

CIVIL COVER SHEET

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

State of Washington

(b) County of Residence of First Listed Plaintiff Thurston, Wash. (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Andrew A. Fitz, Attorney General of Washington, PO Box 40117, Olympia, WA 98504-0117 (360) 586-6770

DEFENDANTS

Samuel W. Bodman, Secretary of the U.S. Department of Energy; and the U.S. Department of Energy

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Michael B. Mukasey, Attorney General, US Dept. of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530-0001;

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, Labor, etc.

V. ORIGIN

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 USC § 6972(a)(1)(A), 28 USC § 1331, 28 USC §§ 2201-02, 28 USC § 1367 (supp. jurisdiction over claims under RCW 70.105.120) Brief description of cause: RCRA citizen suit to remedy order and regulatory violations

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD



APPLYING IFP JUDGE MAG. JUDGE

COPY

ORIGINAL
E-FILE WITH CLERK'S OFFICE

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

EASTERN

District of

WASHINGTON

STATE OF WASHINGTON,
Plaintiff,
v.

SUMMONS IN A CIVIL CASE

SAMUEL W. BODMAN, Secretary of
the United States Department of
Energy; and the UNITED STATES
DEPARTMENT OF ENERGY,
Defendants.

CASE NUMBER: **CV-08-5085-FVS**

TO: (Name and address of Defendant)

Samuel W. Bodman; Secretary
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

ROBERT M. MCKENNA
Attorney General
MARY SUE WILSON, WSBA #19257
Senior Assistant Attorney General
ANDREW A. FITZ, WSBA #22169
THOMAS J. YOUNG, WSBA #17366
ALLYSON ZIPP, WSBA #38076
Assistant Attorneys General
(360) 586 6770

an answer to the complaint which is served on you with this summons, within 60 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

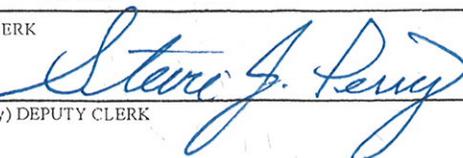
James R. Larsen

NOV 26 2008

CLERK

DATE

(By) DEPUTY CLERK



SERVICE COPY

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

EASTERN

District of

WASHINGTON

STATE OF WASHINGTON,
Plaintiff,
V.

SUMMONS IN A CIVIL CASE

SAMUEL W. BODMAN, Secretary of
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Energy; and the UNITED STATES
DEPARTMENT OF ENERGY,
Defendants.

CASE NUMBER: **CV-08-5085-FVS**

TO: (Name and address of Defendant)

US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

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James R. Larsen

CLERK

STEVIE J. PERRY

DATE

NOV 26 2008

(By) DEPUTY CLERK

NOV 26 2008

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

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Olympia, WA 98504-0117
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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 STATE OF WASHINGTON,

11 Plaintiff,

12 v.

13 SAMUEL W. BODMAN, Secretary
of the United States Department of
Energy, and the UNITED STATES
14 DEPARTMENT OF ENERGY,

15 Defendants.

CV-08-5085-FVS

NO. CT-

STATE OF WASHINGTON'S
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

16
17 **I. INTRODUCTION**

18 1. This is a civil action for declaratory and injunctive relief arising from
19 the United States Department of Energy's failure to meet certain key compliance
20 milestones in a hazardous waste management order (Order) issued by the State of
21 Washington (State) through its Department of Ecology to, and with the consent of,
22 the United States Department of Energy (Energy). The Order, formally known as

1 the Hanford Federal Facility Agreement and Consent Order (HFFACO) and
2 commonly known as the “Tri-Party Agreement” or TPA, requires Energy to
3 remedy noncompliance with federal and state hazardous waste laws at Energy’s
4 Hanford Nuclear Reservation (Hanford) by, among other things, constructing and
5 operating a Waste Treatment Plant (WTP) to convert waste now stored in an
6 underground tank system and elsewhere into a safer form, and retrieving mixed
7 hazardous and radioactive “high-level waste” from 149 non-compliant, aging, and
8 in some cases already leaking, single-shell tanks (SSTs).

