BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

UNITED STATES DEPARTMENT OF ENERGY, Appellant, v. STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Respondent.	Case No. PCHB # 23-027 SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Appellant U.S. Department of Energy (Energy), and Respondent State of Washington, Department of Ecology (Ecology), represented by their respective undersigned counsel, as a full and final settlement of the above-referenced appeal.

Energy and Ecology (collectively the Parties), without admitting fault or liability and without prejudice to their respective legal arguments and positions, stipulate and agree as follows:

I. Background

On May 30, 2023, Ecology issued the Final Class 3 Permit Modification 8C.2023.1F to the Hanford Facility Resource Conservation and Recovery Act (RCRA) Permit, Dangerous Waste Portion, Revision 8C, for the Treatment, Storage, and Disposal of Dangerous Waste, Part III, Operating Unit Group 11, Integrated Disposal Facility (IDF), WA7890008967 (Permit Modification). On June 28, 2023, Energy filed the instant appeal with the Pollution Control Hearings Board (Board). The Parties have engaged in settlement discussions to resolve the dispute and thereby avoid the cost and time associated with further litigation.

II. Settlement Agreement

1. Presence of Shower at IDF

Before IDF "active life" begins, Energy shall deploy and have available a portable shower (i.e., a "drench shower") with containment capabilities at the IDF during the following activities, which will be routinely occurring during the active life phase of IDF, specifically:

(a) the transfer of leachate from the leachate collection systems to tanker trucks at the truck loading station.
(b) treatment of waste through the following immobilization techniques: microencapsulation, macroencapsulation, and sealing.
(c) manual transfer of leachate from the landfill sumps to the leachate collection units.

2. Agency-Initiated Permit Modification to Effectuate the Terms of This Agreement
    (a) Ecology will prepare a draft Agency-Initiated permit modification pursuant to WAC 173-303-830(3)(ii). Prior to initiation of the formal permit modification process:
        i. Ecology shall share the draft permit modification with Energy for confirmation that the permit modification is consistent with the terms of this Agreement prior to Ecology commencing the public comment period for this permit modification.
        ii. Ecology shall transmit the draft permit modification to the permittees on or around June 30, 2024, provided that the permittees provide Ecology with Addendum J, with a certified letter, by March 15, 2024, and review the draft permit modification expeditiously. Based on these dates and a realistic administrative timeline with no unexpected difficulties (e.g. significant comments, appeal, etc.), Ecology anticipates issuing a final permit modification on or around October 31, 2024.
    (b) Permit conditions numbered III.11.N.2, III.11.N.2.a, and III.11.N.2.b of the original May 30, 2023, Permit Modification shall be removed in their entirety.
    (c) Addendum F, Preparedness and Prevention, will be modified as follows:
        i. Add the following language to Section 2.2.1.3 Emergency Equipment:

Before IDF "active life" begins, Energy shall deploy and have available a portable shower (i.e., a "drench shower") with containment capabilities at the IDF during the following activities which will be routinely occurring during the active life phase of IDF, specifically:

- The transfer of leachate from the leachate collection systems to tanker trucks at the truck loading station.
- Treatment of waste through the following immobilization techniques: microencapsulation, macroencapsulation, and sealing.
- Manual transfer of leachate from the landfill sumps to the leachate collection units.

A drench shower is located near one or both of the following locations at IDF: Building MO2269 (IDF mobile support office); and/or Building MO2342 (IDF restroom shower trailer); and has/have the ability to contain and store flushed rinsate to be able to manage it as dangerous waste, if applicable. Water for this/these devices will be replenished from the delivery of sanitary water.

Records of the following will be maintained in the IDF operating record:

- When the drench shower is moved onto and off the IDF.
- Dates of transfer of leachate from the leachate collection systems to tanker trucks at the truck loading station.

- Dates of treatment of waste at the IDF through the following immobilization techniques: microencapsulation, macroencapsulation, and sealing.
- Dates of manual transfers of leachate from the landfill sumps to the leachate collection units.

(d) Addendum I, Inspection Plan, will be modified as follows:

i. Make the following changes to Table I-1, IDF inspection Schedule

Add a row for the drench shower containing the following under the General Facility Section:

- Inspection Item/Area – Drench shower(s)
- Frequency Pre-Active Life – Not applicable
- Frequency Active Life – Monthly (when in use) ([footnote] Inspections are applicable only during periods of equipment use. If the facility equipment has been inactive for more than a month and inspections are suspended, then an initial inspection will be conducted prior to use.)
- Types of Problems and Evaluation Criteria
  - Item: Shower;
  - Inspection: Problem: Equipment is nonoperational. Verify the equipment is present and operational by checking its function.; and
  - Frequency: monthly

(e) Addendum J, Facility Response Plan, will be modified as follows:

i. Make the following changes to Section 8.2, Portable Emergency Equipment

Add a row for the drench shower containing the following under the Portable Emergency Equipment Table

- Location - A drench shower is located near one or both of the following locations at IDF: Building MO2269 (IDF mobile support office); and/or Building MO2342 (IDF restroom shower trailer).
- Capability – Assists in flushing chemicals/grout used for treatment/landfill leachate from personnel. Ability to contain and store flushed rinsate to manage as dangerous waste, if applicable.

3. Dismissal of Appeal

Upon the Parties' signing the settlement agreement, Energy will file a motion with the Board to voluntarily dismiss this appeal without prejudice.

4. Miscellaneous Provisions

(a) Public Message of Intent

Ecology will issue a public message of its intent to modify the permit consistent with this Agreement within 10 business days of receipt of the Board's order dismissing this appeal.

(b) Headings

The section and subsection headings of this Agreement are for the convenience of the Parties and do not affect the meaning or interpretation of the agreement.

(c) Estoppel

Resolution of this appeal is made without prejudice to any other locations on the Hanford Site. Inclusion of a drench shower in the Permit for the IDF is fact specific and applies to IDF rather than the Hanford Site as a whole.

(d) Remedies

In the event that either party violates the terms of this Agreement, the aggrieved party may pursue all remedies available by law.

(e) Effective Date and Duration

This Agreement shall become effective once signed by the Parties. This Agreement shall remain in effect until the agency-initiated permit modification becomes effective.

(f) Drafting

The Parties agree and acknowledge that each party participated in the drafting of this Agreement and, therefore, the Parties shall be deemed to have jointly drafted this Agreement. No presumption shall arise favoring or disfavoring any party by virtue of authorship of all or part of this agreement.

(g) Execution

This Agreement may be executed in any number of original counterparts and may be executed by facsimile and/or electronically. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

(h) Signatories Authorized

The undersigned representatives of Energy and Ecology certify that they are fully authorized to enter into the terms and conditions of this Agreement and to legally bind each Party thereto.

[Signatures on the following page]

MARK D. SILBERSTEIN Chief Counsel _____ ROBERT G. LAMILLA MARK D. SILBERSTEIN BENJAMIN ZELEN Office of Chief Counsel 202-586-4990 *Mark.Silberstein@rl.doe.gov* *Benjamin.Zelen@rl.doe.gov* *Robert.Lamilla@rl.doe.gov* Attorneys for Energy Dated: March 4, 2024	ROBERT W. FERGUSON Attorney General _____ ALEXANDRIA DOOLITTLE WSBA # 36332 Assistant Attorney General KELLY T. WOOD WSBA # 40067 Senior Counsel *alex.doolittle@atg.wa.gov* *kelly.wood@atg.wa.gov* 360-586-6769 Attorneys for Washington State Department of Ecology Dated: March 4, 2024