted. The Introduction section (Draft Permit, Page 4) includes the general requirement to comply with "all applicable State regulations, including Chapter 173-303 WAC."

21.7 In closing, we note that the Department has drafted permit conditions which, in several respects, reach beyond the base regulatory requirements of WAC 173-303. The Department cites the alleged complexity of the Hanford Site and the global authority of WAC 173-303-390 to justify several of the permit conditions. We suggest that each condition constructed by the Department be reviewed to confirm that it is founded on an objective demonstration of need. Such an approach would be consistent with the Department's (and the Governor's) regulatory reform initiative which is intended to create better, not more, regulation.

Thank you for the opportunity to comment on the draft permit.

Sincerely,

P.R. Bemis, Manager
Regulatory Programs (Mail Drop PE20)

COMMENT 22.0

US Ecology, Inc.

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US Ecology, Inc.
509 12th Avenue SE, Suite 14
Olympia, Washington 98501-7519
206-754-3733
206-352-5541 FAX

COMMENT 22.0

US Ecology

an American Ecology company

RECEIVED
MAY 11 1994
RCRA SECTION

May 9, 1994

Daniel Duncan
Hanford RCRA Permit Coordinator
EPA Region 10, HW-106
1200 Sixth Avenue
Seattle, WA 98101

Re: Comments Of US Ecology, Inc., On The Proposed RCRA "Part B" Permit For Treatment, Storage And Disposal Of Hazardous Waste At The United States Department of Energy's Hanford Federal Facility (Permit No. WA7 89000 8967)

Dear Mr. Duncan:

Enclosed are the Comments Of US Ecology, Inc., regarding the above-referenced permit. These Comments are submitted for inclusion in the administrative record and supplement and incorporate by reference all other comments previously submitted orally or in writing by or on behalf of US Ecology, Inc., in connection with the above-reference permit. Please direct any responses to or questions about these comments to me at (206) 754-3733.

Your acknowledgment of receipt and response to these comments is greatly appreciated.

Sincerely,

Barry C. Bede
Regional Manager

BCB; aa

Enclosures

CC: Steve Travers
Ron Gaynor

COMMENTS OF US ECOLOGY, INC. ON THE PROPOSED RCRA "PART B" PERMIT FOR TREATMENT, STORAGE AND DISPOSAL OF HAZARDOUS WASTE AT THE UNITED STATES DEPARTMENT OF ENERGY'S HANFORD FEDERAL FACILITY (PERMIT NO. WA7 89000 8967)

May 10, 199

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I.

INTRODUCTION

A. Background

US Ecology, Inc. ("US Ecology") operates a low-level radioactive waste regional disposal facility for the Northwest Compact pursuant to the Low-Level Radioactive Waste Policy Act, as amended, and the State of Washington's enabling legislation (the "US Ecology site"). See 43 RCW § 2021. The US Ecology site is licensed by the state of Washington Department of Health ("WDOH") pursuant to its agreement state authority delegated by the United States Nuclear Regulatory Commission ("NRC") under § 274 of the Atomic Energy Act ("AEA"). See 42 U.S.C.A. § 2021; 10 CFR, part 150. The US Ecology site also operates pursuant to a special nuclear materials license issued by the NRC (the "license").[1]

The US Ecology site is located at the United States Department of Energy ("DOE") Richland Operations Facility, in Richland Washington (the "Hanford Federal Facility"). In 1964, 1,000 acres of the Hanford Federal Facility were leased by the federal government to the State of Washington pursuant to a 99-year lease.[2] In 1965, the State of Washington subleased 100 acres of this property to US Ecology for the disposal facility.[3] DOE plays no part whatsoever in the operation or regulation of the US Ecology site.

As part of a major program under the Hanford Federal Facility Agreement and Consent Order ("FFACO") with the United States Environmental Protection Agency ("EPA")

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1. A copy of US Ecology's Radioactive Materials License is attached hereto as Exhibit A.

2. A copy of the Lease is attached hereto as Exhibit B.

3. A copy of the Sublease is attached hereto as Exhibit C.

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to clean up on-site wastes, DOE, along with its contractors Battelle-PNL and Westinghouse Hanford Company, applied for a RCRA permit to build and operate waste treatment facilities. On January 15, 1992, EPA and the Washington Department of Ecology ("WDOE") issued a draft RCRA permit for the treatment, storage and disposal of dangerous waste at the Hanford Federal Facility (the "Hanford Permit"). Notwithstanding the fact that US Ecology was not a permittee under the draft permit, the hazardous and solid waste amendments portion of the Hanford Permit included certain alleged solid waste management units ("SWMUs") at the US Ecology site. US Ecology was informed by EPA that inclusion of these disposal trenches in the Hanford Permit will require a RCRA Facility Investigation and Corrective Measures Study and potentially RCRA corrective action activities at the site.

On March 16, 1992, US Ecology submitted comments on the draft Hanford Permit contesting its applicability to the US Ecology site.[4] US Ecology's revised comments dated March 27, 1992 are attached hereto as Exhibit D and are incorporated in full herein by reference.[5] US Ecology informed EPA that US Ecology is not a permittee under the Hanford Permit, is not controlled by DOE in any manner, and that the US Ecology site is a fully regulated facility under the Atomic Energy Act. See March, 1992 Comments, Exh. D hereto at 1-4. US Ecology emphasized that it was not attempting to avoid environmental

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4. Under cover letter dated March 27, 1992, US Ecology resubmitted revised comments to clarify some minor factual inaccuracies, along with an Errata sheet. These are the comments US Ecology relies upon. EPA included the earlier comments dated March 16, 1992 as part of the package for the Second Draft Facility Wide Permit dated February 2, 1994. These earlier comments should be replaced with those dated March 27, 1992.

5. US Ecology has incorporated its earlier comments by reference for two reasons. First, as discussed in the previous footnote, US Ecology wishes to make sure that it is clear what its earlier comments were. Second, US Ecology believes that neither in its revision of the Hanford Permit nor in its Response to Comments has EPA addressed adequately US Ecology's earlier comments. US Ecology has restated some of its earlier comments for this reason.

regulation, investigation or remedial work (which it is actually already doing), but rather that the draft Hanford Permit will require DOE to perform activities at a site over which it has no control and will subject the US Ecology site to conflicting regulatory schemes. See id.

