



Confederated Tribes and Bands
of the Yakama Indian Nation

Established by the
Treaty of June 9, 1855

040582

December 10, 1996

Thomas W. Ferns, NEPA Document Manager
Hanford Remedial Action
Environmental Impact Statement
U.S. Department of Energy
Richland Operations Office
P.O. Box 550, MSIN HO-12
Richland, WA 99352



Mr. Ferns:

Please accept the attached comments from my technical staff regarding the Draft Hanford Remedial Action Environmental Impact Statement on behalf of the Yakama Nation Division of Natural Resources. As you know, the Hanford Site is located upon lands ceded by the Yakama Nation to the United States Government in the Treaty of 1855 - lands which possess great cultural significance to the Yakama people and throughout which we maintain treaty-reserved rights.

This document raises several concerns which my staff addresses in the attached comments, and with which I concur.

If you have questions regarding our comments please feel free to contact me or my staff at (509) 865-5121.

Sincerely,

f Carroll E. Palmer, Deputy Director
Yakama Nation Division of Natural Resources

CONCUR: *Cecil Sanchey*
207 Cecil Sanchey, Chairman
Radioactive/Hazardous Waste Committee

Enclosures





Confederated Tribes and Bands
of the Yakama Indian Nation

Established by the
Treaty of June 9, 1855

MEMORANDUM

TO: Carroll Palmer, Deputy Director, DNR
Radioactive/Hazardous Waste Committee

FROM: Bill Beckley, Environmental Scientist, EPP

THROUGH: Moses Dick Squeochs, Program Manager, EPP

DATE: December 9, 1996

SUBJECT: Comments on Draft Hanford Remedial Action Environmental Impact Statement

Following are comments based on my review of the Draft Hanford Remedial Action Environmental Impact Statement released this September by the Department of Energy. My comments on the document are general, rather than specific to water quality, because the document is not framed in a manner that allows for an assessment of site-wide environmental impacts which would result from implementation of this proposal. Below I have described what I consider significant flaws in the analysis of this action; relevant regulations which describe appropriate remedies; and recommendations regarding what I feel should be included in a revised document to enable us to perform a meaningful analysis of the proposal.

SCOPE

Background

The Department of Energy (DOE) filed a Notice in the Federal Register on August 21, 1992 of their intent to prepare the Hanford Remedial Action Environmental Impact Statement (HRA-EIS). In that Notice of Intent (NOI), DOE indicated that the HRA-EIS would "evaluate a range of remediation approaches and technologies and their application to various site conditions to estimate the potential cumulative impacts associated with the different alternatives for environmental remediation, including those relevant impacts from other past, present, and reasonably foreseeable activities at the site."



In September of this year, the DOE released the HRA-EIS in draft form for public review and comment. In addition to the purposes identified in the NOI, the Draft EIS identifies the development of a site-wide comprehensive land use plan as a primary purpose of the document.

Major Concerns

Between the scoping period initiated by the 1992 Notice of Intent and the release of the Draft HRA-EIS in 1996, the scope and emphasis of this proposal appears to have changed significantly, with the inclusion of a Comprehensive Land Use Plan (CLUP) and the stated intent to adopt such a plan in the Record of Decision (ROD). DOE indicates in the Draft HRA-EIS (Vol. 1, page 5-212) that, "The proposed action of this EIS could lead to extensive changes in existing land uses at the Hanford Site. These changes could be significant in themselves, without considering other potentially significant decisions". The CLUP, which "could be significant", and would arguably require an EIS in its own right, is now being added to the HRA-EIS as an appendix without allowing for a formal scoping period and without performing any alternative analysis.

Recommendations

According to the CEQ Regulations for implementing the National Environmental Policy Act, if substantial changes are made later in the proposed action (i.e., after the initial scoping period) an agency shall revise their determination of scope and significant issues to be analyzed in depth (40 CFR §1501.7 (c)). It is apparent that the scope and purpose of the HRA-EIS has changed with the addition of a land use plan, a change that DOE admits "could be significant" and "could lead to extensive changes in existing land uses at the Hanford Site". However, the framework for alternative development and analysis has not changed to reflect this change in scope.

To correct this, I recommend that DOE: (1) revise the scope and the significant issues to be analyzed in the EIS; (2) revise the framework for alternative development and analysis to include a reasonable range of land use alternatives and analysis of the direct, indirect, and cumulative effects which are likely to be associated with those alternatives; and (3) issue a revised Draft EIS for public review and comment.

