

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY

State of Washington, Department of Ecology,)	
)	
)	
Complainant,)	ECOLOGY No. DE 86-133
)	PCHB No. 86-44
v.)	
)	CONSENT AGREEMENT AND
United States Department of Energy,)	COMPLIANCE ORDER
Richland Operations Office,)	
WA789000896,)	
)	
Respondent.)	

INTRODUCTION

A joint regulatory Compliance Order was issued against respondent United States Department of Energy on February 5, 1986, by the State Department of Ecology (Ecology) and the Environmental Protection Agency (EPA). The Regulatory Order alleged violations of the Revised Code of Washington, chapter 70.105 et seq. (the Ecology Hazardous Waste Management Program) and Subtitle C of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6912 et seq., and regulations found at chapter 173-303, Washington Administrative Code (WAC), and 40 CFR Parts 260 through 265. The Order compelled the respondent to take actions with respect to its dangerous and hazardous waste activities at the respondent's

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Richland, Washington operation, known as the Hanford Nuclear Reservation.

The parties to this agreement and order have agreed that settlement of this action without further litigation is in the public interest and that entry of this Consent Agreement and Compliance Order is the most appropriate means of resolving this matter. Accordingly, the following Consent Agreement and Compliance Order is hereby executed and agreed to by the parties set forth below.

PARTIES

1. The State of Washington Department of Ecology ("Ecology") is the complainant in this action. The United States Department of Energy ("USDOE") is the respondent in this action. Both these parties are signatories to this Consent Agreement and Compliance Order.

JURISDICTION

2. On February 5, 1986 Ecology issued a regulatory order to USDOE pursuant to chapter 70.105 RCW. Ecology has jurisdiction to enter into this consent agreement and compliance order pursuant to chapter 70.105 RCW and specifically RCW 70.105.095.

3. USDOE agrees to undertake all actions required by the terms and conditions of this Consent Agreement and Compliance Order. USDOE consents to and will not contest the jurisdiction of Ecology regarding entry of this Consent Agreement and Compliance Order.

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1 4. All documents submitted hereunder shall be submitted
2 both to Ecology and to EPA.

3 5. The provisions of this Consent Agreement and Compliance
4 Order shall be binding on the USDOE whether activities are
5 performed by its employees or contractors.

6 FINDINGS OF FACT

7 Ecology makes the following Findings of Fact:

8 6. The USDOE is a person, as defined in RCW 70.105.101.

9 7. On or about August 14, 1980, USDOE submitted a Notice
10 of Hazardous Waste Activity pursuant to Section 3010 of RCRA.
11 This notice identified USDOE as the owner and operator of a treat-
12 ment, storage and/or disposal facility for hazardous wastes
13 ("TSDF"). The notice also identified USDOE as a generator and
14 transporter of hazardous wastes. On or about November 18, 1980,
15 USDOE submitted Part A of its permit application, which qualified
16 USDOE for interim status for a number of hazardous waste activi-
17 ties pursuant to Section 3005(e) of RCRA. USDOE's Part A applica-
18 tion was modified on several occasions prior to this Consent Agree-
19 ment and Compliance Order, including submissions dated June 3,
20 1985 and September 27, 1985 (further revised in November, 1985).
21 Hazardous waste facilities identified in such Part A permit appli-
22 cations which are now subject to interim status regulation include
23 the following:

24 Nonradioactive dangerous waste landfill
25 300 area process trenches
26 200 areas - low level radioactive burial
grounds and retrievable storage facilities

1 183-H - solar evaporation basins
2 2727S - nonradioactive dangerous waste
transshipment facility
3 616 - nonradioactive dangerous waste
transshipment facility
4 3718F - alkali metal treatment and storage
facility
5 437 - maintenance and storage facility
6 221T - contaminated systems test facility
7 105DR - large sodium fire facility
8 324 - sodium removal plant
300 area solvent evaporation unit
Shock sensitive or potentially explosive
chemical detonation areas.

9 8. On May 3, 1984, Ecology ordered USDOE to take immediate
10 action to ensure full compliance with state dangerous waste regula-
11 tions (Order No. DE 84-267). On December 26, 1984, Ecology ordered
12 USDOE, inter alia, to submit to Ecology for review and approval a
13 site-wide dangerous waste ground-water monitoring outline and
14 proposal which would detail USDOE's plan for compliance with
15 interim status ground-water standards pursuant to ch. 173-303 WAC
16 and 40 CFR Part 265, Subpart F. Further, Ecology ordered that
17 compliance with these requirements was to be achieved by August 1,
18 1985.

