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COMMENTS ON THE JOINT PERMIT FOR
DANGEROUS WASTE RESEARCH, DEVELOPMENT, AND DEMONSTRATION
TREATMENT AND STORAGE ACTIVITY
(11/30/92 DRAFT)

Number	Page	Section	Comment
1.	p.1		Second paragraph: language limiting permit duration does not appear to be grammatically correct. Language needs to be made more readable. ✓
2.	p.1		Should the ability for renewal of the permit be discussed in the permit? E.2 HWSA
3.	p.4	Introd.	Last sentence: The EPA can not enforce a permit condition that is not within the scope of Federal authority. The sentence seems to contradict 40 CFR 271.1(1)(2) which excludes facets of the state program with a greater scope of coverage from the Federally approved program. Suggest rewording to: 'The Agency shall maintain an oversight role of the state authorized program and, in such capacity, shall enforce any permit condition within the scope of the federal program that is based on state requirements if, in the Agency's judgement, the Department should fail to enforce that Permit condition.'
4.	p.6	Attach.	Section 3.0, page 3-7: Table 3-1 has been excluded from the List of Attachments. In Sections 3.3.1 and 3.3.2, Table 3-1 is referenced.' Is this a problem? oversight
5.	p.10	Defin.	Definition of 'facility' or 'site' not consistent with that proposed by RL/WHC and included in the permit application. ^{Don't look on} ? business sites
6.	p.10	Defin.	It appears that the term 'operating day' was intended to refer to treatment activities and not meant to pertain to storage activities. Whereas 'RD&D Activity' calls out treatment and storage. Clarification is required. on purpose not include
7.	p.12	I.A.	First sentence: 40 CFR 262.34 refers to generator requirements for accumulating waste onsite. A permit is not required for this activity. Should this be 40 CFR 270.65? agree

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corrected:
+ 0 in accordance with
173-303-809 and
270.65

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8.	p.14	I.E.8	It may be more expedient to submit two separate reports, one for the 1706-KE testing and one for filtration testing at LERF. Will the permit allow this?
9.	p.15	I.F.1.a	Should 'may' be used here instead of 'shall'? Is the request for equivalent method a permit change or a letter to EPA? Can compliance with this be as simple as saying it is an alternative method?
10.	p.15	I.F.1.a.ii	Since the permit provides an equivalent requirement for demonstration that the analytical method is equal or superior, the petition process should also be excluded. Since the substituted method(s) will only be granted for the RD&D activities, the petition and subsequent Ecology action to amend regulations to permit the testing should not be required. Suggest modifying the last sentence to read: 'Such approval shall not require a permit modification under WAC 173-303-830, WAC 173-303-089 or 40 CFR 270.41, 270.42, or 270.65, nor will such approval require submittal under WAC 173-303-110(5).'
11.	p.16	I.F.4	Recommend replacing language with the following and deleting condition I.F.5: 'The Permittees shall give advance notice to the Department and Agency of any planned changes in the permitted facility or activity that may result in noncompliance with permit conditions. Such notice shall be given as soon as possible.'
12.	p.17	I.F.7	Recommend adding at the end of the section the following sentence: 'The Director may waive the five day written notice requirement in favor of a written report within fifteen days.' The above language reflects the provision of 40 CFR 270.30(1)(6)(iii) and WAC 173-303-810(14)(f).
13.	p.19	I.K.	The 'independent', registered, professional engineer is assumed to be any engineer that is: qualified, not employed directly by WHC or RL, and not involved in the waste water pilot plant. This could include KEH and/or consultant professional engineers.

