

DESIGNATION OF PERMITTEE

Title 40, Code of Federal Regulations (CFR), Section 260.10, and Washington Administrative Code (WAC) 173-303-040 define "operator as "the person responsible for the overall operation of a facility." (Emphasis added.)

The contractors for DOE on the Hanford Site do not meet the regulatory definition of operator. WHC and PNL are not responsible for the overall operation of either the Hanford Facility or any individual unit within the Hanford Facility, therefore, neither is an "operator" within the meaning of 40 CFR 260.10 and WAC 173-303-040. Rather, DOE is responsible for overall management and operation of the Hanford Facility with authority over policy, programmatic funding and scheduling decisions, and general oversight of its contractors' work. DOE performs these activities for the individual TSD units and for the Hanford Facility as a whole. The contractors have certain responsibilities of an operational nature at certain RCRA Treatment, Storage and/or Disposal (TSD) units on the Hanford Site under their respective contracts with DOE. These responsibilities involve the performance of certain day-to-day activities such as waste analysis and handling, monitoring, container labeling, personnel training, and record keeping.

WHC is responsible for these activities at the 616 Nonradioactive Dangerous Waste Storage Facility. PNL is responsible for these activities at the 305-B Storage Unit. Additional TSD Units at which the contractors have responsibilities are listed with their respective certifications submitted with the permit application (attached).

The contractors do not have overall responsibility for any RCRA TSD unit on the Hanford Site; nor do they have such responsibility for the entire Hanford Facility, the facility for which Ecology contemplates issuing this permit.

The contractors' daily activities are governed by DOE regulations, orders and directives. The contractors can not make program, facility or major operational changes without DOE approval. More importantly, the contractors must request specific funding from DOE to accomplish any of

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these activities. DOE's operation of the facility includes on-site "facility representatives" responsible for overseeing and providing detailed direction to the contractors' activities.

Given this division of responsibilities, Ecology does not have authority under the law to designate WHC and PNL as permittees along with DOE in a Hanford Facility permit. Any permit must recognize the division of responsibilities by function and TSD Unit which exists at Hanford. The permit writers acknowledged these requirements in the Fact Sheet for the initial draft permit released last winter but did not place appropriate language in the draft permit itself.

Additionally, the permit must address these issues in the context of the Hanford Federal Facility Agreement and Consent Order (FFACO). The FFACO does not provide for inclusion of contractors as permittees (see Article II), and therefore contractors would not be subject to its provisions for document review, dispute resolution, etc., while DOE would be. The different treatment of DOE and the contractors needs to be reconciled.

If the contractors are included in the permit, the following changes must be made:

Introduction

page 4, lines 11-14

Replace "a Permit is issued to the U.S. Department of Energy (USDOE), Westinghouse Hanford Company (WHC), and Pacific Northwest Laboratory (PNL) (hereafter called the Permittees), to operate a dangerous waste treatment, storage, and disposal facility located..."

with "a Permit is issued to the U.S. Department of Energy (USDOE), hereafter called the Permittee, and to Westinghouse Hanford Company (WHC) and Pacific Northwest Laboratory (PNL), as Co-Permittees, for the treatment, storage and disposal of dangerous waste..."

Introduction

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page 4, lines 16-17

Replace "The Permittees shall comply with all permit terms and conditions set forth in this Permit and all attachments."

with "The Permittee and Co-Permittees shall comply with the terms and conditions set forth in this Permit, including all attachments, which are specifically identified as applicable to each entity."

Introduction

page 4, line 42

Add: "In the event a decision of the Department is challenged by U.S. DOE under the FFACO and by a contractor under WAC 173-303-845, the Department shall stay the decision as it pertains to the contractor pending the resolution of the matter with U.S. DOE under the FFACO. Such stay constitutes a 'stay by the issuing agency' within the meaning of RCW 43.21B.320(1). Such stay shall remain in effect until resolution of the U.S. DOE challenge under the FFACO."

Definitions

page 10, lines 14-16

Replace "The term "Permittees" means the United States Department of Energy (U.S. DOE), Westinghouse Hanford Company (WHC), and Pacific Northwest Laboratory (PNL)."

with "The term "Permittee" means the United States Department of Energy (U.S. DOE)."

Add new definition "The term "Co-Permittee" means Westinghouse Hanford Company (WHC) or Pacific Northwest Laboratory (PNL). "Co-Permittees" means WHC and PNL.

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Part I - Standard Conditions

Condition I.A.2.

page 14, lines 26-29

Delete "and areas" on line 28.

Add "At those units, WHC and PNL shall each be responsible for only day-to-day activities such as waste analysis, waste handling, monitoring, container labeling, personnel training, and record keeping. WHC and PNL are not responsible for complying with Part IV, Corrective Action."

Note The units identified in Attachments 3 and 4 should initially be only 616 Nonradioactive Dangerous Waste Storage Facility for WHC and 305-B Storage Unit for PNL. Other units added later should reflect the division of responsibilities set out on the certification page for the permit application.

Part I - Standard Conditions

Condition I.A.4.

pages 14-15, lines 43-04

Add "As WHC and PNL are not parties to the FFACO, the portions of the FFACO and its milestone schedules incorporated into this permit are enforceable under this permit only as to U.S. DOE. However, U.S. DOE is responsible under the TPA for its contractors' compliance with the FFACO and its milestones."

Part II - General Conditions

Condition II.H.

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Change to reflect language submitted in March 15, 1992 comments to initial draft permit.

ATTACHMENTS

WHC AND PNL CERTIFICATION PAGES FROM
HANFORD FACILITY DANGEROUS WASTE PERMIT APPLICATION

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