19 9. On June 11 through 14, 1985, Ecology and EPA conducted
20 an inspection of USDOE's facility located at the Hanford Nuclear
21 Reservation, Benton County, Richland, Washington. In addition,
22 on or about August 19, 1985, Ecology and EPA received from USDOE
23 a document entitled "Department of Energy--Richland Operations,
24 Hanford Site Dangerous Waste Implementation Plan ("Implementation
25 Plan"), which purports to examine USDOE's compliance with applic-
26 able regulations as of June 1, 1985.

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1 10. Based upon the June 1985 inspection, subsequent failure
2 to achieve compliance with regulatory requirements by USDOE,
3 review of Part A permit applications, and review of other material
4 submitted to date by USDOE, the following violations have occurred
5 at the USDOE Hanford facility:

6 A. Seven manifests, numbered 64091 through 64097,
7 prepared for the shipment of hazardous wastes from the Hanford
8 facility to Chem-Security Systems, Inc., an off-site TSDF, did
9 not bear the name, address, or signature of USDOE, in violation
10 of WAC 173-303-180 (and 40 CFR 262.21).

11 B. Hazardous waste was stored for over 90 days in
12 four nondesignated TSDFs (the J.A. Jones Staging Area, Hanford
13 Environmental Health Foundation laboratory, Westinghouse Hanford
14 Company, 340 Staging Area, and the Pacific Northwest Laboratory
15 332 Staging Area), in violation of WAC 173-303-200 (and 40 CFR
16 § 262.34).

17 C. Facility-closure and post-closure plans available
18 during the June 1985 inspection were not adequate to meet the
19 requirements of WAC 173-303-400 (and 40 CFR Part 265, Subpart G).
20 Respondent, in correspondence dated April 1, 1986, has now identi-
21 fied that its closure and post-closure plans available during the
22 June 1985 inspection are superseded and replaced by those plans
23 contained in respondent's most recent Part B permit application
24 submittal, currently under review by EPA and Ecology.

25 D. Dangerous (and hazardous) wastes were disposed of
26 in the 183-H Solar Evaporation Basins on at least two occasions,

1 January 17 and April 22, 1983. Thus, the 183-H Solar Evaporation
2 Basins are a regulated unit within the scope of RCRA and
3 ch. 70.105 RCW. The units comprising the basin were used as
4 evaporation tanks by USDOE, qualifying them as storage and treat-
5 ment tanks pursuant to WAC 173-303-141. USDOE did not include
6 these basins in its June 3, 1985, or prior Part A applications.
7 Therefore, the basins had operated as a hazardous waste TSDF with-
8 out interim status, in violation of ch. 70.105 RCW, ch. 173-303
9 WAC and RCRA § 3005. The units are currently listed on USDOE's
10 most recent Part A permit application. In addition, hazardous
11 wastes and hazardous waste constituents have been released into
12 ~~the~~ soil and ground water at this site. Such release constitutes
13 the land disposal of hazardous waste, and subjects the basins to
14 ground-water regulations found at 40 CFR Part 265, Subpart F.

15 E. Ground-water monitoring wells at the 183-H Solar
16 Evaporation Basins were inadequate for alternate ground-water
17 monitoring, as described in 40 CFR § 265.90(d). Ground water
18 monitoring wells at the 300 Area Process Trenches, which are land
19 disposal units, were inadequate for alternate ground-water moni-
20 toring as described in 40 CFR § 265.90(d). No ground-water moni-
21 toring wells existed at the Nonradioactive Dangerous Waste Land-
22 fill, and the written ground-water monitoring waiver demonstration
23 has been determined to be invalid for this land disposal unit.
24 Hazardous waste ground-water monitoring systems in compliance
25 with WAC 173-303-400(e), which incorporates 40 CFR Part 265,

Subpart F, have not been implemented at 200 area mixed waste burial grounds and retrievable storage areas.

DETERMINATION

11. On June 3, 1985, and prior to issuance of the Regulatory Order, USDOE was in violation of RCRA and ch. 70.105 RCW and accompanying regulations.

AGREEMENT

12. Ecology has jurisdiction to enter into and enforce this Consent Agreement and Compliance Order. Nothing in the Findings of Fact or the Determination made herein shall be construed as an admission of fact or law, an estoppel or waiver of defenses by USDOE nor shall anything elsewhere in this agreement be considered an admission of fact. USDOE neither admits nor denies the Findings of Fact or Determination stated herein. However, in order to amicably resolve this matter and to avoid further litigation on this matter, USDOE agrees to comply with all actions described in the Compliance Order. USDOE has a duty to comply with applicable requirements of RCRA and ch. 70.105 RCW, and all accompanying regulations.

