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September 21, 2001

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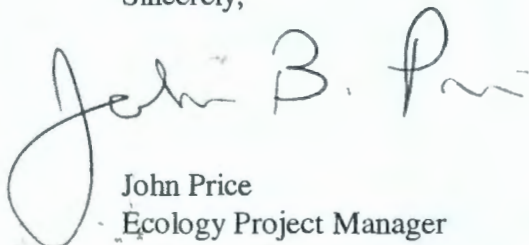
RE: Comments on "Site Wide Institutional Controls Plan For Hanford CERCLA Response Actions" (DOE/RL-2001-41, Draft A, July 2001)


Dear Mr. Daily:

Enclosed are comments from the Washington State Department of Ecology (Ecology) and the U.S. Environmental Protection Agency (EPA) on the subject document. The document is a significant improvement over the version we reviewed in May 2001. We do, however, still have areas of concern. The attachment contains our combined comments.

If you have any questions, feel free to either of us.

Sincerely,


John Price
Ecology Project Manager


Mike Goldstein
EPA Project Manager

Enclosure

cc: Chris Smith, DOE
Bob McLeod, DOE
Bryan Foley, DOE
Arlene Tortoso, DOE
Admin. Record - 100, 200, 300 Area General

**Comments on "Site Wide Institutional Controls Plan For Hanford CERCLA Response
Actions" (DOE/RL-2001-41, Draft A, July 2001)**

General Comments

1. Organization and description of site-wide institutional controls needs to be clarified (Section 3): The distinction between "access controls" and "land and groundwater use controls" is not clear. Additional clarification should be provided in the tables and text. Another aspect that is not clear is the element of "timing." How long are the controls going to be required? Also, when are these controls envisioned to be implemented? Some clearly apply to current day situations. Some to post-cleanup, post-DOE land owner situations. The institutional controls should remain the same, but implementation will change based on who the landowner is. Clarification should be provided in Section 3 and appropriate summary tables.
2. Organization and description of NPL-specific institutional controls (Section 4) needs to be revisited: Section 4 of the document has too much background information and too little information on the nature and extent of NPL-specific institutional control requirements. An option you may want to consider would involve: 1) removing/reducing the NPL-specific background discussions (as written, this discussion will need to be updated every time the Site-Wide Institutional Controls plan is updated), 2) summarize area-specific (e.g., 100N) or NPL-specific requirements OVER AND ABOVE the site-wide requirements in a separate table or in text; and 3) include "Compliance with ROD requirements" in a stand-alone table.
3. Remove "Performance Assessment and Reporting of Controls" from Section 3: This is not an institutional control and should be maintained in a separate section of the document (e.g., Implementation of the Site-Wide Institutional Control Plan). We recommend that you remove references to this in Table 2-1 and make appropriate edits to other sections of the document as well.
4. Create a new section for the document entitled: "Implementation of the Site-Wide Institutional Control Plan." In addition to comment #3 above, this section should include:
 - Key Parties and roles (current section 2.5) should be moved to this new section.
 - A separate and explicit discussion of land transfers should also be added to this section. A key distinction to make is the difference between DOE transfers of land to another Federal agency (e.g., USFWS) and non-Federal entities. The GSA land transfer procedures provided by Dennis Faulk should also be discussed in this section. A key item to reiterate in this section is the requirement that: "DOE will notify EPA and Ecology at least 6 months prior to any transfer, sale, or lease of any property subject to institutional controls required by a CERCLA decision document so that EPA and Ecology can be involved in discussions to ensure that appropriate provisions are included in the conveyance documents to maintain

effective institutional controls. If it is not possible for DOE to notify EPA and Ecology at least 6 months prior to any transfer, sale, or lease, then DOE will notify EPA and Ecology as soon as possible, but no later than 60 days prior to the transfer, sale, or lease of any property subject to institutional controls.”