9 2. Energy has missed, or is certain to miss, the following Order
10 compliance milestones related to tank waste treatment:

11 a. M-062-08 (by June 30, 2006, submit a Hanford Tank Waste
12 Supplemental Treatment Technologies Report describing viable path(s)
13 forward to complete treatment of all Hanford tank wastes by 2028).

14 b. M-062-11 (by June 30, 2007, submit final Hanford tank waste
15 treatment baseline).

16 c. M-062-07B (by December 31, 2007, complete assembly of the
17 Low-Activity Waste (LAW) melter; move High-Level Waste (HLW) melter
18 #1 to HLW building).

19 d. M-062-09 (by February 28, 2009, start “cold commissioning”
20 of WTP).

21 e. M-062-10 (by January 31, 2011, complete “hot
22 commissioning” of WTP (i.e., begin waste treatment)).

1 f. M-062-00A (by February 28, 2018, complete tank waste
2 pre-treatment and vitrification (conversion into a glassified form) of no less
3 than 10% by volume and 25% by activity of Hanford's tank waste).

4 g. M-062-00 (by December 31, 2028, complete the treatment of
5 all Hanford tank waste).

6 3. In addition, Energy has missed, or is certain to miss, the following
7 Order compliance milestones related to tank waste retrieval:

8 a. M-045-00B (by September 30, 2006, complete the retrieval of
9 waste from sixteen "C-Farm" SSTs);

10 b. M-045-05A (by March 31, 2007, complete waste retrieval from
11 tank S-102); and

12 c. M-045-05 (by September 30, 2018, complete waste retrieval
13 from all Hanford SSTs).

14 4. The State requests a judgment that Energy has violated TPA
15 compliance milestones, as well as the hazardous waste laws and regulations that
16 underlie those milestones. The State seeks permanent injunctive relief requiring
17 Defendants to timely retrieve waste from Hanford's SSTs; to place retrieved waste
18 into storage that complies with the Resource Conservation and Recovery Act
19 (RCRA) and Washington's Hazardous Waste Management Act (HWMA); to
20 timely complete construction of the WTP; to timely treat all of Hanford's
21 high-level tank waste; and to take such other actions as are necessary to mitigate
22

1 threats posed to human health and the environment from historic and potential
2 future releases at the Hanford Site, including historic and potential future releases
3 from the SSTs. In addition, the State seeks civil penalties in the amount of up to
4 \$25,000 per violation per day under RCRA, 42 U.S.C. § 6972(a) (referencing
5 42 U.S.C. § 6928(a)(3) and (g)), and up to \$10,000 per violation per day under the
6 HWMA, Wash. Rev. Code (RCW) 70.105.080(1); recovery of its attorney's fees
7 and costs; and such other relief as the Court deems appropriate.

8 **II. JURISDICTION**

9 5. This action arises under the federal RCRA, 42 U.S.C. §
10 6972(a)(1)(A), and Washington's HWMA, RCW 70.105.120. This Court has
11 subject matter jurisdiction over claims asserted under RCRA under 42 U.S.C. §
12 6972(a) and 28 U.S.C. § 1331, as well as under the Declaratory Judgment Act,
13 28 U.S.C. §§ 2201 and 2202. Jurisdiction over claims asserted under the HWMA
14 arises under RCW 70.105.120, with this Court having supplemental jurisdiction
15 over such claims under 28 U.S.C. § 1367.

16 6. The United States has waived sovereign immunity for claims asserted
17 under RCRA, and for supplemental claims asserted under state laws respecting the
18 control and abatement of hazardous waste disposal and management. 42 U.S.C.
19 § 6961.

20 7. By letter dated November 24, 2008, the State notified Energy of the
21 violations of RCRA Subchapter III described in this Complaint, and announced the
22 State's intent to file suit, in satisfaction of 42 U.S.C. § 6972(b). The State

1 provided copies of the notice letter to Samuel Bodman, Secretary of the United
2 States Department of Energy; Ines Triay, Acting Assistant Secretary for
3 Environmental Management, United States Department of Energy; Stephen L.
4 Johnson, Administrator of the United States Environmental Protection Agency;
5 Elin Miller, Regional Administrator of the United States Environmental Protection
6 Agency, Region X; Michael B. Mukasey, Attorney General of the United States;
7 David A. Brockman, Manager, United States Department of Energy, Richland
8 Operations Office; Shirley J. Olinger, Manager, United States Department of
9 Energy, Office of River Protection; and James A. McDevitt, U.S. Attorney.