On February 9, 1994, EPA and WDOE issued a revised draft Hanford Permit. Both EPA and WDOE also issued purported responses to comments ("RTC"). The reissued Hanford Permit continues to include corrective action requirements applicable to alleged SWMUs at the US Ecology site. EPA contends that the US Ecology site was included in the permit based solely on an EPA "policy" interpretation of the term "facility". See EPA RTC at 30. Furthermore, because there is no basis in law for doing so, it is evident that EPA would not be proposing any regulation related to the US Ecology site if DOE had not applied for the Hanford Permit. See id.

B. Summary of Comments

Neither EPA nor WDOE has adequately responded to the main thrust of US Ecology's March, 1992 comments -- that EPA has no authority to impose RCRA corrective action requirements applicable to the alleged SWMUs at the US Ecology site. The US Ecology site is not a RCRA "facility" and it is not part of DOE's "facility" for purposes of RCRA corrective action. Indeed, inclusion of the US Ecology site in the Hanford Permit is arbitrary and capricious and violative of the law. The draft Hanford Permit should accordingly be amended to delete all references to the US Ecology site. This is evident for the following independent reasons which are more extensively discussed herein:

22.1 (1) The US Ecology site is not subject to RCRA (and has never been) because it does not engage in the treatment, storage or disposal of hazardous waste. As set forth in US Ecology's comments on the RCRA Facility Assessment Report

prepared by PRC Environmental Management, Inc., dated January 13, 1993 (the "PRC Report"),[6] US Ecology has never received RCRA regulated hazardous or mixed waste at the time of disposal. As a result, there are no SWMUs at the US Ecology site. Therefore, EPA has no RCRA authority to require corrective action at the US Ecology site.

22.2 (2) Even if there are any SWMUs at the US Ecology site (which there are not) there is no information that a release of hazardous substances or constituents has occurred from any of the alleged SWMUs at the site.

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22.3 (3) There is, likewise, no evidence that RCRA constituents have migrated beyond the Hanford Federal Facility's boundaries to the US Ecology's site and, as a result, no corrective action authority exists under RCRA § 3004(v).

22.4 (4) The US Ecology site is not part of DOE's "facility." By EPA's own admission the definition of "facility" for purposes of RCRA corrective action is limited in scope when applied to federal facilities such as the Hanford Federal Facility. Only property within the control of DOE can be included in the "facility" for purposes of RCRA corrective action. EPA has admitted that the US Ecology site is not under the control of DOE, and therefore the US Ecology site is not part of the permitted "facility."

22.5 (5) Moreover, even if the US Ecology site were a RCRA "facility" (which it is not) EPA is without authority to require corrective action at the US Ecology site because the materials at the site and the activities conducted there are

6. The PRC Report is attached hereto as Exhibit E and incorporated in full herein by reference.

subject to the AEA, and the application of RCRA to the US Ecology site is inconsistent with those regulations.

22.6 (6) In fact, the purpose of the RCRA corrective action requirements, namely the protection of public health and the environment, is more than adequately met at the US Ecology site under the AEA. The application of RCRA to the US Ecology site will result in duplicative requirements and increased costs.

22.7 (7) Similarly, US Ecology is currently monitoring the site pursuant to its WDOH license and NRC regulations, rendering moot EPA's inclusion of the alleged SWMUs at the US Ecology site for additional investigative activity.

22.8 (8) Notwithstanding EPA's suggestions to the contrary, the fact that US Ecology is not party to the FFACO does not give EPA authority to require corrective action at the US Ecology site under RCRA. The FFACO cannot and does not give EPA authority that it does not have under RCRA.

22.9 (9) EPA also wrongly suggests that the Hanford Permit will decrease bureaucracy. In truth, it will create excessive and unnecessary bureaucracy and increase costs by giving EPA oversight authority over the potential amendment of US Ecology's license. EPA cannot obtain this authority in a RCRA permit. The requirement that RCRA corrective action goals be met by applying the Washington MTCA is another example of EPA overreaching its authority.

22.10 (10) Inclusion of the US Ecology site in the Hanford Permit is also violative of US Ecology's substantive and procedural due process rights under the United States Constitution because the Permit applies to DOE as the permittee yet interferes with US Ecology's property rights without providing US Ecology

due process, because the Hanford Permit subjects US Ecology to duplicative regulatory schemes (i.e., the AEA and RCRA), and because inclusion of the US Ecology site in the Hanford Permit is contrary to EPA's own guidelines and is arbitrary and capricious.

22.11 (11) Finally, EPA has failed to respond adequately to US Ecology's March, 1992 comments in violation of 40 C.F.R. § 127.17.

Each of these reasons, either independently or in combination, demonstrates that inclusion of the US Ecology site in the Hanford Permit is arbitrary and capricious and otherwise violates the law. EPA should delete all references to the US Ecology site from the Hanford Permit.[7]

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II.

DISCUSSION

A. The US Ecology Site Cannot Be Regulated By RCRA Because It Has Not Treated, Stored Or Disposed Of RCRA Regulated Waste.

In order to require RCRA corrective action at a site there must be an identifiable SWMU. See 42 U.S.C.A. § 6905(u). As defined in the Hanford Permit, a SWMU is a "discernable unit at which solid waste has been placed at any time...." Hanford Permit at Definitions. The term "solid waste" is defined in RCRA. See 42 U.S.C.A. § 6903(28). Because there are no discernable units at the US Ecology site in which RCRA solid waste has been placed, US Ecology is not a RCRA "facility" and EPA has no authority to require RCRA corrective action at the site.

7. US Ecology also provides specific comments to the draft Hanford Permit. Those comments are attached hereto as Exhibit F and incorporated in full herein by reference.

As has been outlined in previous comments, there are no RCRA mixed or solid wastes at the US Ecology site that were regulated at the time of disposal. See March, 1992 comments, Exh. D hereto at 34-36. In fact, trenches 1-11A were used primarily for the disposal of low-level radioactive wastes with the last disposal (trench 11A) ending in November 1985, (i.e., prior to the date when EPA decided that mixed wastes were subject to RCRA regulation). As EPA has recognized in its RTC, these trenches are not regulated RCRA units. This means that the material disposed of in these trenches was not RCRA hazardous waste because, if it was, the trenches would have been hazardous waste disposal facilities requiring a RCRA permit after 1980.