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add to definition 2 definition

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14.	p.20	II.A.2	It is assumed that the "as-built" drawings will be updated versions of any figures and flowsheets provided in the application, not detailed construction drawings. Is this a correct assumption? Can two sets of "as built" be submitted, one for 1706-KE and one for LERF?
15.	p.21	II.C.2	The 'Test Procedures' described in Section 2.1.1 are called 'test plans' at Hanford and contain the information described in Section 2.1.1. The plans are not detailed procedures (e.g., 'turn valve counterclockwise'). It is assumed that these "test plan" documents will not require certification because EPA approval is not required.
16.	p.21	II.C.4	Can the report referenced be a final quarterly report as in Section II.C.3?
17.	p.21	II.C.4	Last sentence: Needs to be reworded to clarify what is being required.
18.	p.22	II.D.2	The report in question has been sent to EPA and Ecology and has also been included in the 242-A Evaporator Part B as an appendix. We can send you another copy if you wish. Please delete this condition.
19.	p.22	II.E	Security requirements are being studied for possible downgrading. This may include items such as removing the guard from the 200 East gate. If these changes are implemented, the permit will have to be modified.
20.	p.23	II.H.1.d	The pH analyzers/alarms referenced here are there to optimize the process, not for safety. This is stated in section 4.1.5.1.2. Maintaining this pH range is well within corrosive limits of the equipment. If the permit is to require this calibration, then the type should be changed from 'safety' to 'process'.

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January 20, 1993 11:50am

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Draft Comments for Discussion

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21.	p.23	N.H.1.e	There are no temperature indicators associated with UV-TK-1&2. These are sensors with relays (TK) that shut the unit down on either high water temp or high enclosure temp. Does this requirement mandate that we install a parallel temperature indication circuit? If so, that would serve no apparent purpose.
22.	p.23 LF-pag-3.	II.H.1.f <i>is there any one LERF feed?</i>	It is unclear as to what switches are being referred to here, since there are not that many switches in the system. There are pressure gauges for process information, but these do not warrant adding any form of switching devices. Are we being asked to add these switches? Please clarify.
23.	p.24	II.H.1.g	Change: '75' ppm to '10' ppm. ✓
24.	p.24	II.H.1.h	As previously stated, the pH analyzers should be considered 'process' equipment, not 'safety'.
25.	p.24	II.H.1.i and k	As previously stated, there is no such temperature indicator on the UV unit.
26.	p.24	II.H.1.j and l	As previously stated, there are no such pressure switches on this unit.
27.	p.24	II.H.1.m	This item is process-oriented and is only remotely considered an environmental concern.
28.	p.24	II.H.1.n	The portable HNu meters on site are not equipped with an audible alarm (an HNu can be purchased with audible alarm). Furthermore, our HNUs do not have a visible "alarm." They have a meter which will be read continuously by an Health Physics Technician during the load/unload processes. This should provide an adequate response capability to any effluent VOC level above 10 ppm. The organic vapor monitors do have alarms. The organic vapor monitor at the 1706-KE Building does have visual and audible alarms.

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29.	p.25	II.H.2.a, b, and c <i>to allow B-1</i>	These should be deleted. UV-ps, UV-pi and UV-TK-1,2 are safety related items that have no manufacturer's recommendation for recalibration. <i>✓</i> The remaining instruments are process information only and should not be within the scope of EPA's concern.
30.	p.25	II.H.1.o	Change '75 ppm' to '10 ppm'. See response above on alarms.
31.	p.25	II.H.2.c	The equipment listed in this section are process control, not safety instrumentation. Change out is not required every six months.
32.	p.25	II.H.3	Recommend rewording this condition as follows: "The Permittees shall ensure that functional eyewash and emergency shower equipment is available for the duration of the RD&D Activity authorized by this permit to include periods of subfreezing temperatures." The draft language as written mandates that all eyewash and emergency shower equipment never break down. A failure of any eyewash unit or shower at the facility would result in a violation of this condition, regardless of how expediently the problems is rectified. The above proposed language more accurately reflects the requirement at 40 CFR 264.32 to have certain equipment available. The draft language instead is written to state that the equipment shall not fail.
33.	p.25	II.I.2	Names, phone numbers, and addresses of the Building Emergency Director and alternates were not provided due to the Privacy Act.
34.	p.26	II.K.1	What if Ecology changes the regulations to move away from requirements associated with removal/decontamination to background levels as specified in 173-303-610(2)(1)? Is the closure plan written in a manner that would accommodate such a move, or would a modification be required?