10 **III. VENUE**

11 8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

12 **IV. PARTIES**

13 9. Plaintiff is the State of Washington. The State owns the groundwater
14 and surface water of the State, including the groundwater beneath the Hanford Site
15 and the Columbia River, which flows through and is contiguous to the Hanford
16 Site. The State also owns State Route 240, a highway that runs through the
17 Hanford Site. The State owns lands adjoining and in proximity to the Hanford Site
18 that are used by the State and its people for commerce, fishing, recreation, habitat,
19 aesthetics, tourism, and maintaining the cultural identity of the State. The State's
20 waters, highways, and lands are threatened by Energy's treatment, storage, and/or
21 disposal of hazardous and mixed hazardous and radioactive wastes at Hanford in
22

1 violation of the Order, RCRA, and the HWMA. The State has a direct and
2 tangible interest in the health, safety, and welfare of its citizens, and of all lands,
3 air, and waters within the state, which are threatened by Energy's actions.

4 10. The State, through its Department of Ecology (Ecology), is
5 responsible for administering the HWMA. The HWMA and its implementing
6 Dangerous Waste Regulations (Wash. Admin. Code (WAC) 173-303) provide the
7 legal framework for a state hazardous waste program authorized under RCRA by
8 the United States Environmental Protection Agency (EPA). *See* 51 Fed. Reg.
9 3,782 (1986); 52 Fed. Reg. 35,556 (1987); 55 Fed. Reg. 33,695 (1990); 59 Fed.
10 Reg. 55,322 (1994); and 61 Fed. Reg. 7,736 (1996). To the extent authorized, the
11 HWMA and the Dangerous Waste Regulations stand in lieu of RCRA as the law
12 governing hazardous waste management in Washington. 42 U.S.C. § 6926(b).

13 11. Defendant Samuel Bodman is the Secretary of the United States
14 Department of Energy, and is the chief administrative officer of Energy. Secretary
15 Bodman is the official ultimately responsible for the Energy's compliance at
16 Hanford with environmental laws, including RCRA and the HWMA.

17 12. Defendant United States Department of Energy is an executive
18 department of the United States, created pursuant to 42 U.S.C. § 7131. Energy
19 owns and operates the Hanford Site near Richland, Washington.

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V. FACTS

The Hanford Site:

13. Energy's Hanford Site covers 586 square miles in south-central Washington. Between 1943 and 1987, the United States produced plutonium at the Hanford Site for use in nuclear weapons. Plutonium production and other activities at Hanford created enormous amounts of radioactive, hazardous, and mixed wastes. Much of this waste remains at the Site today, still awaiting cleanup and/or proper disposal.

14. The Hanford Site contains over 1,500 identified contaminated sites and structures, which individually and collectively pose substantial risks to human health and the environment. These include 177 underground storage tanks holding approximately 53 million gallons of mixed high-level radioactive and hazardous waste, as described in further detail below.

15. The Columbia River flows through or is contiguous to the Hanford Site on the north and east before flowing through the "Tri-Cities" of Richland, Kennewick, and Pasco, Washington. The Columbia River is a water source for municipal, agricultural, and industrial uses in south-central Washington, as well as downstream in Washington and Oregon. The Columbia River supports aquatic life and related biota, including salmon that migrate and breed within and near the Hanford Site.

16. The southern boundary of the Hanford Site is contiguous with the city limits of Richland, Washington. The "Tri-Cities" of Richland, Kennewick, and

1 Pasco, Washington are home to approximately 170,000 persons (2007 official
2 estimate).

3 17. The Hanford Site itself is significant to the State and its citizens.
4 Large portions of the Hanford Site were designated as the Hanford Reach National
5 Monument in 2000. Both within and beyond the National Monument portion of
6 the Hanford Site, some of the only intact tracts of shrub-steppe habitat in
7 Washington support a variety of plants and wildlife. The Hanford Site, including
8 plants and wildlife within the Hanford Site, is significant to Native American
9 tribes including the Confederated Tribes and Bands of the Yakama Nation, the
10 Confederated Tribes of the Umatilla Indian Reservation, and the Nez Perce Tribe.