Regarding the chemical trench, the PRC Report states that "there is suspicion that uncontainerized liquid wastes have also been disposed of in this chemical trench." PRC Report at 9, § 3.2. The stated basis for this speculation is that a former US Ecology employee told WDOE "staff" that past practices included the disposal of uncontainerized liquid waste. US Ecology has not been able to confirm this speculation. It remains nothing more than an undocumented allegation from an unidentified source. The statement should be afforded little weight, if any, and is best characterized as unreliable speculation.

Despite these facts, EPA continues to insist that the 13 designated trenches at the US Ecology site are somehow subject to RCRA corrective action. Inclusion of these SWMUs in the Hanford Permit in light of the fact that no RCRA regulated waste was disposed of at the US Ecology site is both outside the scope of EPA's authority and arbitrary and capricious.

B. The Authority For Imposing Corrective Action Requires More Than Speculation That A Release May Have Occurred.

Even if there are identifiable SWMUs at the US Ecology site (which there are not) RCRA does not provide for corrective action at such facilities unless there has been a release of hazardous waste or constituents from such SWMU. Section 3004(u) of RCRA authorizes corrective action "for all releases of hazardous waste or constituents" from SWMUs at a treatment, storage or disposal facility seeking a RCRA permit. 42 U.S.C.A. § 6924(u). Similarly, Section 3008(h) of RCRA authorizes corrective action orders to protect human health or the environment when EPA determines "on the basis of information . . . . that there is or has been a release of hazardous waste into the environment." Id. § 6924(h). Under both provisions, there must be some threshold indication that there has been a "release." However, there is no information contained in the draft Hanford Permit, the accompanying Fact Sheet, and the PRC Report that demonstrates that there has been a release of hazardous substances or constituents from alleged SWMUs at US Ecology's site.

Since the material disposed of in trenches 1-11A was not RCRA hazardous waste, such disposal cannot logically result in the "release" of hazardous waste or constituents. See disc. supra at 6-7. (How can hazardous waste be derived from what is not hazardous waste?) Put another way, the disposal of a non-hazardous material cannot result in the release of a hazardous material. The status given "mixed waste" by EPA prior to 1986 answers the question of whether there has been a "release" from trenches 1-11A. That answer is in the negative.

In making this comment, US Ecology is not in any way espousing the unpermitted or unregulated disposal of mixed waste. Quite to the contrary, all disposal at the US Ecology site was and continues to be heavily regulated pursuant to AEA permits and

authority. As stated by EPA in discussing its proposed Subpart S corrective action rule (55 Fed. Reg. 30808 (July 27, 1990):

> Many facilities have releases from solid waste management units that are issued permits under other environmental laws. . . [example omitted] EPA does not intend to utilize the section 3004(u) corrective action authority to supersede or routinely reevaluate such permitted releases. However, in the course of investigating RCRA facilities for corrective action purposes EPA may find situations where permitted releases from SWMUs have created threats to human health and the environment. In such case, EPA would refer the information to the relevant permitting authority or program office for action. If the permitting authority is unable to compel corrective action for the release, EPA will take necessary action under section 3004(u) (for facilities with RCRA permits) or section 3008(h) (for interim status facilities), as appropriate, and to the extent not inconsistent with certain applicable laws (see section 1006(a) of RCRA).

The purpose of citing this EPA discussion is not to suggest or concede that there have been releases from the trenches at the US Ecology site or that there is any threat to human health or the environment. The point is that, where disposal activities are subject to AEA permitting and regulation, EPA should follow its above-stated policy and defer any exercise of its corrective action authority under section 3004(u) or 3008(h). The inclusion of the US Ecology site in the corrective action portions of the DOE permit would be directly opposite to EPA's expressed intentions regarding its use of section 3004(u).

C. There Is No Evidence Of Contamination At The US Ecology Site.

Pursuant to RCRA Section 3004(v), EPA may take corrective action "beyond the facility boundary where necessary to protect human health and the environment. See 42 U.S.C.A. § 6924(v); 40 C.F.R. § 264.101(c). That is, if hazardous waste has migrated to the US Ecology site from the DOE Hanford Federal Facility, EPA may be able to take corrective action at the US Ecology site. There is, however, no evidence in the record

indicating that any RCRA contaminated constituents have migrated beyond the Hanford Federal Facility to the US Ecology site. As a result, EPA cannot rely on its authority under RCRA Section 3004(v) to impose corrective action requirements upon DOE for the US Ecology site.

D. The US Ecology Site Is Not Part Of The RCRA Facility.

Notwithstanding the fact that EPA has no independent authority to require corrective action at the US Ecology site because it is not a RCRA "facility," EPA contends that the US Ecology site is "part of the Hanford Facility as that term is defined under [RCRA]." EPA RTC at 30. RCRA does not contain a definition of the term "facility," however. See 42 U.S.C.A. § 6903. Rather, EPA has promulgated several rules purporting to defining the term "facility" as it applies to various portions of RCRA. See, e.g., 53 Fed. Reg. 31,186 (Aug. 17, 1988) (defining "facility" for purposes of RCRA section pertaining to disposal of "soft hammer" wastes); 40 C.F.R. § 264.101 (1986) (defining "facility" for purposes of RCRA section pertaining to corrective action). EPA has defined the term "facility" in conflicting ways as it sees fit. See Mobil Oil Corp. v. Environmental Protection Agency, 871 F.2d 149 (D.C. Cir. 1989).

EPA has not defined the term for purposes of corrective action requirements pertaining to federal facilities such as the Hanford Federal Facility. As a result, for purposes of defining "facility" in order to include the US Ecology site in the Hanford Permit, EPA is forced to rely upon the preamble to its July 1985 codification rulemaking and a 1986 "Notice of Policy and Interpretation." In the 1985 preamble EPA stated:

> the term "facility" is not limited to those portions of an owner's property at which units for the management of solid or hazardous waste are located but rather extends to all contiguous property under the owner or operator's control.

50 Fed. Reg. 28702, 28712 (July 15, 1986) (emphasis supplied). However, EPA also noted:

> [t]he extent to which the above interpretation applies to federal facilities raises legal and policy issues that the agency has not yet resolved.