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35.	p.26	II.K.7	<p>Remove the reference to 40 CFR 264.115 so that the condition reads: "The Permittees shall certify that the RD&D activity has been closed in accordance with the specifications in the Closure Plan, Attachment 10 of this permit, as required by WAC 173-303-610(6)."</p> <p>There is no federal requirement for certification of closure for tank systems. The certification at 40 CFR 264.115 is limited to closure "of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and of...final closure."</p>	<p>Wot Tues</p> <p>disposal issue of final class</p>
36.	p.28	III.A	1st paragraph: Delete 'F4-1' and change 'F4-24' to 'F4-25'. 2nd paragraph: delete 'F4-1' and add 'F4-25'. Figures have been modified.	<p>check on</p>
37.	p.28	III.B.1	Add 'F001' and 'F002' to the waste designations. Section 3.0 of the permit application has been revised to include these waste codes.	
38.	p.29	III.C.2	Delete 'F4-1' and change 'F4-24' to 'F4-25'.	
39.	p.30	III.D.2	The coupon can be exposed to the same weather and contact conditions. However, it is not known how to expose it to the same stress conditions. Please clarify.	<p>to be drive over?</p>
40.	p.32	IV.B.1	Add 'F001' and 'F002' to the waste designations. Section 3.0 of the permit application has been revised to include these waste codes.	
41.	p.33	IV.C.2.a	The 'independent', registered, professional engineer is assumed to be any engineer that is: qualified, not employed directly by WHC or RL, and not involved in the waste water pilot plant. This could include KEH and/or consultant professional engineers.	<p>agreed</p>
42.	p.33	IV.C.4	The 'independent', registered, professional engineer is assumed to be any engineer that is: qualified, not employed directly by WHC or RL, and not involved in the waste water pilot plant. This could include KEH and/or consultant professional engineers.	<p>agreed</p>

Draft Comments for Discussion

43.	p.33	IV.C.5	The 'independent', registered, professional engineer is assumed to be any engineer that is: qualified, not employed directly by WIC or RL, and not involved in the waste water pilot plant. This could include KEH and/or consultant professional engineers.	<i>agreed</i>
44.	p.34	IV.D.1	This section applies to the double-shell intermediate storage tanks, but there is no mention of the small surge process tanks. It is assumed that the surge tanks are included as storage tanks.	<i>add to revised units</i>
45.	p.34	IV.D.2.a.1	Mid-paragraph: In the sentence '..feed float control valves IST1-cv...' delete the word float. Float-type control valves are used to maintain a liquid level (e.g., in the pH adjustment tanks). The intermediate storage tanks will utilize liquid-level sensors to determine liquid level. Also in this section they refer to shutting down feed pumps P-3,4,5,7,and 8. This should be 3,4,5,6 and 7. However, this is an error on Figure 4-2 that carried over.	<i>check float</i> <i>new</i> <i>refer to float type</i>
46.	p.34	IV.D.2.a.11	Mid-paragraph: Change 'double containment with daily inspection' to 'double containment with daily inspection while the pilot plant has inventory present'.	<i>good comment</i>
47.	p.36 and p.37	V.B.1	Add 'F001' and 'F002' to the waste designations. Section 3.0 of the permit application has been revised to include these waste codes.	<i>✓</i>
48.	p.37	V.C.2.a	Change the reference in the first sentence from 'qualified registered professional engineer' to 'qualified engineer'. There are no requirements for the setpoints to be verified by a P.E.	<i>NO</i>
49.	p.38	V.D.1.b.1	Because of the need to mock the full scale C-018H vendor-specified RO system, a feed rate of approximately 15 gpm will be required for the pilot plant RO system.	<i>?</i>