- An annotated outline for the “Annual Site-Wide Institutional Control Monitoring Report.” That way we can clarify what our expectations are for reporting in the site-wide plan (e.g., key questions that the annual plan should answer). An example of an annual Institutional Controls monitoring report is: “Initial Institutional Controls Monitoring Report for Operable Unit 3-13,” (DOE/ID-10751, May 2000, Revision 0). EPA has a copy of this INEEL document if needed.
 - In addition, model “NPL-specific Institutional Control evaluation checklists/questionnaires,” which would be summarized in a site-wide report, should also be included as well (an appendix would be appropriate). An example can be found in “Institutional Control Plan for the Idaho Nuclear Technology and Engineering Center, Waste Area Group 3, Operable Unit 3-13,” (DOE/ID-10729, May 2000, Revision 0). EPA can provide a copy of this document if needed as well.
 - This section should also include a specific discussion of “next steps” or “action items.” An example would be: Evaluation of how plan will be implemented within RL (FY02), annual report due to EPA/Ecology (FY02), etc... In addition, for those areas where specific Institutional Control enhancements are anticipated (e.g., evaluation and enhancement of warning signs along River Corridor waste site areas), a specific scope, schedule, and point of contact for the activity should be defined and included in this list as well.
5. The draft plan is a compendium of existing procedures and institutional control requirements in existing RODs. It does not propose any new or additional measures. In this sense, it does not constitute an "action plan" or a significant portion of a long-term stewardship plan. Specific actions and commitments should be clearly identified, especially for new activities (see comment #4).
6. The plan assumes that DOE will remain “in control” for nearly all the purposes listed in the plan, i.e., access control, property management and information management will continue under established DOE procedures. The partial exceptions appear to be: 1) the USFWS obligation to control access to the Saddle Mountain Refuge and to inform those “entering the restricted areas in the Refuge with information furnished by DOE concerning potential risks and appropriate procedures;” and 2) a reference to a deed restriction recorded for the Horn Rapids landfill property (p.4-27). An assumption with regard to the first is that the information does not relate to residual contamination but to risks incurred by virtue of the Refuge being within the required potential exclusion zone for active nuclear facilities. Note also that the table on p. 2-11 doesn't clearly express where pre-existing obligations from the Refuge extend to the Hanford Reach National Monument. In any case, there is no specific consideration of what would be required to

successfully transfer institutional control responsibilities for a contaminated area from DOE to USFWS. It is important to begin planning for that eventuality, given progress in cleaning up a number of 100 Area sites (See comment #1).

7. There is no discussion of how, or how successfully, the Horn Rapids deed restriction will be enforced. It would be beneficial to describe how it has been working (or how it will be assessed in the first annual report).
8. The plan makes a reasonable case that the DOE property management system will adequately control excavation and well-drilling for work performed by DOE's prime contractors. A description of a specific, systematic procedure, with assigned responsibility, to audit and make sure that contractors comply with the pertinent requirements appears to be missing. There is only a very general statement that DOE will monitor institutional controls (this issue can be addressed per comment #4).
9. The 200 Area Operable Units include several RCRA TSDs. It would be appropriate to reference the RCRA post-closure care requirements (WAC 173-303-610) when the CERCLA ROD requirements are referenced, e.g., 2nd paragraph of Section 1.1, even though there aren't any TSDs in post-closure care (yet). It is conceivable that those requirements could apply w/in the next 5 years (if IC Plan is to be updated on that schedule).

Specific Comments

10. Executive summary, page iii: The National Contingency Plan should be cited as the basis for any and all definitions with regard to Institutional Controls. In addition, the April 2001 CERCLA Five-Year Review should also be cited as the basis for the Site-Wide Institutional Control Plan requirement.
11. A description of the Model Toxics Control Act (MTCA) as an ARAR should be added to the ES and Introduction: "MTCA is an ARAR as defined by CERCLA. It requires institutional controls if on-site disposal, isolation, or containment is the selected cleanup action for a site or a portion of a site (WAC 173-340-360)."
12. Executive summary, Page iv: Remove reference to "draft" plan in third paragraph.
13. Introduction, page 1-1, first paragraph: Add reference to CERCLA Five-Year Review. Move/remove last part of first paragraph; it seems out of place here.
14. Introduction, page 1-1, second paragraph: The second sentence should read: "... if hazardous substances are not remediated to levels that allow for unrestricted use and unlimited exposure..."