Id.

Therefore, in its RTC EPA has also had to rely on a "Notice of Policy and Interpretation," which it has quoted:

> . . . EPA has concluded that § 3004(u) subjects federal facilities to corrective action requirements to the same extent as any facility owned or operated by private parties. Furthermore, EPA has determined that the statute requires federal agencies to operate under the same property-wide definition of "facility".

RTC at 2, 31. By stopping short here, however, EPA has ignored that the 1985 preamble relies not just on ownership, but that the contiguous property be "under the control" of the federal agency. EPA has ignored as well its own other 1986 pronouncements on this issue.[8]

Regarding the issue of control exercised by a federal agency, there are compelling legal and policy reasons for not applying a broad definition of "facility" to corrective action requirements at federal facilities. Due to the overwhelming number of federally owned properties that are not actually utilized by the federal government, a federal agency could be responsible for corrective action at sites over which it has no control as in the present permitting process. EPA has recognized this problem. In its 1986 Notice of Policy and Interpretation, EPA raised concerns about allowing corrective action to be

8. It is well settled that an agency's interpretation of a statute is given less deference when it conflicts with prior agency interpretations. See INS v. Cardoza-Fonseca, 480 U.S. 421, 446 n.30 (1981).

triggered on contiguous federal lands administered by different agencies with different responsibilities. According to EPA: "In the Western half of the United States, contiguous federal lands cover large portions of several states". 51 Fed. Reg. 7727 (March 5, 1986). Because of this fact:

> a permit for a hazardous waste management unit located anywhere on [such a] . . . collective federal facility could trigger corrective action requirements for every solid waste management unit found within its boundaries . . . [and] the agency that operates such a unit might not have authority to require or manage clean-up of solid waste management units on lands administered by other federal agencies.

Id.

To address this problem, EPA proposed in a simultaneously published Notice of Intent to Propose Rules to limit the "facility" subject to corrective action to land within the jurisdiction of "major departmental subdivisions that exercise independent management authorities." 51 Fed. Reg. 7,723 (March 5, 1986).

In its Notice of Intent, EPA further addressed the relationship for corrective action purposes between publicly-owned lands and private entities operating under long-term leases. EPA noted that:

> EPA intends to propose a rule that limits Federal agency responsibility for facilities operated by private parties with legal ownership interests by identifying a "principal owner" for the purpose of defining the "facility" boundary under section 3004(u). The "principal owner" probably would be the person most directly associated with operation of the hazardous waste facility. Only property within the scope of the "principal owner's" legal interest would be considered the "facility" for corrective action purposes.

Id. EPA explained the factors requiring this proposal:

> To determine whether a private party on federal lands should be treated as a "principal owner", EPA might consider factors such as the degree of control the federal agency exercises over the private party's actions, or the amount of benefit the agency derives from the private party's

> waste management operation. EPA will also need to consider the impact of this concept on private lands where one private party has granted legal ownership interests to a second private party that operates a hazardous waste "facility."

Id.

EPA has chosen to ignore this detailed and sensible guidance by continuing to insist on the inclusion of the US Ecology site in the Hanford Permit. EPA has also ignored its policy that it "will address issues not yet resolved by rulemaking on a case-by-case basis." Id. at 7,774. Rather, EPA has relied upon, but has not so stated in its RTC, OSWER Policy Directive No. 9502.00-2 (April 18, 1986). Intended to explain what it said in its two March 5 Federal Register Notices, this unpublished policy affirms that the issue of private property within the physical boundary of a federal facility should be handled "on a case-by-case basis until the final rule is promulgated and that it is an issue which can not be addressed without a regulation." OSWER Policy at 2. The Policy rightly concludes that "(i)n these limited situations the private party would be responsible for taking corrective actions rather than the Federal Government." Id. Nevertheless, the OSWER Policy concludes that "prior to the issuance of the final rule, the Federal Agency will be considered the owner of such property and would be held responsible for releases from such operations and for releases on its contiguous Federal lands." Id. Contrary to its professed intent, this concluding sentence has served not to clarify the facility issue, but has only further confused it.

By its own terms, this OSWER Policy does not alter the agency's published discussion that the federal agency must also exercise control over the private entity to include it in the federal agency's permit; ownership alone is not enough. EPA has yet to publish the long-promised rule addressing this issue. It is unfair, arbitrary and capricious and a failure to provide an appropriate opportunity for comment that EPA has instead chosen to advance

and test the issue in the context of an individual permit of which US Ecology is not a party and over which it has no control.[9]

Considering as a whole EPA's 1985 codification rule, the two 1986 Federal Register Notices, and the 1986 OSWER Policy Directive (collectively, the "1986" Policy"), EPA must decide this issue with respect to the US Ecology facility on the merits of the facts unique to this case.

The US Ecology site, is not within the scope of DOE's legal interest and DOE has no control over the operations or activities conducted at the US Ecology site. See Lease, Exhibit B hereto; Sublease, Exhibit C hereto.[10] DOE does not derive any benefit from the State of Washington's sublease with US Ecology, since that sublease does not affect the payments the state must make to DOE under the principal lease. See Sublease, Exhibit C hereto.

Significantly, EPA has itself acknowledged that DOE has no control of the US Ecology site. In its Fact Sheet it stated:

> Therefore, although the leased lands are not currently under direct operational control of the Department of Energy, the Department of Energy is responsible under RCRA for appropriately responding to releases of hazardous constituents on these lands.

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9. EPA was completely silent on this issue in its February 16, 1993 final rule regarding Corrective Action Management Units and Temporary Units. See 58 Fed. Reg. 8,658 (Feb. 16, 1993.) In that rule EPA simply reaffirmed the definition of facility it promulgated in July 1985. See id. at 8,664.

10. EPA has determined that the Bonneville Power Administration (BPA) is a separate subdivision of DOE and that therefore its lands are not part of the Hanford Permit. In reliance on its 1986 Notice of Intent to Propose Rules, EPA should likewise remove the US Ecology site from the Hanford Permit.