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50.	p.38	V.D.1.b.11	The filter testing is being conducted at the LERF because of the need for long term testing. Flows to the filter units will be as high as 25 gpm collectively, and tests will be run continuously for several weeks at a time. This would result in an expected flow of 252,000 gallon per week, which differs from the 5,000 gallon a week throughput at the 1706-KE Building.
51.	p.38	V.D.2.a	Delete this item, as it refers to the non-existent temperature indicators addressed in above comments.
52.	p.38	V.D.2.b	Delete this item, as it refers to non-existent pressure switches addressed in above comments.
53.	p.38	V.D.2.c	Delete this item. It refers to pressure gauges that are for process information only, and are not critical equipment.
54.	p.39	V.D.2.e	Change '75 ppm' to '10 ppm'. Last line: after '.1 ppm' add 'using benzene as the calibration gas'.
55.	p.39	V.D.2.f <i>gauge</i>	Change '75 ppm' to '10 ppm'. Change instrument range to 0-20 ppm. There are no visible and audible alarms on the HNU (see comment 24). Last line: after 'add' add: '.2 ppm using benzene as the calibration gas'.
56.	p.40	V.D.2.g	Not clear where pressure switches are to be located and what are they to switch? Requires clarification by EPA.
57.	p.40	V.D.2.h	Not clear where pressure switches are to be located and what are they to switch? Requires clarification by EPA. Also, the RO configuration has changed since the last submittal. The configuration is only now being finalized and the instrument numbers will be changing.
58.	p.40	V.D.5	Checking automatic shutoffs weekly seems excessive, suggest change to monthly.

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Draft Comments for Discussion

59.	p.42	V.E.3.a	Delete from "...or exceeds 400 psig based..." on. The list of pressure indicators are process indication gauges with no switching capability. Over pressurization is already controlled by high pressure switches, and the vessels are pressure rated for 1000 psi. There is no technical justification for adding these 12 pressure switches and interlocks. This is already covered by item V.E.3.b for manual shutdown.
60.	p.43	V.E.6.c	1st line: Replace the text after 'unit' with: 'within 24 hours during pilot plant operation or within 72 hours if the breakthrough occurs during pilot plant shutdown'.
61.	p.43	V.E.6.e	1st sentence: Replace 'X' with '24' and add after 'breakthrough': 'during operational periods or within 72 hours of breakthrough during nonoperational periods.'
			Editorial Comments
	p.3	Intro.	1st paragraph, last sentence: Longitude is 119°35'34.2" and latitude is 46°33'42.33" in the Permit Application.
	p.4	Intro.	1st line on p. 4: Substitute 'RD&D' for 'Part B'.
	p.5	List of Attach.	2nd sentence: Change 'Waster' to 'Water'.
	p.6	List of Attach.	Attachments 3 and 4 last revised on 12/18/92.
	p.7	List of Attach.	P. APP 5A-3 of Attachment 6 last revised 12/18/92.
	p.8	List of Attach.	Attachment 8: Appendix 6A last revised 10/30/92 and Appendix 6B last revised 4/2/92.
	p.14	I.E.5	Last sentence: Change 'required' to 'requires'
	p.15	I.E.8.b	Change 'has' to 'have'.
	p.19	I.K.2	Change 'Part B' to 'RD&D'.
	p.25	II.H.1.o	Change '75' to '10'.

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	p.41 thru p.43	Starting at V.E.1.(a)	Delete parentheses in section numbers to be consistent with rest of the document.
	p.42	V.E.3.(a)	Change 'baaed' to 'based'

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RELATIONSHIP OF PERMIT TO TRI-PARTY AGREEMENT

A. Analysis

The Introduction to the Draft RD&D Permit (pages 3-4) lists as authority the following statutes and regulations: RCRA; HSWA; EPA regulations promulgated thereunder; the Washington Hazardous Waste Management Act (RCW Ch. 70.105); and Ecology's Dangerous Waste Regulations (WAC Ch. 173-303). The Draft RD&D Permit does not cite the Tri-Party Agreement (Hanford Federal Facility Agreement and Consent Order or "FFACO") as authority for the Permit, which indicates that the permit writers do not consider the Permit to be within the scope of the FFACO. The Permit defines "FFACO" and refers once to the FFACO in terms of maintaining records in information repositories. It appears clear, however, that the permit writers are taking the position that authority for the Permit exists independently of the FFACO.

For the reasons discussed below, this position is contrary to the FFACO and the Action Plan incorporated by the FFACO. The RD&D Permit is clearly within the scope of the FFACO and should be subject to the FFACO's provisions, including Dispute Resolution.

1. The FFACO Governs Permitting of TSD Facilities at Hanford.

The requirement to obtain an RD&D permit falls under RCRA. The FFACO clearly states that it governs RCRA regulation of treatment, storage of disposal (TSD) units and groups at Hanford.

