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July 2, 1992

Donald B. Stancik
Attorney at Law
825 Goethals #2-C
Richland, Washington 99352

Re: Ecology preemption at Hanford reservation

Dear Mr. Stancik:

As you know from recent discussions with staff of the State of Washington Department of Ecology (Ecology), it is Ecology's position that your client, the Benton-Franklin District Health Department, is preempted from regulating the solid waste landfill at the Hanford Reservation. The purpose of this letter is to briefly explain the basis for Ecology's position.

The solid waste landfill is located in the 200 area plateau near the center of the Hanford reservation. It is the repository for the solid waste generated at the Hanford reservation. This landfill is subject to the requirements of chapter 70.95 RCW, the solid waste management act, and chapter 173-304 WAC, the minimum functional standards for solid waste handling. Among other things, these laws set standards for the operation and maintenance of the landfill, and require that the landfill be permitted.

Ordinarily, solid waste landfills are permitted and regulated by "jurisdictional health departments," not by the Department of Ecology. It is Ecology's position that this landfill, however, must be permitted and regulated by the Department of Ecology because the landfill is located on a "preempted facility." The authority for this position comes from RCW 70.105.240(1), which provides as follows:

As of July 1, 1985, the state preempts the field of state, regional, or local permitting and regulating of all preempted facilities as defined in this chapter. The department of ecology is designated the sole decision-making authority with respect to permitting and regulating such facilities and no other state agency, department, division, bureau, commission, or board, or any local or regional political subdivision of the state, shall have any permitting or regulatory authority with respect to such facilities including, but not limited to, the location, construction, and operation of such

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facilities. Permits issued by the department shall be in lieu of any and all permits, approvals, certifications, or conditions of any other state, regional, or local governmental authority which would otherwise apply.

(Emphasis added). This statute makes it clear that Ecology preempts all other regulatory entities at "preempted facilities." Therefore, because the solid waste landfill is part of a "preempted facility," Ecology preempts the field of permitting and regulating that otherwise would have been occupied by your client.

RCW 70.105.010(12) defines "preempted facility" as follows:

[A]ny facility that includes as a significant part of its activities any of the following operations: (a) Landfill, (b) incineration, (c) land treatment, (d) surface impoundment to be closed as a landfill, or (e) waste pile to be closed as a landfill.

(Emphasis added). This definition incorporates another term that is defined in chapter 70.105 RCW, "facility." It means:

[A]ll contiguous land and structures, other appurtenances, and improvements on the land used for recycling, storing, treating, incinerating, or disposing of hazardous waste.

RCW 70.105.010(11). Ecology has previously taken the position that the entire Hanford reservation constitutes a "facility" for purposes of the Resource Conservation and Recovery Act (RCRA). It, along with the Environmental Protection Agency, did so by assigning a single RCRA identification number to all portions of the Hanford reservation that are under the control of the Department of Energy. Since RCRA identification numbers are issued to "facilities," it follows that the entire reservation, except for certain segments under the control of parties other than the Department of Energy, is a "facility."

Even if the entire reservation were not considered a "facility," it cannot be disputed that much of the reservation is used for storing, treating, or disposing of hazardous waste. The reservation has been divided into more than 60 units for purposes of regulation under RCRA. One of these units consists of the nonradioactive dangerous waste landfill, which, together with the solid waste landfill, compose the central waste landfill. A single fence surrounds the two landfills. As

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noted above, the central waste landfill is located in the 200 area, an area that is heavily used for storing, treating, and disposing of dangerous waste. Thus, it is clear that the solid waste landfill is on the Hanford "facility."

A "facility" is a "preempted facility" if a significant part of its dangerous waste management activities include any of the five operations listed in RCW 70.105.010(12). Without undertaking an extensive analysis of Hanford's dangerous waste management activities, it is apparent that a number of the treatment, storage, or disposal units at Hanford are used for one or more of the five operations listed in the statute cited above. Thus, the Hanford "facility" is a "preempted facility."

In summary, it is Ecology's position that the solid waste landfill is located on contiguous land that is used for managing dangerous waste, and consequently must be considered part of the Hanford "facility." It also is Ecology's position that the Hanford "facility" constitutes a "preempted facility," since many of the dangerous waste management activities conducted at the "facility" fall into one of the five operations listed in RCW 70.105.010(12).

I hope that this adequately explains to you Ecology's position. Please let me know if I can be of further assistance.

Very truly yours,



Tanya Barnett
Assistant Attorney General
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cc: Dan Josue, Department of Ecology
Bob Carosino, U.S. Department of Energy

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