Fact Sheet at 5 (emphasis supplied). Nevertheless, in its RTC, EPA ignores the control issue altogether and solely focuses on the location of the site. For example, EPA states:

> EPA interprets the term "facility," as defined for the purpose of RCRA corrective action, to include all contiguous property under Subtitle C of RCRA. Since the US Ecology site is located on property owned by DOE which is within the definition of the term "facility" as it applies to the Hanford site, SWMUs on the US Ecology site are included in the permit, and are subject to RCRA corrective action and Section 3004(c) of RCRA.

EPA RTC at 32 (emphasis supplied). Under EPA's own regulations, however, it is irrelevant if the site is located on the permittee's property if the permittee does not have control of such site. See 58 Fed. Reg. 8,658; 50 Fed. Reg. 28,712.

Essentially, EPA argues that based on the definition of "facility" as interpreted by the 1986 Policy, EPA has no choice but to include the US Ecology facility in the Hanford Permit. In fact, those same documents require that EPA exercise its discretion on a case-by-case basis, which it has not done here. The entirety of the record with respect to the Hanford Permit demonstrates that EPA will either choose to ignore altogether the 1986 Policy regarding the facility issue, or decide the issue contrary to the Policy. For example, in the Fact Sheet in the support of the first draft permit, EPA specifically cited its 1986 Notice of Intent to Propose Rules which states that "major subdivisions of federal agencies are to be recognized as owners for purposes of corrective action." Fact Sheet at 34. Nevertheless, as US Ecology has discussed above, EPA reasoned that until the issuance of a final rule clarifying its position "EPA '. . . intends to recognize principal subdivisions as a matter of statutory interpretation on a case-by-case basis in individual proceedings.'" Id. (citation omitted). Thus, in spite of its clear 1986 Policy to the contrary, EPA decided to include BPA Midway SWMUs in the first draft of the Permit. In the second draft, these

SWMUs have been eliminated from the Permit in response to the DOE and BPA comments that BPA is an independent subdivision warranting exclusion of the Midway SWMUs under the 1986 Policy. See, e.g., RTC at 37-38. If EPA now concludes that BPA lands should be excluded because DOE fails to exercise the requisite amount of control over its own subdivision's property, then surely, a private entity such as US Ecology should be excluded for the same reasons.[11]

With respect to all of the individual units originally set forth in Part IV of the Hanford Permit (originally listed in Table IV.1), EPA made decisions that are not supported by its interpretation of the 1986 Policy as applied to US Ecology. There are a number of putative SWMUs that EPA has eliminated from the Permit because they are already covered under the FFACO.[12] EPA has omitted from the Permit other BPA lands, the North slope, the Central Waste Landfill, and the Hanford Site Waste Units from the Permit because "(t)hese areas are already covered in the FFACO." RTC Responses at 1, 5; see also id. at 44, 45, 47, 48 and 49. There is nothing in EPA's 1986 Policy, and especially those provisions cited in the RTC, that support the omission of these putative RCRA units solely

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11. US Ecology questions whether EPA has correctly decided the issue of BPA's independence from DOE. BPA has been variously described by DOE as "an independent subdivision of cabinet-level federal department," "an independent power marketing agency," and "a reporting component of the DOE.". DOE Comments, at 9, 215-216. EPA's conflicting conclusions regarding the answer demonstrate its willingness to interpret the facility issue as its sees fit.

EPA has also noted that Midway remediation is the subject of applicable state authorities. RTC at 38. If this is a factor that influenced EPA's decision to omit this area from the Hanford Permit, then EPA must consider that any necessary remediation at the US Ecology site will occur pursuant to the required closure plan under its AEA license.

12. It is ironic that under EPA's logic those units on leased lands that are otherwise covered under the FFACO are exempted from the Permit precisely because they are in the FFACO, whereas a facility such as US Ecology's, which is specifically exempted from the FFACO, must be included in the Hanford Permit.

because they are covered under some other agreement. If EPA purports to have the discretion to remove these units for this reason, it can do so as well for the US Ecology site.[13] See disc. infra at 25-26.

With respect to other BPA lands and the 351 Substation, even though these areas are owned by DOE, EPA has also removed them from the Hanford Permit because they are not leased lands, but "(u)se of these areas by BPA is governed by use-permits which are similar to contracts and can be more readily terminated." RTC at 4, 38. This is a distinction without a difference and demonstrates again EPA's willingness to act contrary to its interpretation of the 1986 policy.[14]

Finally, EPA's decision not to include the Washington Public Power Supply System leased area in the Permit is inexplicable under any rationale. This area is not covered by the FFACO and therefore not omitted from the Permit for that reason. The fact that this area is to be addressed under a separate RCRA permit is not sufficient justification, and in any event is clearly at odds with EPA's interpretation of the 1986 Policy. See DOE Comments p. 194. If offered as a rationale, then US Ecology's regulation under the AEA and proposed closure backed by a $40-million fund more than justifies its exclusion as well.

In sum, the US Ecology site cannot be part of DOE's "facility" for purposes of corrective action under the Hanford Permit. DOE has no control over the US Ecology site and, therefore, even under EPA's own guidelines, the site cannot be part of the DOE

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13. In support of the North Slope inclusion in the first draft Hanford Permit, EPA noted that the DOE has previously used the site, that it has since been vacated and that it is now open to the public as a wildlife refuge. Unlike the US Ecology site (which severely restricts public access because of its permitting as a LLRW facility) the potential threat to human health in the North Slope area would strongly suggest inclusion in the Hanford Permit.

14. Arguably, other BPA lands could be omitted because, as DOE commented, there are no identified SWMUs at this location. DOE Comments at 9. This is also true for the US Ecology site.

"facility" for purposes of corrective action. Moreover, including the US Ecology site in the Hanford Permit contradicts decisions made by EPA in connection with other aspects of the Hanford Permit. As a result, EPA's actions are completely arbitrary and capricious. EPA has no authority to extend corrective action requirements to the US Ecology site.

E. The Hanford Permit Is Inconsistent With The AEA.

As one of the nation's two licensed and operating commercial low-level radioactive waste disposal sites, the US Ecology site is subject to extensive regulation and control by NRC and WDOH. The NRC regulatory scheme is designed to protect human health and the environment from all environmental dangers that any waste at the site might present. The AEA requirements applicable to the US Ecology site either meet or exceed the standards applicable to hazardous waste under subtitle C of RCRA or differ from them due to the unique nature of low-level radioactive waste. Low-level radioactive waste disposal at the US Ecology site has always been conducted pursuant to AEA requirements.

