



Confederated Tribes and Bands
of the Yakama Nation ERWM

Established by the
Treaty of June 9, 1855

January 6, 2014

Kim Ballinger
U.S. Department of Energy
Richland Operations Office
P.O. Box 550, A7-75
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Steve Lowe
Washington Department of Ecology
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Subject: Review of Class 3 Modifications to the Hanford Site RCRA Permit for the Low-Level Burial Grounds Trenches 31, 34 and 94, the Central Waste Complex and Waste Receiving and Processing Facility (CWC-WRAP) and the T-Plant Complex (T-Plant).

Dear Ms. Ballinger and Mr. Lowe:

The Confederated Tribes and Bands of the Yakama Nation is a federally recognized sovereign pursuant of the Treaty of June 9, 1855 made with the United States of America (12 Stat. 951). The U.S. Department of Energy Hanford site was developed on land ceded by the Yakama Nation under the 1855 Treaty with the United States. The Yakama Nation retains reserved rights to this land under the Treaty.

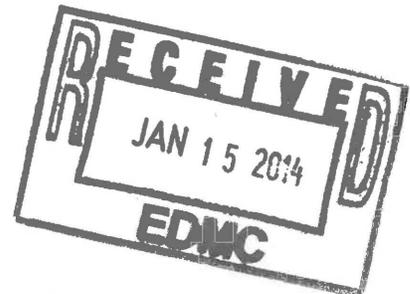
These modifications to the Hanford RCRA Permit Rev. 8C are in part the result of actions required by the Consent Agreement and Final Order (CAFO-No. RCRA-10-2013-0113) executed by the U.S. Department of Energy (DOE) and the U.S. Environmental Protection Agency (EPA) dated June 26, 2013. The Confederated Tribes and Bands of the Yakama Nation appreciate the opportunity to review and provide comments on these documents.

We look forward to discussing our concerns.

Sincerely,

Russell Jim
Yakama Nation ERWM Program Manager

cc:
Matt McCormick, Manager, US Department of Energy
Jane Hedges, Washington State Department of Ecology
Ken Niles, Oregon Department of Energy
Stuart Harris, CTUIR
Gabe Bohnee, Nez Perce



Marlene George, YN ERWM
Administrative Record

Attachment:

Note these comments do not reflect a detailed description of all our concerns.



Attachment 1: Major Concerns:

Interim Status Standards & the RCRA Permit:

1. Ecology has stated “Prior to the issuance of the permit in 1994, Hanford Site TSD units operated under interim status—a status provided for under RCRA, which grants a Facility the right to continue to operate in accordance with applicable RCRA or state regulations until a RCRA final status permit is issued. Any TSD unit not included in the initial Permit, which became effective in 1994, was to be incorporated through a permit modification process (a change control process defined in WAC 173-303-830). This process was initiated by the submittal of a Part B permit application, closure plan, closure/post-closure plan, and/or post-closure permit application in accordance with WAC 173-303-610, -803, -806. The TSD units not yet incorporated into the original Permit were to continue to operate under interim status requirements WAC 173-303-400.” **All modification documents support DOE’s continued RCRA operations under Interim Status Standards despite violations of WAC 173-303-400 and -805 requirements.**

However, under EPA/DOE Consent Agreement and Final Order (CAFO-No RCRA-10-2013-0113), DOE was charged with failure to comply with Land Disposal Restriction [WAC 173-303-140] at the Low-level Burial Grounds Trenches 34. This is a clear violation of the Interim Status standards of WAC 173-303-400(3)(i) and the WAC 173-303-805 requirements. **All operations for all Hanford site units operating under interim status standards should cease immediately and until such time they are fully permitted under WAC 173-303-806, including for closure of the CWC, T-Plant and LLBG storage areas as required pursuant to the EPA Order. Continued operations under interim status standards should be subject to RCRA final status permit requirement violation penalties.**

Furthermore, we request Ecology bar any offsite waste shipments to CWC and/or LLBG. We request EPA to also bar any offsite waste shipments to the Hanford site CWC and LLBG facilities under the CERCLA offsite waste rules [40 CFR 300.440(a)] due to these substantial violations.