15. Table 1-1 on page 1-6: Add "(100 Area Burial Grounds)" to row 1; add "(Spent Fuel)" to row 6; and add action memoranda for 100 Area removal actions to be consistent with the 300 Area table (see CERCLA Five-Year Review for complete listing) and change header of column to "Operable Unit(s)/Expedited Response Action".
16. Page 1-8, paragraph 3: Remove 2 sentences and replace with: "The cleanup levels guiding the amount of waste removal are based on: 1) the reasonably anticipated future land use of industrial for this portion of the Hanford site; 2) protection of groundwater quality; and 3) protection of the Columbia River."
17. Table 1-3 on page 1-9: Remove "ERA" and replace with "Action Memorandum," add to header of column 3 "Operable Unit(s)/Expedited Response Action;" add "300-" to OU identifier (i.e., 300-FF-1, 300-FF-2, 300-FF-5).
18. Section 2-2 on page 2-2:
 - This section is where the confusion begins with regard to the timing of the institutional controls. It is not clear when controls will be required and for how long. For example, different institutional controls are required prior to, during, and after cleanup is complete. The above referenced INEEL documents have some helpful tables that may be used as a model for the Hanford IC plan. Tables 2-1 and 3-1 in DOE/ID-10729, address the issue of "timeframe of controls" and table 4-4 in the same document addresses IC requirements that are required while the land is under DOE control versus when DOE control is relinquished. Creating a similar summary table that makes sense for the Hanford IC plan might help clarify this confusion.
 - In addition, risk assessment discussions in this section confuse the issue further. The nature and type of controls are specified in RODs based on the risk assessments performed in support of the remedy selection decision. This plan should not address this subject. Please remove the references to risk assessment and reevaluating the need for institutional controls. Also, please remove Figure 2-1 on page 2-4 for the same reasons. It is not appropriate for this document and is not easy to follow.
 - Recommendation: Retitle and rewrite section. Should focus on "timing of institutional controls application" and not "basis for IC selection and reevaluation."
19. Page 2-3, last paragraph: Remove first 3 sentences, start with last sentence, and then add "This policy was consulted while developing this site-wide plan for Hanford, and DOE believes that the resulting plan is consistent with the EPA Region 10 policy."
20. Table 2-1 on page 2-6 and 2-7:

- Retitle column 2 header: "Mechanism"
 - Retitle column 4 header: "Who it Protects"
 - In column 3, replace "public visitors" with "Hanford Site visitors"
 - Retitle second control: "Waste site information/records management" The important point that is lost in this table and the subsequent discussion is that if you don't know where the hazards are, how do you know where to post signs and maintain land use controls? This is the information that is relevant to institutional controls.
 - Add first bullet to this row under Objective: "Maintain information on the location and nature of contamination at the Hanford site."
 - Under "Land Use and Real Property Controls," remove last 3 bullets under objective or let's discuss them. This is causing some of the confusion between this type of control and the access controls. Also, add "environmental receptors" to the last column.
 - Under "groundwater controls," add "future jurisdictions" to the last column (i.e., entities that the controls are designed to protect).
 - Under "performance assessment and reporting controls" put "N/A" in the last column (this does not result in the protection of anyone) or remove this from the table altogether (see general comment #3).
 - Footnote to table: replace "may apply to" with "may result in the protection of."
21. Page 2-7, last paragraph, second sentence: Add "EPA and Ecology approve..."
 22. Page 2-8, first paragraph: Add after the second sentence, "However, EPA and Ecology may require additional institutional controls on a site-specific basis if deemed necessary to protect human health and the environment."
 23. Page 2-8, table 2-2: Who is the ORP point of contact?
 24. Page 2-8, paragraph 2: These mechanisms aren't discussed anywhere in the document or in Table 2-1. They should be elaborated on in Section 3 or removed.
 25. Page 2-9, 4th paragraph: The regulators are not part of the Site Planning Advisory Board (SPAB) process. Please remove this reference.
 26. Page 3-1, section 3-1: Please clarify how access controls are not also land use controls (section 3-3). May require restructuring controls/mechanisms? Or maybe one applies now while DOE maintains a presence on site and then the other applies when there is no DOE presence? Additional clarification should be provided in these sections and in summary tables.
 27. Section 3-1: Regarding access control, it would be appropriate to include a commitment to a site-wide review of whether the minimum signage requirements in current RODs (a