11 **The Hanford Federal Facility Agreement and Consent Order:**

12 18. In 1989, Ecology, EPA, and Energy entered into the Order. Among
13 other things, the Order is a compliance order issued pursuant to RCRA and the
14 HWMA. TPA Article I. The Order establishes numerous milestones (schedules
15 and associated regulatory requirements) for cleanup of the Hanford Site, and for
16 bringing Hanford facilities into compliance with applicable requirements.

17 **Hanford's Tank Waste and Tank Waste Treatment:**

18 19. Energy is storing approximately 53 million gallons of high-level
19 radioactive and hazardous waste (tank waste) at Hanford in 177 underground
20 storage tanks. This tank waste was generated beginning in the 1940s from the
21 reprocessing of spent fuel rods to extract weapons-grade plutonium. All of this
22 waste is "mixed," containing a mixture of hazardous waste and radioactive

1 material. The hazardous waste component of tank waste is regulated under RCRA
2 and the HWMA.

3 20. Hanford's tank waste includes at least 26 hazardous waste
4 constituents, including heavy metals and volatile organic compounds. All of these
5 constituents are potentially harmful to human health and the environment. In
6 addition, Hanford's tank waste contains at least 46 identified radionuclides.
7 These radionuclides are also potentially harmful to human health and the
8 environment. Once released, some of these radionuclides will persist in the
9 environment for hundreds of thousands of years.

10 21. All of Hanford's tank waste is "land disposal restricted" under RCRA
11 and the HWMA and thus must be treated to specified land disposal restriction
12 standards before disposal. WAC 173-303-140(2)(b) (incorporating by reference
13 40 C.F.R. § 268.1(b)). However, there is currently no treatment capacity for tank
14 waste at Hanford. The tank waste is instead being stored in violation of the
15 prohibition on storing land disposal restricted waste under the HWMA and RCRA.
16 WAC 173-303-140(2)(b) (incorporating by reference 40 C.F.R. § 268.50).

17 22. The Order is, among other things, a state-enforceable plan for treating
18 all of Hanford's mixed wastes to land disposal restriction standards, as required of
19 Energy under the Federal Facility Compliance Act of 1992 (codified in RCRA),
20 42 U.S.C. § 6939c(b).

21 23. The Order includes compliance milestones under the M-62 milestone
22 series for creating treatment capacity for Hanford's tank waste through

1 construction and operation of a WTP. The M-62 milestone series also includes
2 compliance milestones for completing treatment of all of Hanford's tank waste by
3 a defined end date.

4 24. Since 1989, the Order's milestone for commencing treatment of
5 Hanford's tank waste (e.g., the current M-062-10) has been re-negotiated and
6 extended three times, each time at Energy's request. As originally negotiated in
7 1989, tank waste treatment was to commence in 1999. In 1994, this start date was
8 moved to 2004. In 1996, the start date was moved to 2008. In 2000, the start date
9 was moved to the current date of 2011 (Order milestone M-062-10).

10 25. Energy has missed, or is certain to miss, the following Order M-062
11 compliance milestones related to tank waste treatment:

12 a. M-062-08 (by June 30, 2006, submit a Hanford Tank Waste
13 Supplemental Treatment Technologies Report describing viable path(s)
14 forward to complete treatment of all Hanford tank wastes by 2028).

15 b. M-062-11 (by June 30, 2007, submit final Hanford tank waste
16 treatment baseline).

17 c. M-062-07B (by December 31, 2007, complete assembly of the
18 LAW melter; move HLW melter #1 to HLW building).

19 d. M-062-09 (by February 28, 2009, start "cold commissioning"
20 of WTP).

21 e. M-062-10 (by January 31, 2011, complete "hot
22 commissioning" of WTP).

1 f. M-062-00A (by February 28, 2018, complete tank waste
2 pre-treatment and vitrification of no less than 10% by volume and 25% by
3 activity of Hanford's tank waste).

4 g. M-062-00 (by December 31, 2028, complete the treatment of
5 all Hanford tank waste).

