

Ecology’s Response to Comments for the Proposed Settlement Agreement and Consent Decree Between Department of Ecology and TransAlta Regarding TransAlta’s Coal-Fired Power Plant Near Centralia

Comments received on the proposed Settlement Agreement between Department of Ecology and TransAlta are provided below. There is a separate index table for written comments and for verbal testimony received. You can find the responses to each comment by going to the page numbers referenced in the tables.

Two versions of form letters were received by e-mail from multiple stakeholders through Sierra Club’s web site. The total number of e-mails for both form letters received prior to the close of the comment period was 1,896. This number does not account for duplicate e-mails that were sent by the same stakeholders. Ecology has consolidated responses to both versions of these form letters below.

Written comments and the content of the form letters can be accessed at <http://www.ecy.wa.gov/programs/air/TransAlta/TransAltaAgreement.html>.

Written Comments		
Name	Organization	Page #
Janette K. Brimmer	Earthjustice (Counsel for NPCA, Sierra Club and NW Environmental Defense Center)	1
Mary Wagner	USDA Forest Service	4
Form Letter #1, Consolidated comments	Sierra Club members	5
Form Letter #2, Consolidated comments	Environmental groups	6

Verbal Testimony		
Name	Organization	Page #
Mark Quinn	Washington Wildlife Federation	7
Randy King	Acting Superintendent, Mount Rainier National Park	7
Jonathan Smith		7
Maia Face		7
Adam Fleisher		7
Shane Macover		7
Janette Brimmer	Earthjustice	7
Donna Albert		8
Doug Howell	Sierra Club	8

Response to comments from Earthjustice:

Earthjustice provided comment on the proposed settlement agreement on behalf of the National Parks Conservation Association, the Sierra Club, and Northwest Environmental Defense Center (collectively the “Conservation Organizations”). The comments are 17 pages in length. Below, Ecology has attempted to summarize the key points from this comment letter and respond to them instead of engaging in legal argument. The full comment letter from Earthjustice is available on line at <http://www.ecy.wa.gov/programs/air/TransAlta/TransAltaAgreement.html>.

1. The mercury portions of the proposed agreement and consent decree are inadequate and not in the public interest
 - The TransAlta coal plant is Washington’s largest source of toxic mercury emissions
 - Contrary to assertions in the proposed agreement, the State has the authority and the obligation to control mercury emissions from the TransAlta coal plant
 - The industry is currently achieving 90% and better reductions in mercury emissions, a standard to which TransAlta should be held

Response:

Ecology disagrees with the commenters’ assertion that the agreement with TransAlta to install mercury controls and reduce mercury emissions by 50% is inadequate and contrary to public interest. The agreement achieves this reduction on the state’s top source of airborne mercury faster than would be possible by enacting a regulation or waiting for the pending federal action to take effect.

Ecology concurs that TransAlta is the largest single source of mercury air emissions in the state. Mercury is a top pollutant of concern in Washington. Although the largest source of atmospheric mercury is from global sources that transport to Washington, Ecology recognizes that it is important to address the sources we are able to control. For that reason, Ecology included mercury as a point of discussion in the mediation with TransAlta.

Ecology does not dispute that we have the authority to regulate sources of mercury emissions in the state. But the regulatory process is lengthy and resource-intensive. Working with TransAlta in a mediated process offered an opportunity to get significant reductions in mercury emissions much faster than possible through rule making, and at much less expense to both the State and TransAlta.

Through the mediation, TransAlta has agreed to install state of the art mercury controls that will reduce their emissions by a targeted 50% by 2012. These controls, halogenated activated carbon injection or sorbent injection, are the same controls being used by the facilities the commenters claim achieve 90% emission reduction. TransAlta has already tested the controls, and these tests indicated that the controls may capture as much as 70% of the mercury emissions from the facility. TransAlta is currently in the process of completing the design and installing controls.

Some facilities appear to achieve a 90% reduction in mercury emissions using the same technology. However, the 90% reduction is not really comparable to the 50% reduction that

TransAlta will achieve. Those facilities showing 90% reduction rates are currently uncontrolled for most air pollutants. Many of these facilities utilize different types of coals which emit mercury in a form that is more amenable to removal from the flue gas. TransAlta meanwhile has installed advanced scrubbers for sulfur dioxide and uses particulate controls that reduce particulate matter more than those other plants are required to. These scrubbers and particulate controls reduce TransAlta's potential mercury emissions by about 30%.

Another difference with TransAlta is that because of the configuration of its electrostatic precipitator (ESP) controls for particulate matter, the contact time between the activated carbon and flue gas will be reduced. This limits the effectiveness of the mercury controls compared to facilities that have configurations allowing a longer contact time. For these reasons, Ecology determined that a 50% reduction target in mercury was appropriate. As stated above, Ecology is optimistic that the removal rate will be greater than 50% based on the initial test results.