ALTERNATIVE ANALYSIS

Background

The discussion of alternatives is "the heart of the environmental impact statement" (40 CFR §1502.14). In evaluating alternatives including the proposed action, an agency must "present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public." Each of the alternatives should address the underlying need of the proposal, which is described in the "Purpose and Need" section of the EIS.

Major Concerns

Because of the fundamentally flawed manner in which the Draft HRA-EIS addresses alternatives, the document does not provide a clear basis for comparison between **site-wide** alternatives. In fact, the EIS does not actually describe *any* site-wide alternatives. Various “land use alternatives” are proposed for each of four geographic areas that make up the Hanford Site (for example, a Restricted Land Use alternative for the Reactors on the River geographic area, etc.). None of the alternatives would achieve the proposed action *by themselves*. The alternatives for each of the geographic areas must be combined in some manner to achieve the proposed action. The problem with this is that it is left to the public and the decisionmaker to combine the alternatives in various ways and then to try and determine what the combined environmental impacts would be. This analysis should be provided in the document.

The EIS (vol. 1, page 3-4) states that, by using screening criteria, the list of reasonable future land use alternatives was reduced to 10. (Actually it has been reduced to 12 since there are two restricted use alternatives for the Reactors on the River and All Other Areas geographic areas). While this may not seem like an unreasonable number of alternatives, these 12 individual alternatives can be combined to form **72** different site-wide alternatives, none of which is described or evaluated in the EIS. There is no need for DOE to attempt to analyze every possible combination of geographic area alternatives in the EIS, only *a reasonable range of alternatives*. However, because the EIS fails to analyze *any* alternatives which include all of the geographic areas, the public is forced to look at all 72 and to attempt to determine combined environmental impacts.

Recommendations

According to CEQ Regulations, “If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion.” (40 CFR §1502.9(a)). Because this document neither describes nor evaluates any site-wide alternatives that would achieve the proposed action, it most certainly “precludes meaningful analysis”. At a minimum, as required by regulation, the section of the Draft EIS titled “Proposed Action and Alternatives” should be revised and recirculated for public review. The revised section should describe and analyze a reasonable range of alternatives which each address all four geographic areas. DOE may wish to meet with stakeholders to try and determine what a “reasonable range” might be.

As I have recommended above, I believe the entire EIS should be revised to correct these and other inadequacies and recirculated as a draft. This does not mean I think DOE should start over and prepare a new document. Just that the development and analysis of alternatives and impacts should be properly framed to meet the revised scope of the proposal, and that each alternative should address all geographic areas.

CUMULATIVE IMPACTS

Background

The CEQ regulations require that cumulative impacts be considered together in a single EIS (40 CFR § 1508.25). Cumulative impacts are defined as those impacts on the environment “which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” (40 CFR §1508.7).

In the 1992 Notice of Intent to prepare the HRA-EIS, DOE identified one need which the EIS would address would be “to estimate the potential cumulative impacts associated with the different alternatives for environmental remediation”. The recently issued Draft HRA-EIS reiterates that DOE is responding, through this document, to the need to “evaluate the potential overall cumulative impacts from implementing the *Richland Environmental Restoration Project Plan*”. This is a very valid and important need and should be a major focus of the environmental analysis in the EIS.

Major Concerns

Despite the expressed intent to devote substantial treatment to evaluating cumulative impacts in the HRA-EIS, DOE appears to have failed to meet even the minimum requirements in the regulations for cumulative impact analysis. Cumulative impacts result from the incremental impact *of the action* when added to other past, present, and reasonably foreseeable future actions. The action, in the case of the Draft EIS, is described as the establishment of land use objectives to simplify the process for determining appropriate remediation levels. The EIS should then propose a reasonable range of alternative actions by which DOE can meet this objective. Each alternative must then be analyzed as if that alternative were *the action* to be taken. Therefore cumulative impacts need to be evaluated for *each alternative* when combined with past, present, and foreseeable future actions. Because DOE has failed to evaluate cumulative impacts for each alternative, there is no basis for comparison between the alternatives. Additionally, the courts have ruled that a mere acknowledgment of effects alone is not enough, without alerting the decisionmaker to the nature of those effects.

Recommendations

It appears that the failure to properly evaluate cumulative impacts in this EIS is directly related to the failure discussed above to develop site-wide alternatives which would achieve the purpose of this proposal. The action to be taken would need to be some combination of geographic area alternatives, and the analysis of site-wide environmental impacts resulting from this combination of alternatives, which would provide the basis for evaluating cumulative impacts, is completely lacking in the EIS. As cited above, CEQ Regulations require that if a draft statement is “so inadequate as to preclude meaningful analysis”, the agency shall prepare and circulate a revised draft of the appropriate portion. Since the cumulative impacts discussion in the Draft EIS provides no basis for comparison between alternatives, it clearly precludes meaningful analysis.