6 **Hanford's Single-Shell Tank System:**

7 26. Hanford's approximately 53 million gallons of high-level tank waste
8 is stored in an underground tank system consisting of 177 tanks. Of these
9 177 tanks, 28 are double-shell tanks (DSTs) that comply with RCRA and
10 HWMA standards for hazardous waste tanks. The remaining 149 tanks are SSTs.

11 27. Approximately 30 million gallons of Hanford's tank waste is
12 currently being stored in the 149 SSTs. These tanks were constructed
13 between 1944 and 1964 with an expected operating life of approximately 25 years.
14 These tanks do not comply with RCRA and HWMA standards applicable to
15 tanks that store hazardous waste. Specifically, the SSTs lack structural integrity;
16 lack secondary containment; and lack leak detection, as required by
17 WAC 173-303-400(3) (incorporating by reference 40 C.F.R. § 265.193(a)(3),
18 (b), and (c)).

19 28. At least 67 of the SSTs have already leaked an estimated one million
20 or more gallons of waste to the environment. This leaked waste is mobile. It has
21 already contaminated the vadose zone soils surrounding the tanks. Some of the
22 leaked tank waste has already reached Hanford's groundwater. This groundwater

1 is hydraulically connected to the Columbia River, which flows contiguous to the
2 Hanford Reservation. Left to natural forces, leaked tank waste will continue to
3 migrate into Hanford's groundwater and toward the Columbia River.

4 29. All 149 SSTs have been identified to the State by Energy as "unfit for
5 use" pursuant to WAC 173-303-400(3) (incorporating by reference 40 C.F.R.
6 § 265.196). (Letter dated June 27, 2002, from James E. Rasmussen, Energy Office
7 of River Protection, to Michael Wilson, Department of Ecology.) Energy has
8 not immediately removed these unfit-for-use tanks from service as required
9 under WAC 173-303-400(3) (incorporating by reference 40 C.F.R. § 265.196).
10 Energy has not, within 24 hours after detection of a leak or, if such removal is
11 not possible, at the earliest practicable time, removed as much of the waste from
12 the SSTs as is necessary to prevent further release of hazardous waste to the
13 environment, as required under WAC 173-303-400(3) (incorporating by reference
14 40 C.F.R. § 265.196(b)(1)). In lieu of providing secondary containment and
15 repair to the SSTs, Energy has not yet closed the unfit-for-use tank system
16 as required under WAC 173-303-400(3) (incorporating by reference 40 C.F.R.
17 § 265.196(e)(1)).

18 30. Pursuant to a consent decree entered in *State of Washington, Dep't of*
19 *Ecology v. United States Dep't of Energy*, No. CT-99-5076-EFS, Energy has
20 successfully removed liquid wastes to a certain volume level and "interim
21 stabilized" the SSTs. However, due to the deteriorating condition of the SSTs, the
22 30 million gallons of wastes remaining in the SSTs pose a substantial threat to

escape to the environment and, in turn, threaten human health and the environment through air, soil, groundwater, and surface water exposure pathways. This threat increases the longer tank waste is left in the SSTs.

4 31. The above threat is compounded by a lack of sufficient compliant
5 storage capacity and by delays with the WTP. There is insufficient storage
6 capacity in Hanford's RCRA and HWMA-compliant DST system to allow for the
7 transfer of more than a limited amount of the waste currently stored in the SSTs.
8 Since the Order was negotiated in 1989, Energy's strategy for addressing this
9 situation has been to rely on the prospective future treatment capacity of the WTP
10 to remove waste from the DST and SST systems. Energy has expected that over
11 time, this will free DST capacity to allow for the continued transfer of waste
12 retrieved from the SSTs. Under this strategy, delays with the WTP prolong the
13 continued storage of tank waste in the unfit-for-use SSTs. Furthermore, the longer
14 the timeline for treating Hanford's tank waste becomes extended, the greater the
15 risk that the DSTs may become non-compliant due to aging.

16 32. The Order includes compliance milestones under the M-045
17 milestone series for retrieving tank waste from certain SSTs and SST groupings by
18 certain dates. The Order includes a compliance milestone under the M-045
19 milestone series for retrieving tank waste from all SSTs by a defined end date.

20 33. Energy has missed, or is certain to miss, the following Order
21 compliance milestones related to tank waste retrieval:

22

1 a. M-045-00B (by September 30, 2006, complete the retrieval of
2 waste from sixteen “C-Farm” SSTs).