Under US Ecology's license, only specified classes and types of properly packaged and manifested low-level radioactive waste may be received. See License, Exh. A hereto. Burial of waste at the site is strictly regulated. Site operations are also subject to a detailed site environmental monitoring program that covers potential releases to or through groundwater, air, soil, vegetation, wildlife and direct radiation exposure pathways. These monitoring requirements have never indicated any releases of hazardous substances in excess of allowable limits. The license also requires closure of the US Ecology site under a detailed

plan designed to maintain full environmental protection at the site well into the final half of the 21st Century.[15]

RCRA explicitly provides that it does not apply to activities or substances (such as those at the US Ecology site) which are subject to the AEA where application of RCRA would be inconsistent with the AEA:

> nothing in this Act shall be construed to apply to (or to authorize any state, interstate, or local authority to regulate) any activity or substance which is subject to ... the AEA of 1954 ... except to the extent that such application (or regulation) is not inconsistent with the requirements of such Acts.

42 U.S.C.A. § 6905(a). The application of RCRA corrective action to the US Ecology site is inconsistent with the AEA's regulatory scheme. The US Ecology site has a separate purpose (the safe disposal of low-level radioactive waste), a separate operator (US Ecology), and completely separate operations from those addressed by the Hanford Permit. See March 19, 1992 Comments, Exh. D hereto at 19-33, 36-42.

EPA has itself admitted that RCRA must yield to other regulatory schemes. In the preamble to EPA's July 1985 codification rulemaking, EPA noted that CERCLA also exempts wastes already subject to regulation, and made the following statement regarding RCRA:

> Other exemptions are inappropriate. The CERCLA exemption for releases subject to the Atomic Energy Act and the Uranium Mill Tailings Radiation Control Act (UMTRCA) are not needed because RCRA includes a specific statutory scheme for how overlaps between those statutes and RCRA are to be addressed." See Section 1004 (27), Section 1006 of RCRA. (Section 703 of HSWA also specifically indicates that nothing in the new amendments, including Section 2004(u) should be construed to modify or amend UMTRAC.)

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15. A summary of the site characteristics, trench operation, monitoring, and closure requirements of the US Ecology site was provided in US Ecology's March, 1992 comments. See March, 1992 comments, Exh. D hereto at 21-30.

50 Fed. Reg. 28,702, 28,713 (July 15, 1985). In this same rulemaking, EPA further explained its interpretation of RCRA § 1006:

> It should be noted that, consistent with Section 1006 of RCRA, EPA will implement Section 3004(u) in a manner consistent with other EPA programs. For example, where a release from a solid waste management unit is otherwise subject to regulation under Section 402 of the Clean Water Act, EPA will use the NPDES to address such discharge.

Id. at 28,714.

Most recently, EPA issued its "Issues Paper on Radiation Site Cleanup Regulations." EPA 402-R-93-084 (September 1993). In discussing the applicability of RCRA to radioactive materials, EPA confirmed:

> The two laws [AEA and RCRA] are not fundamentally inconsistent or incompatible, but when the application of both regulatory regimes is inconsistent or incompatible, RCRA (Section 1006) defers to AEA.

Issues Paper at 51. EPA's own interpretations demonstrate the importance of Section 1006, why EPA must rely on it, and why RCRA must yield to the AEA with respect to the US Ecology site.[16]

EPA has noted, however, that, in its view, the Hanford Permit does not conflict with AEA requirements. See Fact Sheet at 7. It purportedly relies on US Ecology's license and EPA's erroneous belief that the groundwater monitoring on site, pursuant to this license, does not apply to RCRA hazardous constituents. See Fact Sheet at 8. EPA has failed to recognize that the extensive groundwater monitoring program being implemented at the site under the guidance of WDOH would detect a release of specific RCRA hazardous

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16. EPA's interpretation is not affected by the fact that shortly thereafter on July 3, 1986, EPA decided that mixed waste should be subject to RCRA regulation and that only the radioactive component of such waste was excluded from the definition of solid waste. See 51 Fed. Reg. 24,504 (July 3, 1986).

constituents (if any such constituents exist on site). Pursuant to its licenses and federal and state regulations, five groundwater monitoring wells are sampled on a quarterly basis for a wide variety of both radioactive and chemically hazardous constituents. See License, Exh. A hereto at Condition 61. The site is currently monitored for chemical contaminants relating to volatile organics, phenols and metals. US Ecology currently samples for total organics and volatile organics, including Benzene, Toluene and Xylene during the first, third and fourth quarter each year. In addition to this sampling during the second quarter the site samples for Phenols and metals including Iron, Magnesium, Sodium, Silver, Barium, Cadmium and Chromium. Monitoring for additional hazardous constituents is currently under discussion with WDOH. US Ecology has installed an experimental vadose monitoring program used to sample soil gases for both radioactive and hazardous constituents. This program is being expanded based on results from prototype studies. The expansion process is undertaken within the framework of the AEA license under the direction of WDOH relating to site closure.

These facts demonstrate why the activities occurring at the US Ecology site pursuant to the AEA regulatory scheme will address any RCRA corrective action concerns. The bigger problems, as previously discussed in US Ecology's March 1992 Comments, are the many ways in which activities pursuant to RCRA corrective action are wholly at odds with activities under the AEA regulatory scheme. See March 1992 Comments, Exh. D hereto, at 19-30. Indeed, as set forth in more detail in the attached article, "Mixed Waste: A Way To Solve The Quandary," Exhibit G hereto, EPA's attempt to regulate the hazardous

component of mixed waste makes no sense, is inconsistent with the AEA, and is technically impossible.[17]

In sum, a review of the relevant facts reveals that RCRA corrective action requirements would be inconsistent with, or at least duplicative of, the procedures already in place at the US Ecology site. As a result, EPA has no RCRA authority to include the US Ecology site in the Hanford Permit. See 42 U.S.C.A. § 6905(a).

