



Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

0051138

067795

Mr. Mike Wilson
State of Washington
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

APR 23 1999



Dear Mr. Wilson:

HANFORD 1100 AREA TOLLING AGREEMENT

- References:
- (1) RL ltr. to M. Wilson, Ecology, from J.E. Rasmussen, same subject as above, 99-EAP-126, dtd. January 20, 1999.
 - (2) Ecology ltr. to J. Wagoner, RL, from M. Wilson, same subject as above, dtd. December 18, 1998.

In regards to reference (1) above, the U.S. Department of Energy, Richland Operations Office (RL) has completed it's evaluation of the subject tolling agreement. After much discussion with staff from your office and the other Hanford Natural Resource Trustee organizations, we have revised the subject tolling agreement in a manner that we feel better addresses the DDT contaminant issue. The revised agreement is attached for your review and signature. Upon our signature, we will transmit the agreement to the U.S. Department of Justice with a recommendation for approval.

Please note that we have limited the agreement to the 1100 Area Horseshoe Landfill. We have taken this approach for two reasons. First, Horseshoe Landfill is the only site within the 1100 Area where information suggests the potential for DDT to impact natural resources. We also feel that any tolling with regards to the North Slope is premature, in particular given the upcoming changes to management of that area.

We hope you will find our revisions to the agreement acceptable. Should you have any questions or comments concerning those revisions, please call Mr. James Zeisloft at (509) 372-0188.

Sincerely,

Linda K. Bauer, Assistant Manager
for Environmental Restoration

Attachment

cc w/attach:
T. L. Elzie, BHI
R. T. Swenson, BHI

HANFORD SITE HORSESHOE LANDFILL TOLLING AGREEMENT**I. AGREEMENT**

This Agreement is made and entered into by and between the State of Washington acting through the Washington State Department of Ecology (Ecology) and the United States Government acting through the U.S. Department of Energy (DOE). The purpose of this Agreement is to toll the statute of limitations set forth in the 42 USC § 9613 (g) for the State of Washington with respect to the Hanford Site's 1100 Area Horseshoe Landfill under the conditions set forth in this agreement.

The parties, in consideration of the promises set forth below, agree as follows:

II. DEFINITIONS

The definitions set forth in 42 USC § 9601 and 43 CFR §11.14 shall control the meanings of the terms used in this Agreement. "Days" shall mean "calendar days".

III. PARTIES

The parties to this agreement are the State of Washington represented by Ecology and the United States Government represented by DOE.

IV. JURISDICTION

1

2 Washington is a Trustee for natural resources at Hanford pursuant to Section 107 of the
3 Comprehensive Environmental Response, Compensation and Liability Act (CERCLA),
4 42 USC § 9607, and regulations promulgated thereunder (40 CFR Part 300 and 43 CFR
5 Part 11).

6

7 As a Trustee, Washington contends it may have civil claims against the DOE to seek
8 damages, including pre-assessment and assessment costs, for injury to, destruction of, or
9 loss of natural resources caused by release of hazardous substances at the Hanford Site.

10

11

V. BACKGROUND

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13 In 1996, the Hanford Trustees, (the states of Washington and Oregon, the Confederated
14 Tribes of the Umatilla Indian Reservation, the Confederated Tribes and Bands of the
15 Yakama Indian Nation, the Nez Perce Tribe, the U.S. Department of Interior and the
16 DOE), entered a Memorandum of Agreement to facilitate the coordination of their efforts
17 in restoring and minimizing impacts to natural resources injured as a result of, or during
18 clean-up of, hazardous substances released in association with the Hanford Site. This
19 Agreement is entered into in the same spirit of coordination and cooperation reflected in
20 the 1996 Memorandum of Agreement.

21

22 A pre-acquisition contaminants survey conducted by the U.S. Fish and Wildlife Service
23 (USFWS) in 1997 found certain concentrations of DDT/DDE in biological resources (i.e.

1 beetles and bird eggs) on or near the Horseshoe Landfill. The Trustees, including the
2 DOE, believe that additional assessment of this DDT/DDE contamination within
3 Horseshoe Landfill is needed to enable the parties to better evaluate the potential for
4 natural resource injuries within that site.

6 VI. WORK TO BE PERFORMED

7
8 The DOE agrees to perform an additional assessment of the biological resources that are
9 suspected by Washington to be injured as the result of releases of DDT/DDE within the
10 Horseshoe Landfill. This assessment shall consist of the following tasks.

11
12 A. DOE shall prepare and execute a work plan to include the project scope of
13 work and schedule. The plan shall include the Horseshoe Landfill and a
14 control site on the Arid Lands Ecology Reserve. The work shall be performed
15 during the normal calendar year 1999 nesting season of birds resident to the
16 sites. The work plan shall be provided to the Hanford Trustees for review.