2. While the documents are intended for the purpose of closure of illegal TSD units, they also list other storage and/or treatment DWMUs which are or could be by the public, considered to be permitted facility units. **This list of units should not be construed to be compliant with WAC 173-303-container/containment building/storage area/tank/miscellaneous unit regulations.**
3. Ecology issued a draft permit for these units in 2012. Hundreds of comments were submitted requesting DOE comply with WAC 173-303 regulations for operation of facilities which treatment, storage, and disposal of wastes and closure [including removal of illegally stored waste] of illegally operating units on the Hanford site. Delays in issuing a permit only complicate the regulatory pathways for these types of modifications and the public review of related documents. **This piecemeal approach to permitting on the Hanford site should not continue.**

SEPA:

1. The SEPA regulations state that SEPA evaluations are to occur in conjunction with licensing/permitting activities [197-11-030(2)(e)]. DOE’s SEPA checklist submitted to

Ecology should be included in this modification request for public review. The SEPA checklist evaluates the impacts of the proposal as presented/documented in the dangerous waste permit application/permit modification request.

Part A forms:

1. The Part A Form seems to be considered as establishing permit conditions. **The sections in the Part A must not be taken to provide any changes in authorization for any DWMU that may be operating under Permit Condition I.A.1.**

Example#1:

- The Part A form should identify and does not, all LLBG trenches as subject to Dangerous Waste Regulations until such time that characterization (including actively digging up waste in support of sampling) demonstrates it is not RCRA waste. As previously noted, this facility is not in compliance with WAC 173-303-400 requirements.
 - With the first submittal of the Part A for interim status in 1985, the U. S. Department of Energy (DOE) declared the process codes and capacities, dangerous waste codes, and unit boundaries for the Low Level Burial Grounds (LLBG).
 - As a RCRA Treatment, Storage, and Disposal (TSD) facility, hazardous waste became regulated under Washington's Hazardous Waste Management Act, Chapter 70.105 of the Regulatory Code of Washington (RCW). RCW 70.105.109 provides that: "The Department of Ecology may regulate all hazardous wastes, including those composed of both radioactive and hazardous components, to the extent it is not preempted by federal law."
 - The waiver of sovereign immunity, 42 U.S. Code (U.S.C.) paragraph 6961(a) states in pertinent part as follows: "Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges... The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to the in the preceding sentence, or reasonable service charge)." The wording of the waiver located at 42 U.S.C. paragraph 6961 was amended, of course, in the Federal Facilities Compliance Act of 1992. However, the operative language of the waiver -- " [e]ach department. ..of the Federal Government... shall be subject to, and comply with, all ... State requirements" - has been in the statute since 1978. **There should be no categorizations for TRU wastes disposed at Hanford.**

- **Associated issues:**
 - Whether or not any new information gathered (without actual characterization) will substantiate the claims of non-use, and the closure of a sub-portion (i.e. the ‘unused trenches’) of a subunit (i.e. the LLMW Burial Grounds TSD) independent and to different closure standards of the rest of the facility (i.e. the entire Hanford Facility under the RCRA permit).
 - References to acceptance or potential acceptance of Off-site Waste at LLBG Trenches 31 & 34. Off-site wastes should not be permitted to be buried on the Hanford site until a cumulative Risk Assessment indicates there will be no exceedances of groundwater cleanup standards.
 - Under the federal superfund statute, a unit, or burial ground, at a facility, such as the Hanford Reservation, may only receive off-site waste if the facility is operating in compliance with relevant federal and state law [CERCLA 121(d)(3), 42 U.S.C.A. § 9621(d)(3)]. To satisfy this standard, the unit must not be releasing any waste *and* any releases at units elsewhere in the facility must be controlled by a corrective action program [CERCLA 121(d)(3), 42 U.S.C.A. § 9621(d)(3)].
 - SEPA requirements/coverage for authorization of acceptance of offsite waste has yet to be met.
 - Trenches 31 & 34 are twenty years past their *intended operational life*.

Example #2: Integration of CWC-WRAP into one facility. Previously, CWC and WRAP were managed as separate OUGs. The primary mission and operational capabilities are different. Combining these two facilities into one unit makes public reviews very difficult. **At issue is the continued mismanagement of containers [e.g., labeling discrepancies and non-permitted storage of dangerous waste].**

2. **The Part A forms for the proposed permit modifications for unit closures cannot authorize any treatment, storage, or disposal of dangerous mixed wastes except as specifically identified by the approved closure plan.** Any authorization for treatment, storage, or disposal in a new DWMU must be in accordance with a permit modification request per WAC 173-303-830/840 and include the information required in the Part A and Part B permit application.

Example: Supporting placement of [storing] containers next to LLBG trenches. Language such as this is not in compliance with WAC 173-303-140(4) Dangerous Waste regulations. WAC 173-303-630 regulations apply. To agree to this activity would allow use of a non-compliant RCRA design in-lieu of requiring DOE build a compliant storage facility.