At a minimum, the cumulative impacts analysis should be revised and recirculated in draft form for public review and comment. Combined with the inadequacies of the other sections discussed above, I would again recommend that the entire draft EIS be revised and recirculated for public review. Revisions should include, at a minimum, a revised determination of scope and significant issues to be analyzed in depth; a revised evaluation of direct and indirect effects of a reasonable range of site-wide alternatives; and a revised evaluation of the cumulative impacts of each alternative when combined with other past, present, and reasonably foreseeable future actions.

GENERAL COMMENTS

Indirect Effects

Comprehensive Land Use Plan

Every EIS must evaluate the direct, indirect, and cumulative effects of a proposal. Indirect effects are defined as those that are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth effects and other effects **related to induced changes in land use**, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems (40 CFR § 1508.8).

The Record of Decision for this EIS is intended to be the decision process for finalization and adoption of a Comprehensive Land Use Plan. DOE indicates in the Draft EIS (vol. 1, page 5-212) that the proposed action of the EIS **could lead to extensive changes in land uses** at the Hanford Site. These changes **could be significant in themselves**, without considering other potentially significant decisions. However, future land use impacts are not included in the scope of this EIS (vol. 1, page 1-15). Future land use impacts are indirect effects of this proposal and need to be evaluated in the EIS.

ALE and North Slope

The land use decisions that will be made through the adoption of the CLUP as part of this EIS may have direct, indirect, and cumulative effects on both the Arid Lands Ecology Reserve (ALE) and the North Slope geographic areas. However, the EIS provides no analysis of what these environmental impacts may be. The land uses proposed in the CLUP differ from existing land uses at ALE and North Slope, as well existing land uses in adjacent areas. The land use changes are likely to have impacts, and these impacts need to be analyzed in the EIS



Confederated Tribes and Bands
of the Yakama Indian Nation

Established by the
Treaty of June 9, 1855

MEMORANDUM

TO: Radioactive/Hazardous Waste Committee
Carroll Palmer, Deputy Director, DNR

THROUGH: Mose Dick Squeochs, Program Manager, EPP *[Signature]* 12-10-96

THROUGH: Russell Jim, Program Manger, ER/WM *[Signature]* 12-10-96

FROM: Paul Ward, Policy Analyst Intern, ER/WM *[Signature]*

DATE: December 9, 1996

RE: Draft Hanford Remedial Action Environmental Impact Statement

The following are comments based upon my review of the Draft Hanford Remedial Action Environmental Impact Statement (HRA-EIS) released by the Department of Energy in August of 1996. My comments address some larger policy concerns while those of the Richland Office address technical issues.

Environmental Justice Impacts to Native Americans:

Background:

HRA-EIS Section 5.13.2.2.2 addresses the exercise of treaty reserved rights by Yakama Tribal members on the Hanford Reserve. These reserved rights are remanent aboriginal rights reserved by the Yakama Nation in the Treaty of 1855, which was ratified by Congress in 1859. DOE splits these reserved rights between aquatic and terrestrial resources. The access to fisheries on the Hanford Reach is not questioned by DOE. However, access to terrestrial resources is denied to the entire reserve.

Major Concerns:

The Yakama Nation objects to the inclusion of an analysis of our legal rights within a NEPA document. This is an inappropriate forum to determine what rights exist pursuant to the Treaty of 1855. DOE fails to consider alternatives based upon geographic units but applies this as a blanket denial of rights. The Yakama Nation assumes that this denial applies to the entire site as the EIS Scope includes ALE and North Slope. (Scope 1.2, p. 1-5)



Additionally, there is a failure to provide any legal substantiation of the DOE claim. This blanket denial of rights throughout the entire site, including areas not considered for remediation, flies in the face of the DOE trust responsibility to Yakama Nation.

Recommendations:

Any reference denying the treaty reserved rights of the Yakama Nation must be removed from this document. DOE should consider what alternatives are feasible for each geographic area given exposure of natural resources and projected exposure of tribal members in collecting these resources.

Areas such as ALE and North Slope, though required for buffer zones during remediation of the other units, should be accessible at Yakama Nation's discretion.