USDOE agrees to the dismissal of its appeal of the Regulatory Order before the Pollution Control Hearings Board (PCHB No. 86-44). USDOE recognizes that it is the position of Ecology that failure to comply with the final order may subject USDOE to penalties of up to \$10,000 per day to Ecology and the State of Washington, pursuant to RCW 70.105.095. USDOE reserves any defenses it may have to such penalty assertion by Ecology.

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1 As between Ecology and USDOE this Consent Agreement and Final
2 Order supersedes the Joint Regulatory Order issued by Ecology and
3 EPA on February 5, 1986.

4 FINAL ORDER

5 13. Manifest Requirements: USDOE shall comply with all
6 described procedures for the completion of manifests to ensure full
7 compliance with 40 CFR Part 262, Subpart B, and WAC 173-303-180.

8 14. Storage Requirements: USDOE shall comply with the
9 90-day storage requirements of 40 CFR § 262.34 and WAC 173-303-200
10 for the off-site disposal of hazardous waste from its generator-
11 accumulation areas. USDOE shall remove all dangerous (and hazard-
12 ous) wastes stored for more than 90 days from nondesignated TSDFs
13 by July 14, 1986. USDOE shall submit a report demonstrating com-
14 pliance with this Section by July 31, 1986. The provisions of
15 this section do not address other regulations applicable to
16 hazardous waste generators.

17 15. Closure and Post-Closure Plans: Within sixty (60) days
18 of receipt of written comments from Ecology on respondent's clo-
19 sure and post-closure plans, respondent shall modify those plans to
20 fully address the comments, and otherwise comply with requirements
21 of 40 CFR Part 265, Subpart G. This requirement applies to the
22 following seven facilities: nonradioactive dangerous waste land-
23 fill, 2727S and 616 - nonradioactive dangerous waste transshipment
24 facilities, 221T - contaminated systems test facility, 3718F -
25 alkali metal treatment and storage facility, 105DR - large sodium
26

1 fire facility and 183-H - solar evaporation basins. Such modified
2 plans shall be submitted to Ecology for final review and approval.
3 Any deficiencies in these modified plans noted by Ecology in the
4 final submittal shall be cured (and the plans resubmitted to
5 Ecology) within thirty (30) days. Such modified plans shall
6 become the approved closure plans under the terms of this agree-
7 ment.

8 16. Landfill Utilization: USDOE shall not accept hazardous
9 waste at the nonradioactive dangerous waste landfill, the 183-H
0 Solar Evaporation Units or 300 Area Process Trenches, until such
1 time as Ecology recognizes respondent's compliance with 40 CFR
2 Part 265, Subpart F, for the units. The issue of the unit's com-
3 pliance with regulatory requirements shall be resolved through
4 formal agreement between USDOE and Ecology. The issuance of a
5 Part B permit would be one example of such formal agreement.

6 17. Ground-Water Monitoring:

7 A. Affected Units: USDOE shall come into compliance
8 with WAC 173-303-400(3) and 40 CFR Part 265, Subpart F (interim
9 status ground-water monitoring requirements), for the following
0 units as soon as is reasonably and practically possible, but no
1 later than the schedules set forth below: Nonradioactive Dangerous
2 Waste Landfill; 183-H Solar Evaporation Units; 300 Area Process
3 Trenches; and 200 east and 200 west mixed waste burial grounds
4 and retrievable storage areas.

5 B. Compliance Plans: USDOE shall immediately initiate
6 efforts to comply with ground water monitoring requirements at the

1 identified units through development of compliance plans and initia-
2 tion of necessary procurement as presented to Ecology and EPA at
3 meetings on March 5, April 15, May 5, and June 11, 1986. USDOE
4 shall provide EPA and Ecology with copies of Requests for Propo-
5 sals issued in relation to this Final Order. Development of
6 ground-water monitoring systems shall adhere to the following:

7 (1) Compliance Plans: Contents: A compliance
8 plan for each unit shall be developed and shall include at a
9 minimum, the following:

10 (a) A narrative description of all work
11 performed to date, to comply with 40 CFR Part 265, Subpart F
12 ("interim status ground-water monitoring requirements").