3. Part A inconsistencies: Closure Plans need reviews for accuracy & consistency with Part A forms; inconsistency between units listed on Part A forms and Closure Plans; inconsistency in measurement units between Part A forms and Closure Plans; design capacities and total volumes of waste, etc.
4. Without access to the 2004 Permit Applications and the current RCRA Permit Rev. 8C, the public cannot fully determine if information presented within these modification documents is accurate or legally authorized under WAC 173-303 (e.g. 2236-W outside container storage area was not identified in application for renewal).

Inspection Plans:

1. Documents cite several Part II Permit Conditions: Rev 8C is not available for public review. These may not be sufficient and require revisions themselves.
2. No documentation (or characterization) is provided to support claim that these facilities are in *safe configuration* (or in proper storage) as stated. In fact, history at the Hanford site has shown leakage from drums/containers designated as “debris” which by definition are dry without any free, leakable liquids. Until closed, facility inspections must be done per WAC 173-303 regulations (e.g., daily inspections of spill areas; tanks require daily visual inspections). Units should not be designated as “in safe configuration.”

Not all WACs are applied as required or fully applied. The inspections and inspection schedule should meet all the requirements of WAC 173-303-320 and applicable items and frequencies required for the specific waste management method describe in WAC 173-303-630 thru WAC 173-303-680, and 40 CFR 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089 for final status facilities and the requirements in the approved Closure Plan.

3. No Sections on Container Receipt and Inspection and non-acceptable waste shipment within the Inspection or Closure Plans rendering these documents incomplete.

Personnel Training Plans:

1. Documents are structured to reflect only training for personnel dealing with sub-units which are closing and deemed to be with or without having any dangerous waste present. Unless there are different training plans [i.e., operating units] then this plan should be structured to reflect both closing units and operational units to comply with WAC 173-303-330 requirements.
2. Rev 8C Permit Attachment 5 is stated as describing the specific requirements of the personnel training program, but is not available for public review. Attachment 5 may not be sufficient and also require revision.
3. The statement “The SWOC Closure Units Dangerous Waste Training Plan (DWTP) provides a complete description of the personnel training requirements” is misleading. This Addendum is the Personnel Training Plan. Alone, it does not fulfill compliance with WAC 173-303-330(2)(a) and (b).
4. Misleading statements are made which support the premise that what is designated on the Part A form reflects permit conditions (e.g., “The LLBG Trench 31-34-94 closure unit where dangerous waste containers are no longer present is FS-1” and “ The Permittees will comply with the following training matrix, which provides training requirements for Hanford Facility personnel associated with the Solid Waste Operations Complex (SWOC) Central Waste Complex Waste Receiving and Processing Plant (CWC-WRAP) closures.”) **This falsely states the premise that only these three trenches are the LLBG and that that CWC & WRAP have authority to be designated as one facility.)**
5. Training matrix tables do not include all necessary personnel (e.g. Building Emergency Director, Regulatory Compliance [unless that position is included in the ECO position], groundwater samplers). The Operations Supervisor should be trained in all areas. Additional trainings should be required for other listed personnel as well.

6. Additional trainings for surveillance personnel [including inspectors and groundwater samplers] should be required.

Closure Plans:

1. **Scrutiny of Closure Plans show there is nothing in them which compel DOE to do work now** (i.e., There is nothing in these Closure Plans [including in descriptive/informational sections] which compel to have a schedule to remove, treat and dispose of all illegally stored wastes at CWC).

The proposed schedule and listing of Tri-Party Milestones [acknowledging a general TPA agreement for removal by 2030] does not fulfill WAC 173-303-610 requirements to have a detailed, complete closure plan to include a specific detailed closure activity schedule with complete removal of wastes in 180 days. The TPA schedule is even beyond the next Permit re-application cycle. DOE is not in compliance with EPA's CAFO-No RCRA-10-2013-0113 to submit complete closure plans per WAC 173-303-610 requirement. There are no details included which provide for the monitoring [or characterization] for the decades of proposed storage. Permitted treatment facilities [e.g., Perma Fix] are available; there is no justifiable defense for non compliance with WAC 173-303-610.

Furthermore, operational history at these sites does not substantiate DOE's claim to have demonstrated it has (or will) take steps to prevent threats to human health and the environment including compliance requirements [WAC 173-303-110, -200, -310, -320, -330, -340, -360, and -380]. [231ZDR-11 container noted in Outside Storage Area A (Area A) closure plan as *an area of interest* & Ecology letter 12-NWP-039]. Removal is urgently needed before there is another leak, fire or explosion.