3 b. M-045-05A (by March 31, 2007, complete waste retrieval from
4 tank S-102).

5 c. M-045-05 (by September 30, 2018, complete waste retrieval
6 from all Hanford SSTs).

7 VI. CLAIMS FOR RELIEF

8 **COUNT ONE: RCRA Citizen Suit — Violation of Order.**

9 34. The State realleges paragraphs 1-33 above.

10 35. 42 U.S.C. § 6972(a)(1)(A) authorizes any person to commence a civil
11 action against any other person, including the United States, who is alleged to be
12 in violation of an order or regulation that has become effective pursuant to this
13 chapter.

14 36. The State of Washington, Department of Ecology is a “person” within
15 the meaning of this statute.

16 37. The Hanford Federal Facility Agreement and Consent Order is an
17 “order” that has become effective pursuant to RCRA.

18 38. RCRA-authorized regulations within Washington’s Dangerous Waste
19 Regulations, WAC 173-303, are “regulations” that have become effective pursuant
20 to RCRA.

1 39. Defendant Energy has violated and currently is in violation of the
2 Order with respect to the following M-062 series tank waste treatment milestones:

3 a. Failing to comply with milestone M-062-08 (by June 30, 2006,
4 submit Hanford Tank Waste Supplemental Treatment Technologies Report).

5 b. Failing to comply with milestone M-062-11 (by June 30, 2007,
6 submit final Hanford tank waste treatment baseline).

7 c. Failing to comply with milestone M-062-07B (by December
8 31, 2007, complete assembly of the LAW melter; move HLW melter #1 to
9 HLW building).

10 d. Failing to perform sufficient work to assure with reasonable
11 certainty that Energy will accomplish milestone M-062-09 (by February 28,
12 2009, start “cold commissioning” of WTP).

13 e. Failing to perform sufficient work to assure with reasonable
14 certainty that Energy will accomplish milestone M-062-10 (by January 31,
15 2011, complete “hot commissioning” of WTP).

16 f. Failing to perform sufficient work to assure with reasonable
17 certainty that Energy will accomplish milestone M-062-00A (by February
18 28, 2018, complete tank waste pre-treatment and vitrification of no less than
19 10% by volume and 25% by activity of Hanford’s tank waste).

20 g. Failing to perform sufficient work to assure with reasonable
21 certainty that Energy will accomplish milestone M-062-00 (by December
22 31, 2028, complete treatment of all Hanford tank waste).

1 40. Defendant Energy has violated and currently is in violation of the
2 following regulations that underlie the Order's M-062 series tank waste treatment
3 milestones:

4 a. Storing land disposal restricted hazardous waste in violation of
5 the prohibition against storing such waste under WAC 173-303-400(2)(b)
6 (incorporating by reference 40 C.F.R. § 268.50).

7 41. Defendant Energy has violated and currently is in violation of the
8 Order with respect to the following M-045 series SST waste retrieval and closure
9 milestones:

10 a. Failing to comply with milestone M-45-00B (by September 30,
11 2006, complete the retrieval of waste from sixteen C-Farm SSTs).

12 b. Failing to comply with milestone M-045-05A (by March 31,
13 2007, complete the retrieval of waste from tank S-102).

14 c. Failing to perform sufficient work to assure with reasonable
15 certainty that Energy will accomplish milestone M-045-05 (by September
16 30, 2018, retrieve waste from all SSTs).

17 42. Defendant Energy has violated and currently is in violation of the
18 following regulations that underlie the Order's M-045 series tank waste retrieval
19 milestones:

20 a. Storing hazardous waste in tank systems that lack structural
21 integrity as required by WAC 173-303-400(3) (incorporating by reference
22 40 C.F.R. § 265.193(a)(3)).

1 b. Storing hazardous waste in tank systems that lack secondary
2 containment as required by WAC 173-303-400(3) (incorporating by
3 reference 40 C.F.R. § 265.193(b)).

4 c. Storing hazardous waste in tank systems that lack leak
5 detection as required by WAC 173-303-400(3) (incorporating by reference
6 40 C.F.R. § 265.193(c)).