17
18 B. The scope of work to be performed at Horseshoe Landfill and the control site
19 shall include the collection and analysis of insect and bird egg samples, along
20 with the collection and recording of relevant field data. Approximately thirty-
21 five samples of the insects resident to the sites shall be collected from within
22 the sites and the appropriate portion of those samples (i.e. less mobile species)
23 shall be analyzed for potential DDT/DDE contamination. One egg from each

1 bird nest discovered within the sites shall also be collected and analyzed for
2 potential DDT/DDE contamination. The sites shall be visited regularly (i.e.
3 on an average of twice a week) and relevant field observations (e.g. weather
4 conditions, number and species of birds observed, nesting information, insects
5 available) shall be recorded.

6
7 C. DOE shall prepare a report of the findings of the assessment work. The report
8 shall include all sample analysis and field data generated by the assessment.
9 A draft of the report shall be provided to the Hanford Trustees for review and
10 comment. Comments shall be considered and incorporated into the final
11 report as appropriate.

12
13 The DOE agrees to commence the assessment work described above within 7 days after
14 the effective date of this Agreement. The expense of the work performed under this
15 Section VI shall be credited against any claims for natural resource damages. The
16 exclusive remedy of Washington for alleged breach by DOE of its obligations undertaken
17 in this Section VI shall be to terminate this Agreement in accordance with Section VII
18 and file an action for natural resource damages.

19
20 **VII. TOLLING OF TIME LIMITATIONS**

1 The time limitations set forth in 42 USC § 9613(g)(1), with respect to Washington
2 commencing an action for natural resource damages to the Horseshoe Landfill are hereby
3 tolled until 90 days following the expiration of this Agreement.

4

5 Washington agrees not to file an action for damages against the DOE asserting injuries to
6 natural resources caused by the release of hazardous substances within the Hanford Site
7 Horseshoe Landfill while this Agreement remains in effect.

8

9 In consideration thereof, the DOE further agrees that it will not raise or assert any claim
10 or defense of statute or statutes of limitation, or any defense or claim of laches to an
11 action covered by this agreement to a suit brought by the State of Washington, if that suit
12 is for damages filed within 90 days after expiration of this Agreement.

13

14

VIII. RESERVATION OF RIGHTS

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16 This Agreement does not constitute an admission by the parties as to the applicability or
17 operation of any statute of limitations, nor of the factual or legal bases of a claim for
18 natural resource damages, including the assertion of natural resource trustee status as to
19 any specific natural resource or location, and shall not be admissible in evidence for any
20 purpose, except for enforcement of this Agreement.

21

1 Nothing in this Agreement shall preclude Washington from commencing any action
2 necessary to protect the public health, welfare, or environment, including any action
3 under CERCLA not covered by this Agreement.
4

5 This Agreement in no way affects or relieves the DOE from its responsibility to comply
6 with any applicable Federal or State law, regulation, administrative order, or permit, nor
7 does it impair Washington's authority or ability to enforce the same.
8

9 This Agreement does not alter in any way the rights and obligations of the parties under
10 the Hanford Federal Facility Agreement and Consent Order (HFFACO), CERCLA, the
11 National Contingency Plan (40 CFR Part 300), or related executive orders.
12

13 This Agreement does not waive or relinquish any defenses or claims that DOE may have
14 as to liability for response costs or natural resource damages or other claims, including
15 but not limited to, the defense that releases of DDT/DDE were made by third parties
16 unrelated to any contractual relationship with DOE, or the defense that the releases were
17 lawful applications of pesticides and therefore not releases of hazardous substances,
18 pollutants or contaminants subject to CERCLA.
19

20 IX. DURATION

21

1 This Agreement becomes effective on the date it is signed by all parties and shall remain
2 in effect for a period of 180 days. At the end of the 180 day period, the Agreement may
3 be renewed for an additional period of time subject to the written consent of the parties.

4

5 This Agreement may be terminated by Washington, or by the DOE, after providing 60
6 days written notice. If this Agreement is terminated early, the tolling of the statute of
7 limitations under this Agreement shall cease 90 days after the effective date of the
8 termination.

9

10

X. MODIFICATIONS

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12 This Agreement contains the entire understanding among the parties. This Agreement
13 may not be modified except in writing signed by the parties.

14

15

XI. SIGNATURES

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17 The undersigned certify that he or she is authorized to sign this Agreement on behalf of
18 the party whom he or she represents.

19

20

For the State of Washington

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Washington State Department of Ecology

Date

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For the United States of America

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6

U.S. Department of Energy

Date