RCRA compliance, and TSD permitting, closure, and post closure care (except HSWA corrective action) shall be governed by Part Two of this Agreement.

FFACO, page 2.

Parts One, Two, Four, and Five of this Agreement shall serve as the RCRA provisions governing compliance, permitting, closure and post-closure care of TSD Units.

FFACO, par. 6, page 5.

Even if it is argued that the Permit is independently authorized by State law, the FFACO would still apply. One of the FFACO's express purposes is to provide a framework for permitting TSD units to ensure compliance with RCRA and the Washington Hazardous Waste Management Act. FFACO, par. 13 B & C, page 7;

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Action Plan, § 6.2. Part Two of the FFACO comprehensively sets forth DOE's obligation to obtain TSD permits, to close TSD units, and otherwise comply with applicable hazardous waste management requirements, whether arising under Federal or State law.

2. The Waste Water Pilot Plant is a TSD Unit Under the FFACO.

The FFACO's Action Plan contains plans, procedures and implementing schedules, and "is an integral and enforceable part" of the FFACO. FFACO, page 2. "The Action Plan lists the Hanford TSD Units and TSD Groups which are subject to permitting and closure under this Agreement." FFACO, par. 25, page 19. Appendix B of the Action Plan sets forth the specific TSD Units and Groups and lists "Physical and Chemical Treatment Test Facilities" as Group Number T-X-2. The Waste Water Pilot Plant (WWPP) falls within this category and is therefore a TSD Unit within the meaning of the Action Plan. Permitting of the WWPP is thus subject to the RCRA provisions of the FFACO.

3. The WWPP is Required to Support Numerous Milestones in the Action Plan.

Further evidence to support this position is provided by the fact that the WWPP is required to support the following Milestones in the Action Plan. In fact, submission of the WWPP RD&D Permit application is itself a Milestone. Under these circumstances, it is difficult to conceive of a rational argument that would extricate the WWPP RD&D Permit from the FFACO.

Relevant Milestones

- M-17-00A Complete liquid effluent treatment facilities/upgrades for all Phase I streams.
- M-17-14 Initiate full scale hot operations of '242-A Evaporator/PUREX Plant Condensate Treatment Facility' with permitted discharge of treated effluent to the soil column.
- M-17-14A Submit the Architect/Engineering firm design-construction schedule for '242-A Evaporator/PUREX Plant Condensate Treatment Facility' to the EPA and Ecology.
- M-17-14B Initiate pilot plant testing for '242-A Evaporator/PUREX Plant Condensate Treatment Facility' after the effective date of the RD&D Permit.

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Draft Comments for Discussion

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- M-17-14C Submit Federal Delisting petition for treated effluent from '242-A Evaporator/PUREX Plant Condensate Treatment Facility' in accordance with 40 CFR 260.22 to the EPA.
 - M-17-14D Initiate Operational Test Procedures for the '242-A Evaporator/PUREX Plant Condensate Treatment Facility' using simulants and/or actual LERF-stored wastes, with recycle to the LERF basins.
 - M-17-20 Implement BAT/AKART for PUREX process condensate. No soil column disposal until BAT/AKART implemented as part of '242-A Evaporator/PUREX Plant Condensate Treatment Facility'.
 - M-17-29 Implement BAT/AKART for the 242-A Evaporator Process Condensate.
 - M-17-29A Cease all discharges to the 216-A-37-1 Crib. No soil column disposal of this effluent shall occur until BAT/AKART is implemented as part of '242-A Evaporator/PUREX Plant Condensate Treatment Facility'.
 - M-20-49 Submit RCRA research, development and demonstration (RD&D) permit application for the 242-A Evaporator/PUREX Plant Process Condensate Treatment Facility pilot plant testing in accordance with 40 CFR 270.65.
 - M-20-50 Submit complete RCRA Part B permit application for the 242-A Evaporator/PUREX Plant Process Condensate Treatment Facility to Ecology for approval, which includes 80% design, detail and available pilot plant test results.
 - M-26-03 Cease discharge of 242-A Evaporator process condensate effluent to LERF units.
 - M-26-04 Remove all hazardous waste residues from the 242-A Evaporator LERF units.
4. A RCRA Permit Issued Under the FFACO Must Reference the FFACO.

