

START



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Mail Stop PV-11 • Olympia, Washington 98504-0711 • (206) 459-6000

July 5, 1991

Mr. Steven H. Wisness  
Hanford Project Manager  
U.S. Department of Energy  
P.O. Box 550  
Richland, Washington 99352



Dear Mr. Wisness:

As a courtesy, I provided you a copy of a Memorandum of Understanding (MOU) the Department of Ecology and the Benton/Franklin County Health District were planning on signing. This MOU is intended to solely apply to the Solid Waste Landfill which is adjacent to the Dangerous Waste Landfill. On June 28, 1991 I discussed this issue with Leo Little. Mr. Little agreed that the direction Ecology was taking was appropriate.

Under RCRA, we are required to investigate and undertake, where appropriate, corrective action at hazardous waste facilities which have impacted the environment. This requirement applies to the Dangerous Waste Landfill. Further, this same requirement applies to Solid Waste Management Units, as defined under RCRA. This requirement applies to the Solid Waste Landfill.

As I explained, these two units are essentially contiguous. It is therefore prudent to investigate and, if needed, coordinate corrective actions for both of these units.

The MOU provides Ecology authority to manage the Solid Waste Landfill to accomplish this goal. It also provides USDOE a single point of contact, more control in resource expenditures, a better ability to plan activities, and a consistent integrated approach to the issues involved.

You expressed concern that it was your belief that solid waste was not part of the Tri-Party Agreement (TPA) and, therefore, was not subject to funding under it's terms. In principle, I concur with you. However, where hazardous waste activities are inextricably linked with another activity (e.g. contaminant investigations/corrective actions) we must address the problem under the TPA.

The MOU addresses a legal issue for Ecology and the Benton/Franklin County Health District. It will not encumber or obligate USDOE for any specific funding under the TPA that would not be borne without it.



MEMORANDUM OF AGREEMENT

THIS AGREEMENT is a valid, binding contract made and entered into between the STATE OF WASHINGTON, acting by and through the DEPARTMENT OF ECOLOGY, hereinafter called the DEPARTMENT, and the Benton-Franklin County Health District, hereinafter called the DISTRICT.

DISTRICT'S Legal Address and Telephone Number:

Benton-Franklin District  
Health Department  
506 McKenzie  
Richland, WA 99352  
(509) 943-2614

WITNESSETH

WHEREAS, the State of Washington has entered into an agreement with the Environmental Protection Agency and the Department of Energy, known as the Tri-Party Agreement, which provides for extensive regulation of solid and hazardous waste activities at the Hanford facility which will require a coordinated regulatory effort that minimizes duplication of effort; and

WHEREAS, the DISTRICT is provided with jurisdiction over solid waste handling facilities under chapter 70.95 RCW; and

WHEREAS, RCW 70.95.163 authorizes the DISTRICT to contract with the DEPARTMENT to provide for the exercise by the DEPARTMENT of any power granted to the DISTRICT by chapter 70.95 RCW; and

WHEREAS, the legislative bodies served by the DISTRICT have approved entry of the Agreement (attached as Appendix A); and

WHEREAS, historically the Federal government has denied jurisdiction to the Hanford Reservation to the DISTRICT for enforcement of the solid waste laws under chapter 70.95, and

WHEREAS, the DISTRICT has been unable to enforce chapter 70.95 RCW as a result of the actions of the Federal government;

NOW, THEREFORE, IN CONSIDERATION OF MUTUAL BENEFITS TO BE DERIVED FROM THIS AGREEMENT, THE DEPARTMENT AND DISTRICT agree as follows:

1. SCOPE OF SERVICE

The DEPARTMENT agrees to perform specific functions assigned by chapter 70.95 RCW to the DISTRICT over solid waste handling in respect to a solid waste facility located on the Hanford Reservation and owned and operated by the United States of America, its agencies, contractors, successors, or assigns.

The DEPARTMENT shall be authorized and shall have exclusive power and authority for the issuance and enforcement of a solid waste permit for an application by the Federal government received by the DISTRICT on January 31, 1991. The permit covers a facility located approximately in portions of Sections 19, 20, 29, 30, Township 12 North, Range 27 East, Benton County, Washington.

Nothing herein shall affect the jurisdiction of the DISTRICT over solid waste handling facilities other than the one covered by the Federal government's application of January 31, 1991, hereinbefore described.

