

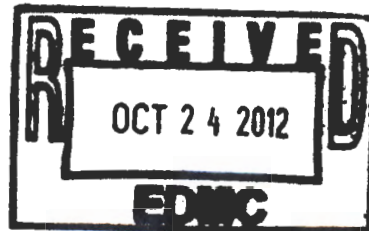


**U.S. Department of Energy  
Hanford Site**

OCT 18 2012

13-EMD-0004

Mr. E. R. Skinnarland  
Nuclear Waste Program  
State of Washington  
Department of Ecology  
3100 Port of Benton Boulevard  
Richland, Washington 99354



Dear Mr. Skinnarland:

COMMENTS FROM THE U.S. DEPARTMENT OF ENERGY (DOE) RICHLAND OPERATIONS OFFICE (RL), U.S. DEPARTMENT OF ENERGY OFFICE OF RIVER PROTECTION (ORP), BECHTEL NATIONAL, INCORPORATED (BNI), CH2M HILL PLATEAU REMEDIATION COMPANY (CHPRC), WASHINGTON CLOSURE HANFORD LLC (WCH), AND WASHINGTON RIVER PROTECTION SOLUTIONS, LLC (WRPS) ON THE DRAFT "HANFORD FACILITY DANGEROUS WASTE PERMIT FOR THE TREATMENT, STORAGE, AND DISPOSAL OF DANGEROUS WASTE" ISSUED BY THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY (ECOLOGY) FOR PUBLIC COMMENT ON MAY 1, 2012

RL, ORP, and their contractors BNI, CHPRC, WCH, and WRPS have reviewed the draft "Hanford Facility Dangerous Waste Permit for the Treatment, Storage, and Disposal of Dangerous Waste" published by Ecology for public comment. To ensure a thorough understanding of the permit and conditions, we have reviewed each condition, addendum, and attachment to determine whether the condition or requirement:

- Is consistent with regulatory requirements under the Washington Administrative Code (WAC) and within the scope of Ecology's permitting authority.
- Is clearly written and understandable.
- Is consistent with the long history of our prior agreements with Ecology.
- Reflects current operational needs and requirements.
- Could practically be met to maintain compliance.

Due to the size and complexity of the permit (approximately 16,000 pages covering 39 Treatment, Storage, and Disposal [TSD] and two Corrective Action Units), the comment package we are submitting contains only those comments on conditions and requirements which were not acceptable to us as written. We elected not to comment on unenforceable portions of the draft Permit such as the Fact Sheets, even though our review revealed some inaccuracies in these documents.

We prepared our comments in a Review Comment Response format as requested by Ecology. This format provides (1) the condition or requirement identifier; (2) a comment that reflects what is necessary to be done with the condition or requirement;

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(3) a basis for the action proposed in the comment; and (4) suggested language where appropriate that would make the condition or requirement acceptable to the Permittees. We have identified several issues that are of concern to us. A summary of the issues include, but are not limited to:

- The issue of limitations on receipt of off-site waste has previously been litigated with Ecology and a Federal Court decision issued stating that Ecology cannot place limits on receipt of offsite waste. See, "e.g., U.S. v. Manning, 434 F. Supp. 2d 988, aff'd, 527 F. 3d 828 (9<sup>th</sup> Cir. 2008)." DOE has agreed to certain limitations on receipt of off-site waste in the Settlement Agreement in "Washington v. Bodman, Case No. 03-5018-AAM (E. D. Wa. January 6, 2006)," and has also unilaterally extended those limitations on receipt of off-site for several years into the future.
- The imposition of a requirement to develop and use a "risk budget tool" to evaluate whether wastes can be placed in Resource Conservation and Recovery Act (RCRA)/Hazardous Waste Management Act (HWMA) permitted landfills is outside the scope of the RCRA/HWMA, and Washington State Dangerous Waste regulations. The waste types and volumes of waste that can be disposed in RCRA/HWMA landfills are defined in the Part A portion of the permit application. As long as the RCRA/HWMA regulated waste types and quantities are within the design parameters for the landfill and meet land disposal restriction requirements, these wastes can be disposed in permitted landfills. There is no regulatory requirement to develop and use a "risk budget tool" for the disposal of hazardous or dangerous wastes. Further, it is not clear in the proposed requirement that use of the risk budget tool would be required only for evaluation of the impacts of the non-radioactive component of mixed dangerous wastes.
- There are multiple instances where Ecology has rewritten existing Hanford Facility documents (e.g., contingency plans and sampling and analysis plans) to such an extent that the rewritten documents incorrectly describe operations, are inconsistent with operational practices and regulatory requirements, and cannot be complied with. In many instances, Ecology's proposed revisions will put the Permittees into non-compliance with environmental and safety regulations and the permit once the permit is issued and these revisions become effective.
- The Permittees have identified over 400 conditions or requirements in the draft permit that are not based on promulgated regulations. As Ecology has not cited any underlying regulatory authority for these conditions, it appears that Ecology is basing these requirements on its "omnibus authority", in an attempt to create permit conditions that are purportedly intended to protect human health and the environment without establishing the required rational nexus between these conditions and the hazardous waste operations being conducted by the Permittees, as required by numerous court and administrative agency decisions.