Paragraph 26 of the FFACO requires DOE to submit permit applications in accordance with the Action Plan, and further requires that the RCRA Permit issued after EPA and Ecology review "shall reference the terms of this Agreement . . ." Milestone M-20-49 of the Action Plan required DOE to submit an application

Draft Comments for Discussion

for the WWPP RD&D Permit. The resultant Permit must therefore reference the terms of the FFACO as underlying authority. As used in paragraph 26, "terms of this Agreement" is all-inclusive and does not allow the permit writers to pick and choose which terms they deem applicable and which are not.

B. Suggested Revisions.

Page 1, first paragraph

After "and the regulations promulgated thereunder in Title 40 of the Code of Federal Regulations."

Add: "and the Hanford Federal Facility Agreement and Consent Order (FFACO)."

Page 3, first paragraph, line 10

Prior to "a Permit is issued . . ."

Add: "and pursuant to the Hanford Federal Facility Agreement and Consent Order (FFACO),"

Page 3, second paragraph

After the second sentence

Add: "This Permit is intended to be consistent with the terms and conditions of the FFACO. In the event of a conflict between the Permit and any provision of the FFACO, the FFACO will prevail."

Page 3, third paragraph, first sentence

Revise the first sentence to read: "The Permittees shall comply with the FFACO and the federal regulations in 40 CFR Parts 124, 260 through 266, 268, and 270 as specified in this permit."

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ROLE OF STATE IN ISSUING RD&D PERMIT

A. Analysis

The Permit states that the State of Washington is not authorized to issue RCRA RD&D permits, but is co-issuing this permit under its independent state authority. The permit also states that all provisions are issued under concurrent authority, i.e. that there are no "state only" provisions which are more stringent than the federal regulations. This is an improper and unnecessary role for the State to take.

The Guidance Manual for RD&D Permits states that if a state is authorized to issue RCRA Permits but not RD&D Permits, the state "must decide whether to issue a full RCRA permit or defer to EPA to process an RD&D Permit." Ecology seems to have chosen neither alternative. It has neither deferred to EPA nor issued a full RCRA permit, but instead purports to issue a non-RCRA state law permit. The Guidance Manual does go on to state that if EPA issues the RD&D permit, a state or locality may impose additional limits. Here, while Ecology purports to issue the permit under state law outside RCRA, no provision is identified as an "additional" or "more stringent" state-only requirement. The State's role appears redundant at best.

B. Suggested Revisions

1. Delete all references to the Department of Ecology and state regulations from Page 1 of the permit.
2. On page 3, first paragraph, delete references to RCW 70.105, WAC 173-303, and Department of Ecology.
3. On page 4, delete the first two full paragraphs.
4. There are numerous other parallel references to state regulations throughout the permit which are rendered unnecessary.

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REQUIREMENT FOR APPEAL AND STAY PROCEDURE

A. Analysis.

The RD&D Permit provides that any challenges to EPA should be appealed to EPA in accordance with 40 CFR § 124.19, and any challenges to Ecology will be governed by WAC 173-303-845 which provides for an appeal to the Washington Pollution Control Hearings Board (PCHB). This provision should be modified for the following reasons.

If DOE is designated as the sole permittee, the only right to administratively challenge any condition of the Permit should be through the Dispute Resolution procedures of the FFACO. The Permit is clearly within the scope of the FFACO. If both DOE and WHC are designated as permittees, then DOE's appeal remains through the FFACO. WHC's appeal right should arise from Federal, not State, law, because there are no "State only" provisions in the Permit that would be appropriate for review under State appeal procedures. The Permit should be clarified to make clear that WHC is entitled to appeal any condition of the Permit to the EPA Administrator under 40 CFR § 124.19, thus eliminating any ambiguity regarding possible dual appeal procedures and conflicting results.

In the event that DOE is not the sole permittee, provision must be made for staying the application of a permit condition as to both permittees when the condition has been challenged by one permittee. The granting of a stay would be consistent with the Dispute Resolution provision of the FFACO which extends the time period for completion of work directly affected by a dispute for at least a period of time equal to the actual time taken to resolve a good faith dispute. FFACO, par. 29E, page 23. Extending the stay to both permittees would avoid inconsistent enforcement of the permit.