F. The US Ecology Site Is Protective Of Human Health And The Environment.

Inclusion of the US Ecology site in the Hanford Permit also ignores the fact that pursuant to the AEA and Washington regulations, US Ecology is already protecting human health and the environment. See, e.g., License, Exh. A hereto, at Condition 6. In fact, US Ecology is currently negotiating with WDOH the terms of a revised site closure plan that will amply protect human health and the environment and which includes activities designed to manage chemical hazardous waste constituents in addition to radioactive constituents.[18]

The proposed amended closure plan will specifically be designed to detect and adequately remedy any releases or future releases of hazardous substances at the US Ecology site. The chemical trench identified by EPA as a SWMU in the Hanford Permit will be

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17. US Ecology incorporates herein in full the arguments set forth in this article. On page 10706 of this article, the authors refer to scintillation fluids as containing primarily the hazardous component of mixed waste. See Exh. G hereto, at 10706. Any scintillation vials at US Ecology were disposed of prior to 1986 and were never subject to RCRA jurisdiction. See March 1992 Comments, Exh. D hereto, at 34-35.

18. A copy of US Ecology's current closure plan is attached hereto as Exhibit H. The attachments to that Closure Plan are voluminous and have not been included. They are, however, available for review if necessary. Likewise, because the draft Closure Plan is already in EPA's possession it is not provided herewith. If necessary, however, an additional copy can be provided. US Ecology requests that these documents will be deemed part of the administrative record of the Hanford Permit.

covered by the proposed closure plan. Similarly, all structures, equipment and materials at the site, such as SWMUs 1 through 11A (i.e., SWMUs 2-13) identified in the Hanford Permit, must be dismantled, decontaminated and disposed of prior to site transfer. See 1990 Closure Plan, Exh. H hereto. Moreover, further investigation of the chemical trench and trenches 1 through 11A is planned through the closure plan. An expanded groundwater and vadose zone monitoring system is to be implemented throughout site operations. See 1990 Closure Plan, Exh. H hereto. Any migration from the 13 SWMUs referred to in the Hanford Permit will be assessed and mitigated to satisfy stringent AEA standards for release at facility boundaries. It is, accordingly, unnecessary to adopt MTCA or RCRA release or point of compliance standards (as provided in the Hanford Permit) at a site neither regulated by or designed to meet such standards.

Moreover, EPA's attempt to include the US Ecology site in the Hanford Permit is inconsistent with the legislative intent which prompted promulgation of the RCRA corrective action requirements. See 42 U.S.C.A. § 6924(c) (1985). As the United States Court of Appeals for the District of Columbia has observed, "the broad purpose underlying this aspect of the 1984 Amendments was to relieve future burdens on the 'Superfund' program." United Technologies Corp. v. United States EPA, 821 F.2d 714 (D.C. Cir. 1987), citing, H.R. Rep. No. 198, 98th Cong., 1st Sess. 20, 61 reprinted in 1984 U.S. Code Cong. & Admin. News 5576, 5579, 5620. The RCRA corrective action requirements, in essence, create a duty "to take corrective action as a quid pro quo to obtain a permit" thereby eliminating the need to remediate a site pursuant to Superfund at a later date. Id. Due to the fact that the US Ecology site is extensively regulated under the AEA and will be

remediated (if necessary) under that regulatory scheme, corrective action under RCRA serves no purpose.[19]

EPA has previously held that corrective action requirements should be site-specific to avoid imposing duplicative and unnecessary requirements on a permittee. See, e.g., In the Matter of: Beazer East, Inc. & Koppers Indust., RCRA Appeal No. 91-25 (Environmental Appeals Board, March 18, 1993), attached hereto as Exhibit I; In re General Motors Corporation, RCRA consolidated Appeal Nos. 90-24, 90-25 (Environmental Appeals Board, Nov. 6, 1992), attached hereto as Exhibit J. The inclusion of corrective action requirements at the Hanford Federal Facility that are applicable to the US Ecology site can accomplish nothing at the site that has not already been required - generally in a stricter and more elaborate form - under the AEA. Therefore, in addition to being inconsistent with the AEA, imposition of RCRA corrective action requirements at the US Ecology site would be duplicative and produce no discernible environmental benefits. To do so is arbitrary and capricious.[20]

G. There Is No Need For Further Investigation.

The Hanford Permit maintains that further investigation is required "to determine whether releases of hazardous waste or hazardous waste constituencies have

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19. The Hanford Permit itself states that "[t]he Permittee shall be required to take corrective action for any such releases on-site and/or off-site where necessary to protect human health and the environment." Hanford Permit at Introduction (emphasis supplied). Because the US Ecology site is already protective of human health and the environment, there is no need for corrective action under the permit's own terms.

20. Although US Ecology recognizes that USEPA intends to defer RCRA corrective action requirements for the alleged SWMUs at the US Ecology site for one calendar year, the fundamental argument remains that there is no authority or need for these requirements to be imposed at any time. Human health and the environment is fully protected by the current AEA requirements enforced under the authority of WDOH.

occurred [at SWMUs 1-13] which threaten human health and the environment." See Hanford Permit at § III.B. As set forth previously, no regulated hazardous wastes have been disposed of at the US Ecology site thereby rendering EPA's desire for additional testing moot. See supra disc. at 6-7. Moreover, US Ecology is already monitoring the site pursuant to WDOH and NRC regulation and its license. If a release had occurred it would have been detected. Accordingly, EPA's requirements for additional investigation are completely unnecessary to protect human health and the environment. EPA's inclusion of such requirements in the Hanford Permit is arbitrary and capricious.

H. The FFACO Does Not Provide EPA Authority Under RCRA.

In response to DOE's comments on the January, 1992 draft permit, EPA removed all SWMUs which are within the jurisdiction of the FFACO from the reissued draft Hanford Permit. See Fact Sheet at 6; EPA RTC at 1-2. It did so because corrective action requirements in the January, 1992 draft permit were inconsistent with similar requirements in the FFACO. See RTC at 1. Because the US Ecology site is on land leased to US Ecology and because DOE has no control over the US Ecology site, that site is not included in the FFACO. Therefore, according to EPA, it must be included in the Hanford Permit. EPA's logic is flawed. The FFACO does not give EPA RCRA corrective action authority over the US Ecology site.