13 (b) A copy of all boring logs, well
14 construction location data, results of sampling and analysis, and
15 other hydrogeological data gathered since June 1985, to comply
16 with interim status ground-water monitoring requirements.

17 (c) A discussion on the need for further
18 hydrogeological investigation at the unit as related to the
19 requirements of the hazardous waste regulations.

20 (d) An outline and schedule of additional
21 work planned to comply with interim status ground-water monitoring
22 requirements, such that compliance is achieved by the date
23 indicated in Section 18(C), below.

24 (e) For those units subject to alternate or
25 assessment ground-water monitoring, a discussion of the method of
26

1 determining the rate and extent of contamination. Compliance
2 plans shall be submitted according to schedules indicated in
3 Section C, supra.

4 (2) Compliance Plans: Modifications Prior to
5 Implementation: Ecology may submit written comments on each com-
6 pliance plan received in the event such plan is inadequate or
7 unacceptable. These comments and proposed modifications may
8 include additions or changes to the Outline and Schedule for Addi-
9 tional Work section of the plan. USDOE shall modify each plan,
10 within thirty (30) days of receipt of comments specific to each
11 compliance plan, to fully address these comments and submit such
12 modified plan to Ecology and EPA prior to performance of scheduled
13 work, to the extent practicable. USDOE shall implement the modi-
14 fied compliance plans according to terms and schedules as set
15 forth in the modified compliance plans.

16 (3) Compliance Plans: Reporting: For each
17 compliance plan, USDOE shall submit a quarterly report on the
18 status of USDOE's implementation of the outline and schedule for
19 additional work until the plan is fully implemented. These
20 reports shall describe all work done pursuant to this Agreement
21 and Order in the past quarter, and shall present a compilation of
22 all raw data obtained pursuant to this Agreement and Order in the
23 previous quarter. Ecology, in reviewing the quarterly report
24 (which shall be submitted by the 25th day of each subsequent
25 quarter), or any other report submitted by USDOE, may comment on
26

1 the report in writing and request modification of the applicable
2 compliance plan including additions and/or alterations to the
3 outline and schedule for additional work. Upon receipt of com-
4 ments, USDOE shall modify said compliance plan per the terms and
5 procedures set forth in paragraph 2 above. Ecology reserves the
6 right to request additional information at any time regarding
7 compliance with the terms of this agreement.

8 C. Implementation of Compliance Plans: Specific Units:

9 (1) Nonradioactive Dangerous Waste Landfill: The
10 March 1986 compliance plan submitted to EPA and Ecology for the
11 nonradioactive dangerous waste landfill satisfies the requirement
12 to submit a ground-water monitoring compliance plan for this unit,
13 subject to supplementation at the request of Ecology. A ground
14 water monitoring system based upon such plan shall be installed by
15 USDOE. A ground-water monitoring system adequate to comply with
16 interim status standards shall be installed no later than
17 December 31, 1986.

18 (2) 183-H Solar Evaporation Basins: Within
19 forty-five (45) days of the effective date of this Order USDOE
20 shall submit a compliance plan for the 183-H Solar Evaporation
21 Basins. A ground water monitoring system based upon such plan
22 shall be installed by USDOE. Phase II of the ground water moni-
23 toring plan, as presented to EPA and Ecology (as modified),
24 designed to comply with interim status standards shall be in place
25 no later than December 31, 1986. Phase II shall include those
26

1 wells identified in the Revised Phase II Ground Water Monitoring
2 Plan presented to EPA and Ecology on June 11, 1986. Phase III of
3 the ground-water monitoring system shall be installed no later
4 than September 30, 1987, to complete compliance with interim
5 status standards.

6 (3) 300 Area Process Trenches: Within sixty
7 (60) days of the effective date of this Order USDOE shall submit a
8 compliance plan for the 300 Area Process Trenches. A ground water
9 monitoring system based upon such plan shall be installed by
10 USDOE. A ground-water monitoring system adequate to meet interim
11 status standards shall be in place no later than December 31,
12 1986.

13 (4) 200 Area Mixed Waste Burial Grounds and
14 Retrievable Storage Facilities:

15 (a) Within 60 days of the effective date of
16 the Order USDOE shall submit an outline of a proposed compliance
17 plan for the 200 East and 200 West mixed waste burial grounds and
18 retrievable storage facilities. Regulated units within those
19 facilities are identified by USDOE as follows: 218-W-3A, 218-W-3A2,
20 218-W-4C, 218-E-10, and 218-E-12B.