2. **Clarification is also requested as to what basis Ecology has to authorize continued management of wastes in a dangerous waste management that has already failed or is so poorly managed so as to result in releases to soils and the environment or has violated WAC 173-303-400 [see CAFO-No RCRA-10-2013-0113].** Another example is in the case of the floor of Room 152; it is sealed concrete that does not provide secondary containment. Dangerous waste containers meeting the criteria specified in WAC 173-303-630(7)(c) are stored on standard pallets to ensure elevation off of the concrete floor. Dangerous waste packages not meeting the criteria specified in WAC 173-303-630(7)(c) (e.g., waste package containing free liquids) are placed on portable spill containment equipment such as spill pallets meeting the criteria specified in WAC 173-303-630(7)(a) and (b). WAC 173-303-630(7)(c) bars free liquid storage in noncompliant facility storage.
3. Erroneous statements that approval of Closure Plans will grant the Hanford Site an extended closure period in accordance with WAC 173-303-610(4)(c) without any modification requests being submitted to Ecology. Any subsequent changes to the approved closure plan or schedule require a permit modification in accordance with WAC 173-303-830/-840.
4. Closure plans must comply with the WAC 173-303-610 requirements; closure plans do not 'simply represent a baseline for closure' as stated. WAC 173-303-610(3)(iv thru vi) requires more information and details which are not included in these Closure Plans.

- Lacking detailed descriptions of steps needed to remove or decontaminate all dangerous waste residues and contaminated containment system components, equipment, structures and soils, including methods for sampling and testing of surrounding soils and criteria for determining the extent of decontamination required to satisfy the closure performance standards.
- Lacking details of compliance with WAC 173-303-630 & WAC 173-303-695 requirements. [e.g., The current LLBG container storage pads are not in compliance with WAC 173-303-630 requirements [and a discrepant container does not meet LDR standards for placement on these pads]; Sections of 221-T Building have been designated as a Containment Buildings [221-T Railroad Tunnel, 221-T Canyon Deck, and selected 221-T Cells (7L, 13R, 17R).]
- Lacking details of compliance with WAC 173-303-640(6). [E.g., Given that wastes remain in some tanks (see Part A form text cited above), the tanks continue to actively manage wastes, and they must continue to follow applicable tank requirements at least until removal of waste has been completed, if not until certification of completion of closure has been submitted to Ecology. Tank inspections shall include inspection of overfill controls, aboveground indications of corrosion or release of wastes, data gathered from monitoring any leak detection equipment, the construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system to detect erosion or signs of releases of dangerous wastes. Tank inspection shall include inspection of cathodic protection systems, if present.]
- Lacking details of compliance with WAC 173-303-680(2). [E.g., Miscellaneous unit]
- Lacking details of how compliance with WAC 173-303-140(2) will be met prior to storage or disposal.
- Lacking details of compliance with the requirements of and 40 CFR 264.1101(c)(4) [incorporated by reference at WAC 173-303-695]. [E.g., Containment building].
- Lacking following text to ensure public involvement opportunities: Any updates to SAP shall be through the permit modification process in accordance with WAC 173-303-830/840.
- Lacking following (or similar) text to ensure prevention of soil and groundwater contamination: Clean closure of the soil under the CWC structures and modules will be accomplished by demonstrating that the coated concrete floors kept contamination from reaching the soil. The coated concrete floors provided secondary containment for the storage and treatment areas of CWC. Unless inspections identify potential through-thickness cracks indicating containment failure and a subsequent for potential soil contamination from the TSD unit operations, the soil will be considered clean closed. Should inspections identify such cracks, potential soil and groundwater contamination will be investigated as an unexpected event during closure. In this circumstance, a sampling and analysis plan for characterizing the nature and extent of soil contamination will be prepared following the completion of a data quality objectives process in accordance with EPA/600/R-96/055 (QA/G-4), *Data Quality Objectives Process*, as amended. The data quality objectives process will be initiated prior to closure on a schedule to ensure timely closure of CWC. The sampling and analysis plan will be submitted to Ecology as part of a permit modification request in accordance with WAC 173-303-830. This permit modification request will also establish constituents of concern, soil

remediation requirements, soil closure performance standards, and associated sampling, analysis, and QA/QC requirements necessary to demonstrate compliance with closure performance standards. The sampling and analysis plan will be prepared consistent with EPA/240-B-01/003 (EPA/QA R-5), *EPA Requirements for Quality Assurance Project Plans*, as amended.