US Ecology is not party to the FFACO and that agreement does not apply to US Ecology or to its low-level radioactive waste site at the Hanford Federal Facility. The

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definition of facility set forth in the FFACO is completely at odds with inclusion of the US Ecology site in the Hanford Permit:[21]

> "Hanford," "Hanford Site," or "Site" means the approximately 560 square miles in Southeastern Washington State (excluding lease land, State-owned lands, and lands owned by the Bonneville Power Administration) which is owned by the United States and which is commonly known as Hanford Reservation . . . .

In fact, the logic of not including the US Ecology site in the FFACO should govern its not being included in the Hanford Federal Facility. DOE has no control over any aspect of the US Ecology site and DOE should not be required to institute corrective action at the US Ecology site.

Furthermore, the fact that the US Ecology site is not included in the FFACO cannot serve as a basis for including the US Ecology site in the Hanford Permit. For the reasons set forth in these and previous comments, RCRA corrective action requirements do not apply to the US Ecology site. The FFACO does not (and cannot) provide EPA any RCRA corrective action authority over the US Ecology site that it does not have under RCRA.

I. The Hanford Permit Creates Excessive Bureaucracy And Increased Costs.

In EPA's RTC it states that corrective action requirements will be suspended for one calendar year to allow for investigation and remediation of the US Ecology site under the Washington MTCA or under US Ecology's radioactive materials license. See RTC at 33, 35. EPA claims that this one-year suspension will "eliminate the complex, bureaucratic

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21. The FFACO definition acknowledges that the Hanford Site only includes property under DOE's control. Apparently, EPA agreed with this concept when it entered into the FFACO but has now abandoned it in its quest to include the US Ecology site in the Hanford Permit.

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and increased cost steps of enforcing corrective action requirements through Energy via the HSWA Permit." Id. at 35. The truth is, however, that inclusion of the US Ecology site in the Hanford Permit at any time will result in more, not less, bureaucracy and expense.

The Hanford Permit provides EPA (in consultation with WDOE) authority to determining whether the alleged SWMUs have been adequately addressed under the MTCA or US Ecology's license. See Hanford Permit at III.B.2. That is, EPA and WDOE, and not US Ecology's regulator, WDOH, will make the applicable determination. This process creates a needless excessive tower of bureaucracy that will result in the increased costs EPA claims it is avoiding. This process also wrongly attempts to provide EPA and WDOE authority over the amendment of US Ecology's radioactive materials license. Pursuant to the Washington Administrative Code, that authority is vested in the WDOH not EPA or WDOE. See WAC, title 402. Accordingly, EPA has no such authority and it cannot create it in the Hanford Permit.

Finally, use of a proposed RCRA permit to impose MTCA-type cleanup requirements on US Ecology is patently illogical and without a legal foundation. As set forth in US Ecology's March, 1992 Comments, there are significant factual, legal, and policy issues regarding whether MTCA could apply to the US Ecology site. See March, 1992 Comments, Exh. D hereto at 16-19. If WDOE and EPA are interested in asserting CERCLA/MTCA jurisdiction over the US Ecology site, they cannot do so by virtue of a RCRA permit issued to a third party. Moreover, federal law does not permit use of CERCLA to require cleanup of materials regulated by the AEA or of "Federally Permitted Releases." See 42 U.S.C.A. §§ 9601(10)(k), (22). Accordingly, EPA has no authority to

use the Hanford Permit (issued to DOE) to impose MTCA requirements on an AEA regulated site, licensed by WDOH (i.e., the US Ecology site).

J. The Hanford Permit Violates Due Process.

US Ecology has a protected property right embodied in its sublease of property at the Hanford Federal Facility. See, e.g., Lynch v. United States, 292 U.S. 71 (1934); Almota Farmers Elevator & Warehouse Co., 409 U.S. 470 (1973); see also Sublease, Exh. C hereto. EPA cannot interfere with this right without due process of law. See U.S. Constitution, 5th and 14th Amendments. The Hanford Permit imposes corrective action requirements applicable to the US Ecology site yet holds the permittee, DOE, accountable for abiding by such requirements. The Hanford Permit, likewise, provides DOE (not US Ecology) various rights to amend or modify the terms of the permit. See, e.g., Hanford Permit at III.B.2. Because US Ecology's property will be affected by the Hanford Permit yet it is afforded no rights under such permit, the permit is violative of US Ecology's substantive and procedural due process rights embodied in the Fifth and Fourteenth Amendments of the United States Constitution.

Moreover, as set forth in these and previous comments, the Hanford Permit subjects US Ecology to duplicative regulations (i.e., the AEA and RCRA) and the conflicting jurisdictions of EPA and NRC and of WDOE and WDOH. See disc. supra at 26-28. The Hanford Permit was also issued upon an application by DOE and its contractors. US Ecology did not apply for this permit and cannot be governed by it. The issuance of the Hanford Permit, violates US Ecology's substantive due process rights.

Finally, it is arbitrary and capricious to include the US Ecology site in the Hanford Permit when it is not itself a RCRA "facility" and cannot be part of DOE's

"facility" pursuant to EPA's own guidelines because DOE has no control over the US Ecology site. In light of this, inclusion of the US Ecology site in the Hanford Permit violates US Ecology's due process rights.

K. EPA Has Failed To Address Adequately US Ecology's Comments.

EPA is required to provide a full and complete response to all comments submitted on a draft permit. See 40 C.F.R. § 124.17. For all the reasons set forth above, EPA has failed to do so. It has ignored the fundamental fact that the US Ecology site is not a RCRA facility itself and is not part of the DOE facility for purposes of RCRA corrective action. EPA has made only modest changes to the revised draft Hanford Permit. The changes do not address the inadequacies raised in US Ecology's March, 1992 Comments. To address adequately US Ecology's comments, EPA must delete all references to the US Ecology site in the final Hanford Permit.

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III.

CONCLUSION

For the reasons set forth herein and in US Ecology's previous written and oral comments and in DOE's comments, all references to US Ecology and to alleged SWMUs at the US Ecology site should be stricken from the Hanford Permit. EPA has no authority to include US Ecology in the Hanford Permit or to require corrective action at the US Ecology site. To do so is violative of the law and is arbitrary and capricious. Finally, USEPA has failed to articulate a valid legal basis for including US Ecology in the Hanford Permit.

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