21 USDOE has determined that radioactive mixed waste was not
22 disposed of in sites 218-W-2A and 218-C-9 and will withdraw its
23 permit application for these two sites. Other units identified
24 in the Part B permit application which may be utilized in the
25 future, but which have not been used to date, shall not be
26 subject to this Order.

1 tion that was not reasonably available at the time of presentation
2 of the compliance plan becomes available to USDOE which indicates
3 the plan will not result in compliance with applicable ground-water
4 monitoring regulations by the specified dates, that information
5 shall be brought immediately to the attention of Ecology. After
6 submission and evaluation by Ecology, an alternative plan and
7 schedule may be negotiated by the parties based on such new infor-
8 mation.

9 (2) Ecology may require modification or expansion
10 of ground-water monitoring systems installed pursuant to this
11 agreement, should such installed systems fail to achieve compliance
12 with 40 CFR 265 Subpart F.

13 18. In the event any reviews or circumstances demonstrate a
14 need for extension of time for any submission or compliance date
15 set forth above in paragraph 17, it may be modified by the written
16 agreement of the parties. If agreement on a revised schedule
17 cannot be reached, or if any party believes that a revised
18 schedule is not justified, the parties shall resolve any
19 disagreement over the revised schedule through the conflict
20 resolution procedures of this agreement.

21 19. Conflict Resolution: In the event of a dispute arising
22 between the parties concerning the implementation of any of the
23 terms of this Agreement, the parties will attempt to resolve the
24 differences. If the differences cannot be resolved by the two
25 parties in a timely manner, USDOE will expeditiously prepare a
26 brief issue(s) paper detailing the circumstances of the dispute

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1 and present the paper to Ecology's project manager. If a resolu-
2 tion is not reached within two weeks of the receipt of this issue
3 paper, the parties will hold a mid-level management meeting to
4 resolve the issues in dispute. If the dispute is still unresolved,
5 higher management levels and respective legal counsels for the
6 parties will be consulted.

7 Should a dispute involving Ecology and USDOE not be resolved
8 by the foregoing procedure, an action may be taken by Ecology to
9 the extent authorized by law to enforce its position on this
10 agreement in an appropriate forum.

11 20. Compliance with Permits and Laws: Compliance with the
12 terms and conditions of this Order shall not in any way be con-
13 strued to relieve USDOE of its obligations to comply with the
14 terms and conditions of any permit, or any applicable federal,
15 state or local law. All actions taken pursuant to this Agreement
16 and Order shall be those authorized by RCRA and ch. 70.105 RCW, as
17 applicable.

18 21. Availability of Funding: USDOE's commitments under
19 this Agreement are subject to the availability of appropriated
20 funds for such purpose. However, should USDOE fail to comply
21 with the terms herein based on a lack of appropriated funds,
22 Ecology reserves all rights to initiate action to require compli-
23 ance with RCRA and ch. 70.105 RCW, including the provisions of
24 § 6001 of RCRA (42 U.S.C. § 6961) at those facilities on the
25 Hanford site subject to such requirements, including those covered
26 by this Agreement and Order, to the extent permitted by law.

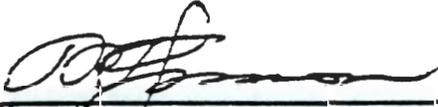
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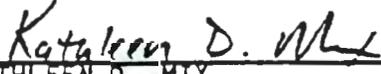
1 22. Submission of Documents: All submittals required under this Order
2 shall be submitted in duplicate to Mr. Richard A. Burkhalter, Supervisor,
3 Industrial Section, Washington Department of Ecology, M/S PV-11, Olympia,
4 Washington, 98504. Where provided in this Agreement and Order, duplicate
5 copies shall be provided to Mr. Kenneth D. Feigner, Chief, Waste Management
6 Branch, M/S 533, Environmental Protection Agency, 1200 Sixth Avenue, Seattle,
7 WA 98101.

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9 IT IS SO AGREED AND ORDERED, effective this 1st day of October, 1986.

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12 _____
13 MARC A. HORTON, Deputy Director
14 Office of Operations and Enforcement
15 State of Washington Department of
16 Ecology

17
18 STIPULATED AND AGREED FOR ISSUANCE

19 
20 _____
21 T. R. Fitzsimons, Assistant Manager
22 Environment, Safety and Security
23 United States Department
24 of Energy

25 
26 _____
27 KATHLEEN D. MIX
28 Assistant Attorney General
Department of Ecology
State of Washington

Approved as to form.

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