It is further important to note that EPA is currently taking action to require mercury Maximum Available Control Technology (MACT) limits for mercury for coal fired power plants. In this process, EPA will evaluate all the installed control technologies for the industry, then select the top performing 12% as the standard. This standard will likely be in effect in 2016. If it is set at a level higher than what TransAlta is able to achieve through the controls agreed to in the mediation, TransAlta will be required to install additional controls.

2. The proposed agreement and consent decree include various clauses and constraints that further weaken the agreement.

Response:

Ecology believes that the commenter's have misconstrued these clauses. To implement the mercury reductions, TransAlta is agreeing to install the controls and undergo substantial expenditures to make them work. In fact, TransAlta has already taken major steps in this direction by proceeding with testing and design of the controls. While Ecology has agreed to not require additional NOx reductions until after 2018, Ecology believes this agreement is reasonable as stated in response to Earthjustice comment 4 below. Finally, Ecology is puzzled by the comment regarding "beneficial uses" of ash. "Beneficial use" is a term clearly defined in Ecology's solid waste rules, WAC 173-350 et seq., and is a well-known term of art. Further, the inference that TransAlta's ash handling could result in a coal ash spill such as that by the Tennessee Valley Authority (TVA) in December 2008 is misleading. TransAlta does not have ash ponds of this nature and its coal ash handling system is disposed in accordance with Ecology's solid waste rules, so such an outcome is not possible.

3. It is extremely unfortunate and puzzling why Ecology feels compelled to reach this lopsided Agreement with TransAlta. This Agreement is not a compromise as between two ends of a spectrum, but rather a capitulation. Ecology and the citizens of Washington get nothing from this "bargain" that TransAlta wasn't already going to give them. TransAlta gets exactly everything it wants: it is not subject to BART for NOx; it is not required to do anything to control NOx pollution that is it not already doing and would do regardless of this Agreement; it can do minimal mercury control, well below industry standards, at its sole option with no repercussions if it does not achieve the reductions agreed to. In return, Ecology agrees to

Response:

Ecology disagrees with the commenter's characterization of the agreement. The agreement reached a quick and effective resolution of issues related to NOx and mercury controls without the delay that would otherwise be caused through the regulatory process or potential litigation. Instead of litigating the question of whether TransAlta is subject to BART, Ecology and TransAlta were able to agree and move forward on a BART determination for NOx that meets the requirements of the federal Regional Haze Rule. Instead of expending much time and resource in establishing a mercury rule for a single facility, Ecology secured an agreement to use state-of-the-art technology to reduce mercury emissions by at least 200 lbs per year beginning in 2012. This achieves substantial mercury reductions well in advance of the EPA action. Regarding ash handling, all Ecology has agreed to do is work with TransAlta to find solutions to potential future ash handling problems (which would be as a result of the new control technology) within the constraints of Ecology's solid waste rules. These results are all at tremendous benefit to Ecology, the state of Washington, and to the environment.

4. Ecology should retain its authority to require further NOx reductions regardless of TransAlta's arguments.

Response:

Ecology does retain authority to require further NOx reductions from the TransAlta facility. The federal Regional Haze program requires that states submit updated plans to achieve natural background visibility conditions in Class I areas by 2064 every ten years starting in 2018. Ecology has agreed not to request additional NOx reductions from TransAlta in 2018 because that date is only a few years from the current analysis, and it is not likely that there would be additional information by then that would alter Ecology's current determination. Instead, Ecology would likely seek emission reductions from the many other sources of impacts to Class I areas that have not been subjected to a BART analysis before seeking additional reductions from the BART sources. However, there are no restrictions in the agreement that would prevent Ecology from seeking further NOx emission reductions from TransAlta post 2018, and Ecology would consider such reductions if needed to keep on track to meet the 2064 visibility targets.

**Response to comments from the United States Department of Agriculture,
National Forest Service:**

1. Provisions associated with the BART determination [in the agreement?] should be separated from the voluntary mercury reductions to remove the non-enforceability provisions intended to cover the voluntary mercury reductions.

Response:

The BART determination language in the mediation agreement will be superseded by the BART regulatory order to be issued to the facility. As a result the ‘non-enforceability’ considerations of the BART portions of the mediation agreement go away.

2. Ecology should not limit itself from opportunities to reduce haze causing emissions at the TransAlta Centralia plant for the next 20 years.

Response:

The mediation agreement does not limit our ability to come back to TransAlta for additional reductions under the context of further progress in meeting the visibility goal. The agreement only provides that through 2018 we will not impose any new requirements as a result of regional haze requirements. Such requirements could be imposed as part of the long term strategy included in the 2018 regional haze SIP.

Response to consolidated comments in Form Letter #1, Sierra Club Members:

1. The Clean Air Act requires power plants to reduce haze-causing pollutants, including nitrogen oxides, and toxic chemicals like mercury. Washington should require the most effective pollution controls to reduce TransAlta's nitrogen oxide and mercury emissions. Without these controls, the Centralia coal plant will continue to unnecessarily obscure views and contaminate water and wildlife in our national parks and wilderness areas for decades to come.