Irreversible and Irrecoverable Commitment of Resources:

Background:

CERCLA Section 107(f) allows for the identification of irreversible and irretrievable commitment of resources in drafting an EIS. The HRA-EIS assumes that this identification and a subsequent Record Of Decision (ROD) will release DOE from Natural Resource Damages pursuant to CERCLA.

Major Concerns:

The identification of committed resources is only one of several conditions which must be met for the Section 107(f) exclusion to apply. For example CERCLA requires that the committed resources be specifically identified and that a permit or license be issued. It is not apparent from the HRA-EIS how all the conditions could be met. Further, even if these conditions were met, it is not clear that the Section 107(f) exclusion would apply to resources committed in remediation of past releases at the Hanford Site.

Recommendations:

DOE's identification of natural resources which may be injured during remediation, development of a plan to properly mitigate those injuries, and action upon that plan, may reduce liability under Section 107(f) of CERCLA. Such action would also meet the policy set forth in the NEPA regulations which states that Federal agencies shall: "Use all practical means ... to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their action upon the quality of the human environment" (40 CFR 1500.2(1)). The draft EIS falls short of reducing liability or meeting NEPA policy by only generally identifying injured natural resources, summarily discussing mitigation opportunities, and deferring any detailed mitigation planning and commitments until after an alternative is selected. By addressing these issues, DOE can reduce potential liability in advance of the CERCLA damage assessment process and better maintain the natural resources for which DOE is a trustee under both CERCLA and

NEPA.

The issue of I and I commitments arises in the context of borrow sites addressed by the Yakama Nation below, and must also meet with the higher standard of trust responsibility to the Yakama Nation.

Borrow Sites:

Background:

Present plans for remediation of Hanford Site wastes include the construction of surface caps over waste sites to isolate these substances from the environment. Construction of these caps, or Hanford Barriers, requires massive volumes of silt and basalt materials.

The HRA-EIS identifies several possible sites for obtaining these materials including Gable Mountain, Gable Butte and ALE for basalt and McGee Ranch for fine grain sediments.

Major Concerns:

As made abundantly clear to DOE staff involved in the drafting of the HRA-EIS, the Yakama Nation is opposed to the use of Gable Butte, Gable Mountain and ALE as borrow sites. These three sites are of tremendous religious significance to the Yakama Nation. Accessing these sites for cap material would have tremendous permanent impact to the religious and cultural uses of the Yakama Nation. The selection of these sites would also be derogation of DOE trust responsibility to the Yakama Nation under Federal court common law and DOE trust responsibility in making an irretrievable and irreversible commitment of resources under CERCLA.

In addition to the contemporary impact to the free exercise of traditional Yakama religion on these site, use of Gable Butte, Gable Mountain and ALE for borrow site would also destroy numerous archaeological properties. These sites were used for thousands of years by resident and non-resident natives and contain information which is irreplaceable in nature.

Additionally, the consideration of McGee Ranch as a source for fine grain sediments is not acceptable as the Ranch is an important corridor for the migration of animal and plant species of concern between the Yakima Training Center and the Hanford Reserve's Arid Lands Ecology Unit. This is important from a natural resource perspective as opposed to the cultural significance of the basalt quarries and is also of great concern to the Yakama Nation.

Recommendations:

The Yakama Nation cultural concerns require that DOE delete Gable Butte, Gable

Mountain and ALE from the list of borrow site alternatives. As stated in the EIS, the estimated volumes are a conservatively high volume and eventual needs should show a smaller quantity of basalt is required for remediation activities. This smaller quantity should enable other sites to be considered from engineering, budgetary and cultural perspectives.

Maintaining and improving McGee Ranch as a biological corridor will enable DOE to lessen its natural resource liability under CERCLA. Consideration of the natural resource damager liability as an additional cost to accessing McGee Ranch will lessen its attractiveness as a sediment source when compared to other alternatives with less possible natural resource liability.



Confederated Tribes and Bands
of the Yakama Indian Nation

Established by the
Treaty of June 9, 1855

TRANSMITTAL FORM

TRIBAL PURCHASING

P.O. Box 151-Ft. Road
Toppenish, WA 98948
(509) 865-5121
FAX #: (509) 865-5522

DATE: Dec 19 2001

TO: Tom Foy, H&A-E&C, 12000 1st Ave, Everett, WA 98201
Department of Public Works, Project Management Team

FAX #: (509) 865-5522 TOTAL PAGES: 11

FROM: Victoria L. Brown, Director of Tribal Purchasing

COMMENTS: Transmittal on H&A-E&C

NOTE: If you do not receive total number of pages (including cover) please contact us at (509) 865-5121 ext.399