7 d. Failing to remove unfit-for-use tanks from service immediately
8 as required under WAC 173-303-400(3) (incorporating by reference
9 40 C.F.R. § 265.196).

10 e. Failing to, within 24 hours after detection of a leak from
11 an SST or, if such removal is not possible, at the earliest practicable
12 time, remove as much of the waste from the SSTs as is necessary to
13 prevent further release of hazardous waste to the environment, as
14 required under WAC 173-303-400(3) (incorporating by reference 40 C.F.R.
15 § 265.196(b)(1)).

16 f. In lieu of providing secondary containment and repair to
17 unfit-for-use SSTs, failing to close an unfit-for-use tank system as
18 required under WAC 173-303-400(3) (incorporating by reference 40 C.F.R.
19 § 265.196(e)(1)).

20 43. Under 42 U.S.C. § 6972(a)(1), this Court has jurisdiction to enforce
21 the Order and the regulations that underlie the Order, as well as to order Energy to
22 take such other action as may be necessary.

1 **COUNT TWO: Hazardous Waste Management Act.**

2 44. The State realleges paragraphs 1-43 above.

3 45. Ecology issued the Order under authority granted by RCW
4 70.105.095. The Order is designed to bring Hanford's stored tank waste and
5 Hanford's tanks into compliance with the HWMA.

6 46. Defendants are in violation of the Order.

7 47. Defendants are in violation of regulations that underlie the Order.

8 48. Under RCW 70.105.120, the Attorney General is authorized to bring
9 such injunctive, declaratory, or other actions to enforce any requirement of this
10 chapter.

11 **VII. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff respectfully requests that this Court:

13 49. Enter judgment that Defendants have violated Order compliance
14 milestones, as well as the hazardous waste laws and regulations that underlie those
15 milestones.

16 50. Grant permanent injunctive relief requiring Defendant Energy to
17 timely retrieve waste from Hanford's SSTs and place it into RCRA and HWMA
18 compliant storage; to timely complete construction of the WTP; to timely treat all
19 of Hanford's high-level tank waste; and to take such other actions as are necessary
20 to mitigate threats posed to human health and the environment from historic and
21 potential future releases at the Hanford Site, including historic and potential future
22 releases from the SSTs.

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NOV 26 2008

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6
7
8 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF WASHINGTON

9 STATE OF WASHINGTON,
10
11 Plaintiff,

NO. **CV-08-5085-FVS**

AFFIDAVIT OF SERVICE

12 v.

13 SAMUEL W. BODMAN, Secretary
of the United States Department of
Energy, and the UNITED STATES
14 DEPARTMENT OF ENERGY,

15 Defendants.

16 Pursuant to Fed. R. Civ. P. 4(i) and (l), I certify that on the 26th day of
17 November 2008, I caused true and correct copies of the Summons and
18 Complaint to be served upon the parties herein, as indicated below:

19 Samuel W. Bodman, Secretary
20 U.S. Department of Energy
1000 Independence Avenue SW
21 Washington, DC 20585

[x] Certified U.S. Mail
7005 3110 0003 5271 0740
[] Hand Delivered
[] Overnight Express

22 AFFIDAVIT OF SERVICE

1
COPY

ATTORNEY GENERAL OF WASHINGTON
West 1116 Riverside Avenue
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Attorney General Michael B. Mukasey
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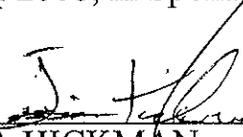
James A. McDevitt, US Attorney
United States Attorney's Office
920 W. Riverside Avenue, Suite 340
Spokane, WA 99201

Certified U.S. Mail
 Hand Delivered
By **A&A Attorney Services**
Spokane, Washington
 Overnight Express

the foregoing being the last know business address.

I certify under penalty of perjury under the laws of the state of
Washington that the foregoing is true and correct.

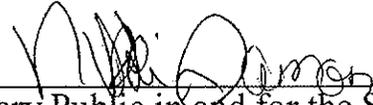
DATED this 2th day of November 2008, in Spokane, Washington.



JESSICA HICKMAN
Legal Assistant

Subscribed and sworn to before me on 11/26/08, by
JESSICA HICKMAN.





Notary Public in and for the State of
Washington, residing at Spokane County.
My appointment expires 8/11/12