Response:

Thank you for your comments on the proposed Settlement Agreement and Consent Decree between the Washington State Department of Ecology and TransAlta regarding the company’s coal-fired power plant near Centralia.

Staff members with Ecology’s Air Quality Program reviewed your comments and offer these responses:

Sufficiency of nitrogen oxide controls: Staff analysis of the TransAlta facility near Centralia concludes that the terms of the Settlement Agreement satisfy requirements for Best Available Retrofit Technology (BART). BART is the standard that applies to this facility. Under BART, the selection of an emission control technology is based on a multi-factor analysis. These factors include non-air quality impacts, visibility impacts, cost of the equipment, and remaining expected plant life.

It is important to note that many of coal-fired power plants that are reporting 80 to 90 percent emission reductions did not have emission controls prior to the installation of this technology.

In addition, many of the 80 to 90 percent mercury reductions required by jurisdictions outside Washington only apply to new facilities, with lower or no requirements for existing facilities.

Thank you again for your comments and for your interest in helping to protect Washington's air quality and environment.

Response to consolidated comments in Form Letter #2, Sierra Club Members:

1. From health care professionals to park rangers to fishermen, the Washington public has grave concerns about what this plant generates in our communities. As the state's largest polluter for global warming, mercury and haze (from nitrogen oxide pollution), the cumulative impact of this plant affects Washingtonians from every walk of life. The State should not move forward with the Settlement Agreement as proposed until a more substantive review can take place.

There are three main problems with this Settlement Agreement as it now stands:

1. The reductions required for toxic mercury emissions are insufficient and should be improved to 90 percent.
2. The pollutant-by-pollutant process has distorted the pollution impacts of this plant on public health.
3. The public process has been insufficient.

Response:

Thank you for your comments on the proposed Settlement Agreement and Consent Decree between the Washington State Department of Ecology and TransAlta regarding the company's coal-fired power plant near Centralia.

Staff members with Ecology's Air Quality Program reviewed your comments and offer these responses:

1. **Sufficiency of nitrogen oxide controls:** Staff analysis of the TransAlta facility near Centralia concludes that the terms of the Settlement Agreement satisfy requirements for Best Available Retrofit Technology (BART). BART is the standard that applies to this facility. Under BART, the selection of an emission control technology is based on a multi-factor analysis. These factors include non-air quality impacts, visibility impacts, cost of the equipment, and remaining expected plant life.
2. **Plant impacts on public health:** A pollutant-by-pollutant approach is the only applicable scientific standard. At this point, no scientific method has been developed to measure combined pollutants' interactions and effects.
3. **Sufficiency of public process:** The State of Washington entered into confidential mediation on these issues at TransAlta's request. Mediation enabled the State to avoid potentially lengthy and costly litigation over these issues. Once the proposed Settlement

Thank you again for your comments and for your interest in helping to protect Washington's air quality and environment.

Response to testimony from October 14, 2009, Public Hearing on proposed TransAlta mediation agreement:

Mark Quinn, Washington Wildlife Federation:

Thank you for your views. The Governor's Executive Order, 09-05 plus the program in Chapter 70.235 sets up an approach to reducing our states greenhouse emissions and promoting 'greener' energy sources. One element of the Executive Order directs the Department of Ecology to work with TransAlta to establish an agreed order for the company to reduce its emissions to meet the greenhouse gas emission requirement in Chapter 80.80 RCW by 2025.

Randy King, Superintendent Mt. Rainier Natl. Park:

Thank you for your views. As noted in our presentation at the hearing, Ecology is concerned with the mercury emissions from the facility and has worked with the company on a voluntary approach to reduce the emissions on a schedule that is faster than would be accomplished by waiting for EPA to complete new rules. We have addressed the concerns about the level of NOx control more thoroughly in our response to written comments.

Johnathan Smith, Maia Face, Adam Fleisher:

We acknowledge your views that the mediation agreement doesn't result in enough mercury control, and that the nitrogen oxides reduction proposal in the BART order is inadequate. Ecology respectfully disagrees with your assessments, as more fully described in the responses to written comments.

Shane Macover:

When issued as final documents, the mediation agreement and BART order will be legally binding and enforceable documents, not listings of voluntary actions.

Janette Brimmer, Earth Justice:

Thank you for your views on nitrogen deposition, and climate change. Your oral comments on the BART determination and mercury control and other aspects of the Mediation Agreement are covered by our responses to written comments.

Donna Albert:

We appreciate your thoughtful views on the subject of coal free electric power and stopping the ongoing climate change.

Doug Howell, Sierra Club:

Thank you for your views on the Confidential Mediation process and your views of what would constitute adequate public involvement. Your direct questions and concerns about the Mediation Agreement and its content and process are covered in response to Earth Justice's written comments.

Your concerns about the Air Operating Permit process are outside of the scope of this hearing. Your concerns about greenhouse gas emissions from the TransAlta facility are outside the scope of this hearing, but are being addressed through the process included in the Governor's Executive Order 09-05.