Clarification of the Permit is necessary to protect WHC, because applicable law does not provide for an automatic stay. WHC is not a party to the FFACO and would not therefore benefit from the Dispute Resolution provision of the FFACO in the event of a challenge by DOE. Were WHC to file its own appeal utilizing the procedures of 40 CFR § 124.19, a stay of a contested permit condition would only be invoked if the EPA Administrator granted the request for review. 40 CFR § 124.16. In the event that State appeal procedures were to apply, there is likewise no automatic stay. WHC would have to petition the PCHB for issuance of a stay. See RCW 43.21B.320. The Permit should therefore expressly provide for a stay in the event that either permittee challenges the Permit.

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B. Suggested Revision.

Page 4, second full paragraph

Replace the entire paragraph with: "The Agency shall enforce all Permit conditions in this Permit. Any challenges by the Department of Energy-Richland Field Office of this Permit shall be subject to the Dispute Resolution procedure of the FFACO. Any challenges by Westinghouse Hanford Company of this Permit shall be directed to the Agency in accordance with 40 CFR § 124.19. In the event of a challenge by either permittee, the Permit shall be stayed as to both permittees pending resolution of the challenge under the applicable procedure referenced above."

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INCLUSION OF REQUIREMENTS BY REFERENCE (SECTION I.B.1)

A. Analysis

Section I.B.1 incorporates into the permit by reference all the general permit requirements of WAC 173-303-810 and 40 CFR § 270.30, as well as all the final facility standards of WAC 173-303-600 and 40 CFR Part 264, "as applicable." This section is at best redundant and at worst dangerously vague, and should be deleted for the following reasons.

First, there is no counterpart to this section in the Model RCRA RD&D Permit, OSWER Policy Directive No. 9527.00-3C. Most of the other provisions of Parts I and II of the permit correspond to similar provisions in the Model RD&D Permit (although the order is different), but section I.B.1 does not. When the Model RD&D permit incorporates a regulation by reference, it does so specifically and for a specific purpose. For example, Model RD&D Permit § II.M on Security says: "The Permittee shall comply with the security provisions of 40 CFR § 264.14(b) and (c)." The first page of the Model RD&D Permit states that the Permittee must comply with the terms and conditions of the permit "and the regulations contained in 40 CFR Parts 260 through 265, 124 and 270 as specified in this permit." The Model RD&D Permit thus rejects the notion of wholesale incorporation of the substantive regulations.

Second, such a blanket incorporation by reference is also contrary to the underlying statutes and regulations. Section 3005(g) specifies that the EPA (or State) will include such provisions as it deems necessary to protect human health and the environment. It is specifically authorized to modify or waive permit requirements in the general permit regulations. § 3005(g)(2); 40 CFR § 270.65. The Guidance Manual for RD&D Permits explains that the standards in some parts of 40 CFR Part 264 will be used "as a guide to define general requirements for individual RD&D permits." (page 16) The Model RD&D Permit materials also stress that requirements from 40 CFR Parts 264 and 265 will be applied "where appropriate," but specifically lists many such provisions as optional. (Page 1, iv-v.) Thus the statute, regulations and guidance materials all reject the wholesale incorporation of Parts 270 and 264. RD&D permits are designed not to simply incorporate whatever regulations would otherwise be "applicable"; rather, the EPA is supposed to specify in the RD&D permit which provisions are applicable and necessary.

Third, the provision is entirely redundant to the extent it incorporates WAC 173-303-810 and 40 CFR § 270.30. Those sections list some 14 standard conditions which every RCRA permit should contain (although they could clearly be waived for an RD&D permit

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Draft Comments for Discussion

under 40 CFR § 270.65). Every one of those conditions is spelled out explicitly in Part I of the permit, as listed below. There is absolutely no need to incorporate the regulations by reference. It can add nothing to the specific provisions of the permit, which go beyond the regulations already (a.g., in Part I.F.2).