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- DOE and Ecology have agreed – and acted upon this agreement for over 30 years – that the Single-shell tank (SST) System could not and cannot be brought into compliance with tank design and operating requirements promulgated under the Dangerous Waste regulations. Since initial approval of the Hanford Federal Facility Agreement and Consent Order (HFFACO) on May 15, 1989, the SST System has been recognized as "going to closure" with the closure requirement appearing at Milestone M-45-00; furthermore, there has never been a final status Part B permit application submittal requirement in the HFFACO (e.g., M-20-00). Consequently, DOE and Ecology have negotiated and agreed to a comprehensive series of enforceable milestones in the HFFACO to allow temporary continued use of SSTs pending closure. Despite these agreements under the HFFACO, Ecology has created a new category of regulatory requirements in the SST permit called "pre-closure requirements" that do not exist in the existing regulations that apply to the rest of the regulated community and that have not been subjected to proper rulemaking procedures.
- The draft permit has multiple conditions that require submittal of revised permit application documents within 14 days of final permit issuance. This timeframe is unreasonable. The Permittees have previously submitted all of the documents subject to these permit conditions in accordance with regulatory requirements. Ecology apparently has rejected the DOE documents without explanation. It is unclear how the documents would need to be revised, since Ecology has provided no information on how they are deficient. In addition, the Permittees do not have sufficient staff resources to produce revisions to multiple documents simultaneously, get them through the review and document release processes, and transmitted to Ecology in such an abbreviated time frame.
- Waste analysis plans have been rewritten by Ecology to require complete characterization of waste before it can be received at any of the permitted TSD units. This requirement is inconsistent with prior agreements between the Tri-Parties that emphasize the retrieval of buried mixed waste containers from the trenches. Those agreements were negotiated in good faith and the milestones related to those agreements would instantly be put in jeopardy by this requirement being imposed by one of the three parties ex post facto. Additionally, these requirements are inconsistent with prior direction from the Director of Ecology as written in a clarification of Administrative Order 1671 (2004).

For newly generated waste, characterization and verification are not problematic. However, many of the wastes that must be managed on the Hanford Facility were previously disposed or buried 30 or more years ago, prior to the RCRA law and regulations,

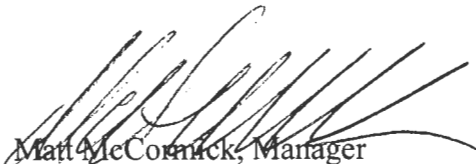


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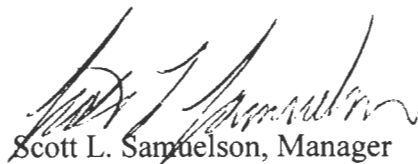
and contain radioactive constituents. DOE requirements for the safe management of radioactive materials limit the ability to open containers with radioactive contents except in very controlled locations designed to prevent the spread of radioactive contamination. As written, the draft permit conditions could essentially make it impossible for DOE to retrieve previously disposed or stored wastes and move them to other locations for further management and ultimate disposition, since it would be unable to move them to any of the permitted TSD units prior to fully characterizing the contents of the waste containers.

We look forward to Ecology's response to our comments, and we remain available to answer any questions Ecology may have on our comments.

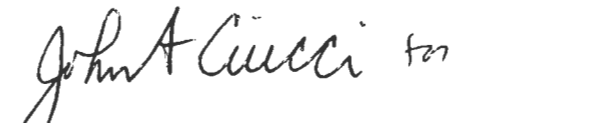
If you have any questions, please contact us, or your staff may contact Ray J. Corey, Assistant Manager for Safety and Environment, on (509) 376-0108.




Matt McCormick, Manager  
Richland Operations Office



Scott L. Samuelson, Manager  
Office of River Protection

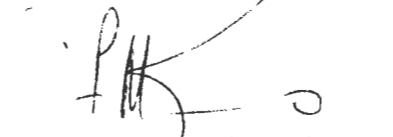


John C. Fulton, President and CEO  
CH2M HILL Plateau Remediation Company



Carol A. Johnson, President  
Washington Closure Hanford LLC

R. Skrand for  
Michael D. Johnson  
President and Project Manager  
Washington River Protection Solutions LLC



F. M. Russo, Project Director  
Bechtel National, Inc.

Mr. E. R. Skinnarland  
13-EMD-0004

cc w/encl:

L.A. Huffman, DOE-ORP (CD ROM)  
Ecology NWP Library (CD ROM)  
Environmental Portal, LMSI, A3-95 (CD ROM)  
Administrative Record, TSD: H-0-1, H-0-8, T-3-4, H6-08 (CD ROM)  
HF Operating Record (J. K. Perry, MSA, H7-28) (CD ROM)

cc w/o encl:

J. W. Badden, WRPS  
G. P. Bohnee, NPT  
F. W. Bond, Ecology  
L. E. Borneman, WRPS  
D. M. Busche, BNI  
A. S. Carlson, Ecology  
S. L. Dahl, Ecology  
L. L. Fritz, MSA  
K. A. Hadley, WCH  
S. Harris, CTUIR  
J. A. Hedges, Ecology  
A. M. Hopkins, WRPS  
R. Jim, YN  
S. E. Killoy, WRPS  
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A. G. Miskho, WRPS  
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