## 2. PERFORMANCE

- a. Effective Date: The effective date of this agreement shall be the date it is signed by the Assistant Director for Waste Programs of the DEPARTMENT. Prior to signature of this Agreement, the DISTRICT has obtained the approval of the legislative authority (ies) which it serves as required by RCW 70.95.163. Said approvals are attached hereto as Appendix A.
- b. Duration: This agreement shall be valid and binding upon the parties until otherwise terminated in accordance with paragraph 3 of this Agreement.
- c. Reporting: The DEPARTMENT shall provide the DISTRICT with notice of issuance of all final permits and determinations made under the State Environmental Policy ACT (SEPA), chapter 43.21C RCW and 197-11 WAC. For any action taken pursuant to the authority conferred by this Agreement, the parties agree that the DEPARTMENT shall be the lead agency for SEPA purposes.

## 3. TERMINATION OF AGREEMENT

- a. Upon Notice: This agreement shall be reviewed every ten (10) years by the parties. Within thirty (30) days of the anniversary date of this contract in 2001, and each ten-year period thereafter, either party may terminate this contract by providing written notice of such termination and specifying the effective date thereof, at least one hundred eighty (180) days before the effective date of termination.
- b. Upon Agreement: This Agreement may be terminated upon the written agreement of the DEPARTMENT and the DISTRICT. Prior to entering into any agreement to terminate this Agreement, the DISTRICT shall obtain the approval of the legislative bodies which it serves.

#### 4. INDEMNIFICATION

The DEPARTMENT shall indemnify, defend and hold harmless the DISTRICT, its officers, agents, employees and the legislative authorities that comprise said DISTRICT, from and against any and all claims, losses or liability, including attorney's fees, arising from injury or death to persons or damage to property occasioned by an act, omission or failure of the DEPARTMENT, its officers, agents and employees, in performing the work required by this agreement.

With respect to the performance of this Agreement and as to claims against the DISTRICT, its officers, agents and employees, the DEPARTMENT expressly waives its immunity under Title 51 of the revised code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligation to indemnify, defend and hold harmless, provided for in this paragraph, extends to any claim by or on behalf of any employee of the DEPARTMENT. This waiver is mutually negotiated by the parties.

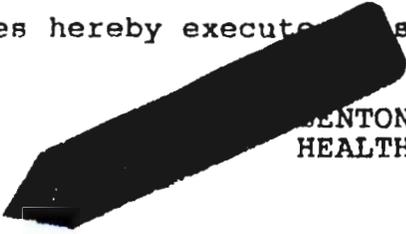
This paragraph shall not apply to any damage resulting from the sole negligence of the DISTRICT, its agent and employees. To the extent any of the damages referenced by this paragraph were caused by or resulted from the concurrent negligence of the DISTRICT, its agents or employees, this obligation to indemnify, defend and hold harmless is valid and enforceable only to the extent of the negligence of the DEPARTMENT, its officers, agents and employees.

#### 5. MISCELLANEOUS PROVISIONS

- a. Parties Bound: This Agreement is binding upon the DEPARTMENT and the DISTRICT and all successor agencies thereto.
- b. Assignments: No right or claim arising under this Agreement may be transferred or assigned.
- c. Waiver: Waiver of a breach of any provision of this Agreement is not a waiver of any subsequent breach and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of the DEPARTMENT.
- d. All Writing Contained Herein: This Memorandum of Agreement and appendices attached hereto contain the entire understanding between the parties, and there are no other agreements, understanding, or representations set forth or incorporated by reference herein. No subsequent modification(s) or amendment(s) of this Agreement shall be of any force or effect unless in writing, signed by authorized representative of the DISTRICT and the DEPARTMENT and made a part of this original Agreement.

IN WITNESS WHEREOF, the parties hereby execute  Memorandum of Agreement.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

 BENTON-FRANKLIN DISTRICT  
HEALTH DEPARTMENT

\_\_\_\_\_  
TERRY HUSSEMAN  
Assistant Director

Date \_\_\_\_\_

Approved as to Form

  
\_\_\_\_\_  
Assistant Attorney General

Contract No. \_\_\_\_\_  
Accounting Data \_\_\_\_\_

\_\_\_\_\_  
Executive Secretary

Date \_\_\_\_\_

\_\_\_\_\_  
Chairman, Board of Health

Date \_\_\_\_\_

## CORRESPONDENCE DISTRIBUTION COVERSHEET

Author: J. M. Ring, 376-8162  
Addressee: Steven H. Wisness,  
DOE Field Office, Richland  
Correspondence No.: Incoming:9102865  
Subject: DRAFT MEMORANDUM OF AGREEMENT BETWEEN BFDHD AND ECOLOGY FOR REGULATION  
OF THE SOLID WASTE LANDFILL

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