<u>Requirement</u>	<u>§ 270.30</u>	<u>WAC-810</u>	<u>Permit Section</u>
Duty to Comply	(a)	(2)	I.E.1
Duty to Reapply	(b)	(3)	I.E.2
Duty to Halt	(c)	(4)	I.E.3
Duty to Mitigate	(d)	(5)	I.E.4
Proper Operation	(e)	(6)	I.E.5
Permit Actions	(f)	(7)	I.C.
Effect of Permit	(g)	(8)	I.A.
Provide Info	(h)	(9)	I.E.6
Inspection	(i)	(10)	I.E.7
Monitoring	(j)	(11)	I.F.1-3
Signatory	(k)	(12)	I.J
Certification	(k), 270.11	(13)	I.J
Reporting	(l)	(14)	I.F.4-9
Confidentiality	270.12	(15)	I.B.3

With regard to the incorporation of WAC 173-303-600 and 40 CFR Part 264, the clause is not redundant but instead vague and confusing. Unlike § 270.30, Part 264 is a wide-ranging regulation that takes up some 150 pages in the CFR. It is unreasonable to expect the Permittees to parse through that regulation and determine which provisions beyond those specified in the permit are "applicable." Further, while many of the topics covered by Part 264 are covered by Part II of the permit, the permit requirements are based on incorporation of (and specific modifications to) the Attachments, rather than incorporation of "applicable" regulations. Therefore, incorporation by reference of anything "applicable" in Part 264 creates the possibility of conflict between the permit and regulations.

Further, there are certain provisions in Part 264 which are not reflected in Part II of the permit. These provisions were omitted deliberately. Part I.B.1 creates the possibility for confusion and dispute over whether they are nevertheless

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"applicable." The most obvious examples are the financial assurance and liability insurance provisions of Part 264, Subpart H. While mandated for RD&D permits, these provisions are not applicable at a federal facility. The Guidance Manual for RD&D Permits addresses this specifically at Page 22:

It should be noted that the Federal government and State governments are exempt from the Subpart H financial requirements (§ 264.140(c)) if they own or operate the facility. When one party (the owner or operator) is an exempted party because it is a State or Federal entity, then any other private sector party may not need to comply with the financial responsibility requirements. The State or Federal government may, however, require the private sector party to demonstrate financial responsibility by means of a contractual agreement.

Thus financial responsibility of Westinghouse Hanford Company is a matter of its contract with Department of Energy, and is correctly omitted from this permit.

Finally, the incorporation of all of Part 264 "as applicable," rather than specific sections of the regulations as in the Model RD&D Permit, makes the exact permit requirements open-ended. The "applicable" requirements will not be determined until some time in the future. This deprives the Permittees of a meaningful opportunity to commit upon or challenge the appropriateness of any permit conditions that are incorporated by reference. Under 40 CFR § 124.19 and WAC 173-303-840(6), the Permittees must raise all "reasonably ascertainable issues" during the comment period. Inclusion of Section I.B.1 could create needless disputes over which provisions of Part 264 are "reasonably ascertainable" as "applicable."

In conclusion, Part I.B.1 is contrary to the EPA's own Guidance Manual and Model RD&D Permit. It is at best redundant and at worst a confusing source of potential disputes. Under the Model Permit and Guidance Manual, only those regulatory provisions specified in the permit are "applicable." If there are applicable provisions of Part 264 that can be identified, they should be specifically incorporated into the appropriate sections of the permit, as is done in the Model RD&D Permit. A corresponding change should be made on page 3 of the permit.

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B. Suggested Revisions

1. Change title of Section I.B. to "Confidential Information."
2. Delete I.B.1 for reasons above.
3. Delete I.B.2 because the attachments are already incorporated by reference on page 5.
4. Text of I.B.3 retained as Section I.B.
5. On page 3 of permit, replace the third paragraph with the following:

The Permittees shall comply with the FFACO and the federal regulations in 40 CFR Parts 124, 260 through 266, 268, and 270, as specified in this permit. The Permittees shall also comply with any self-implementing statutory provisions which, according to the requirements of RCRA (as amended) or state law, are automatically applicable to Permittees' dangerous waste activities, notwithstanding the conditions of this Permit.

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