- Lacking consistency in requirements for IQRPE actions.
 - Lacking consistency in requirements for decontamination per WAC 173-303.
 - Lacking consistency in requirements for removal of and disposal of contaminated media [including rinsate].
 - Lacking consistency in designation of dangerous and/or mixed waste provisions of WAC 173-303.
 - Lacking consistency between closure plan tables and Part A tables and/or area dimensions/volumes.
 - Lacking (in some instances) evaluations of compliance with [WAC 173-303-630(4), - (7), Subpart CC control standards (40 CFR 264.1084 - 264.1086), and Ecology Publication ##09-05-007 [Guidance for Preparing Waste Sampling and Analysis Documents and QA/QC Requirements at Nuclear Waste Sites.
 - Lacking (in some instances) the estimated maximum waste inventory; WAC 173-303-610(9) & (10) discussions; and Post-Closure Care -610(7) & (8) discussions.
 - Lacking section on Container Receipt and Inspection and non-acceptable waste shipment within the Inspection or Closure Plans.
 - Including statements regarding clean closure determinations by DOE which are under Ecology's authority [e.g., Allowing concrete floorings to remain in place; Some closure units will remain in "as is" state citing nearby operating DWMU when in reality, information presented in figures do not support claims to not need to comply with clean closure standards of WAC 173-303-610(2). Closing units which are easily and safely accessible should not delay or defer required closure actions subject to TPA Milestones.
 - Including statements not in compliance with WAC 173-303-830 requirements (e.g., "Subsequent changes to the closure schedule will not require a permit modification and a separate extension request will not be filled".)
 - Inconsistent format between similar documents.
5. Clarification is needed to differentiate between closure performance standards for soils, groundwater, surface water, and air, subject to -610(2)(b)(i) and which are not being established in this closure plan, and -610(2)(b)(ii), which are established by Ecology. Closure Performance standards for structures are to be set by Ecology on a case by case basis.
1. **SAPs: Sampling and analysis for exceedence of MTCA Method B standards do not require following the *observational approach* and unfiltered sampling for SAPs. Additional soil removal and re-sampling until these standards are not exceeded is not required and should be. The following are requested to be included in all SAPs:**
- Employment of a 'methods based approach' to all sampling, provide all suite analysis results, and evaluate data to ensure verification sampling demonstrates no exceedances of unrestricted numerical cleanup levels should also be a requirement of the clean closure determination process. Use of the 'judgmental sampling' approach should be limited and in no way substitute for the required a statistical approach. Discrete samples should target the most likely to be highest site of contamination.

- Verification soil sampling performed during closure activities must demonstrate that any residual dangerous wastes, dangerous waste constituents, and/or residues do not exceed the unrestricted numerical clean ups levels in accordance with the Model Toxics Control Act (MTCA) regulations calculated according to MTCA Method B (2007, as amended).
- The Sampling and Analysis Plans to have consistency with Ecology Publication #09-05-007 Guidance for Preparing Waste Sampling and Analysis Documents and QA/QC Requirements at Nuclear Waste Sites.
- Methods are not discussed. Steps are conceptual rather than defined as required.

Associated issue: The Sampling and Analysis Plans (and Waste Analysis Plans) and criteria for waste acceptance at the LLBG should be informed by the results of the Risk Budget Tool.

2. Some closure units will remain in “as is” state citing nearby operating DWMU when in reality, information presented in figures do not support claims to not need to comply with clean closure standards of WAC 173-303-610(2). **Closing units which are easily and safely accessible should not delay or defer required closure actions subject to TPA Milestones.**

Related Issue: Factsheet and public hearings:

The Factsheet provided to the public did not fully disclose DOE violations and the content of the EPA Consent Agreement and Final Order (CAFO-No RCRA-10-2013-0113). This does not comply with the requirements of WAC 173-303-830(4)(c)(iii) to have supporting documents available, etc. The YN ERWM program requests a new public involvement comment period including public hearings around the region with full discussions of the following:

- EPA Consent Agreement and Final Order (CAFO-No RCRA-10-2013-0113).
- Closure schedule for removal and treatment of illegally stored wastes and how it complies with WAC 173-303-610(4) and the CERCLA offsite waste rule and relevant standards
- DOE’s SEPA checklist submittal for this permitting action.
- Unit operations under interim status standards and Ecology’s obligations under WAC 173-303-400(3)(i) and 173-303-805(8)(d)