minimum of one sign per OU), and the kinds of signs currently required by order or meeting national standards actually do what the plan states on p. 3-3: include the name of the geographic area addressed by the sign, information regarding the contaminant(s) of concern, the media affected, any access restrictions that may be in affect [sic], a POC and the telephone number to request more information or report any findings.”

28. Section 3.1.3, Section 3.3.2, Table 4-1 et seq.: Plan should cite the specific Ecology WAC: requirements for well drillers and for water well construction. These have proven to be effective off site from Hanford, witness, the recent prosecution of an unlicensed well driller in the Prosser area.
29. Page 3-6, section 3.2: Please retitle section “Waste Site Information/Records Management,” make appropriate edits to objectives (see comment # 20), and start with discussion of WIDS. Also need to address how DOE plans to maintain WIDS, or a similar type of geographic information system in the future. This is one of the most important aspects of the site-wide institutional controls plan.
30. Section 3.2: This describes procedures in existence, but makes no attempt whatsoever to assess their adequacy for the purpose. It is entirely possible, if not likely, that current record retention requirements are not sensitive to the need for clear, accessible information on institutional control requirements over long periods. Nor is there any indication in Sec. 3.2 of how routine monitoring of performance will be recorded and made available. The weakness of this section is of concern particularly since it is at the sitewide, system level that information management needs to be performed. There is no discussion of how information regarding institutional controls will be made available to external parties beyond the TPA administrative record requirement, nor any planning for transfer of records to other potential owners or stewards.
31. Page 3-8, second paragraph: remove reference to regulators from SPAB process.
32. Page 3-11, Section 3.4 and 3.5: See general comment on page 1 of this letter. Also see referenced INEEL documents. These sections should be removed from the IC table and discussion (they aren’t Institutional Controls), and be expanded into their own chapter with more specific examples of NPL-specific IC evaluation forms and an annotated outline of an annual IC monitoring report.
33. Page 4-1, Section 4.0: See general comment on page 1 of this letter. Here are some ideas to consider:
 - 100 Area: The 100 Area covers a larger and more diverse footprint than the 200 and 300 Areas. Therefore, this discussion should probably be the only NPL-specific writeup that addresses different geographic areas (i.e., reactor areas) specifically. Key points to make: 1) NPL-specific implementation plan for Site-wide requirements (this doesn’t need to be a table, it could be text); 2) ROD

requirements (most of these are related to pre-cleanup or during cleanup. Post-cleanup Institutional Controls will be specified in final RODs for the 100 Area) and how they will be addressed by the Site-wide plan and/or supplemental requirements; and 3) NPL-specific evaluation plan (i.e., how will IC implementation be evaluated for the 100 Areas?).

- 200 Area: Not much more to say about NPL-specific requirements at present time. Site-wide controls should be adequate until more remedy selection decisions are made. A ROD table should be included to address controls that have been specified in the interim RODs. If none have been specified, then the Site-Wide plan requirements will apply. The same logic flow of information should be presented as above.
- 300 Area: A bit different. ROD was more specific with regard to Institutional Controls required post-cleanup (pre-cleanup and during cleanup requirements are very similar to the 100 Areas). This key issue is completely lost in the discussion. Again, the logic flow could be: Here are the site-wide requirements, here are the additional requirements that have been specified in 300 Area RODs and how they will be addressed either by the site-wide plan or supplemental requirements, here is how IC implementation will be evaluated for the 300 Area.
- 1100 Area: Current model may work. Need to evaluate as modifications are made to previous sections. This should be the easiest section in a way. The controls should be in place and should be easy to assess. Consider adding a discussion of how the 1100 Area institutional controls are being implemented.