



Consent Decree Outline

To better explain the proposed Consent Decree, the state of Washington offers the following:

OVERVIEW OF PROPOSED CONSENT DECREE BETWEEN STATE OF WASHINGTON AND USDOE
IN State of Washington v. DOE, No. 08-5085-FVS (E.D. Wa)
October 2009

Consent Decree includes the Body of the Decree (the main text) and three Appendices (Appendices A, B, and C). All terms included in the Consent Decree (including both those embodied in the main text of the document and those embodied in each of the three Appendices) will become requirements of the court upon court approval. Once they are requirements of a court order, they will be directly enforceable by the court.

The Body of the Decree (or the main text) includes 15 Sections. Those are described below.

The Appendices cover three different topics:

- **Appendix A** sets forth deadlines, definitions and other requirements related to construction and initial operation of the Waste Treatment Plant.
- **Appendix B** sets forth deadlines, definitions and other requirements related to retrieval of 19 Single Shell Tanks.
- **Appendix C** sets forth deadlines, definitions and other requirements related to retrieval standards applicable to waste retrieval from the 19 Single Shell Tanks governed by the Consent Decree.

The Body of the Decree includes the following Sections:

- **Section I: Introduction:** This section provides background of case – how we got to this point – provides summary parties' reasons for settling case.
- **Section II: Jurisdiction:** This section identifies the legal authority of court to approve the Consent Decree.
- **Section III: Parties Bound:** This section identifies the parties obligated to meet the requirements of the Consent Decree.
- **Section IV: Work to Be Performed and Schedule:** This section, combined with the three Appendices, specifies the key actions required by USDOE. This section includes reporting obligations which will enable the State to monitor USDOE's compliance with the Consent Decree.

- **Section V: Access:** This section authorizes the State to access the site and other materials in order to monitor USDOE's compliance with the Consent Decree.
- **Section VI: Joint Three Year Reviews:** This section obligates the parties to meet jointly every three years to monitor USDOE's compliance with the Consent Decree. Note: this is not the exclusive method of monitoring compliance. Reporting obligations and access provisions set forth in Sections IV and V also enable the State to monitor compliance.
- **Section VII: Amendment of Decree:** This section identifies the process and standards applicable to future requests by either party to change requirements of the Consent Decree. This section applies to changes agreed to by the parties and to changes requested by one party, but not agreed to by the other party. This section includes a commitment to take public comment before making a significant change to the Consent Decree.
- **Section VIII: Funding:** This section identifies the process that will be used to address a claim by USDOE that appropriated funds are not available to meet a Consent Decree requirement(s).
- **Section IX: Resolution of Disputes:** This section identifies the process to be used by the parties if a dispute arises. If the parties are unable to resolve the dispute without Court involvement, either party may ask the Court to resolve the dispute.
- **Section X: Resolution of Claims and Covenant Not to Sue:** This section indicates that the claims made by the State in its case are resolved based upon USDOE's commitment to meet the requirements of the Decree. So long as USDOE complies with the Consent Decree's requirements, the State is precluded from asking for relief from the Court.
- **Section XI: Integration:** This section explains the relationship between the terms of the Consent Decree and other legal instruments that govern USDOE's compliance with environmental requirements, including the Tri-Party Agreement and the Hanford hazardous waste facility permit (site-wide permit).
- **Section XII: Retention of Jurisdiction:** This section indicates that the Court will retain oversight authority to ensure that USDOE complies with the requirements of the Consent Decree.
- **Section XIII: Construction and Use of Consent Decree:** This section specifies how the language of the Consent Decree will be considered in disputes regarding the Decree and in other proceedings related to Hanford.
- **Section XIV: Costs of Litigation:** This section indicates that the parties are working to resolve the State's claim that USDOE pay the State's costs associated with this case and the related settlement efforts. If the parties are unable to resolve the State's claim, the State may ask the Court to resolve the claim.
- **Section XV: Effective and Termination Dates:** This section specifies that the Consent Decree becomes effective on the date the Court approves it and that the Court's jurisdiction over the Decree will terminate when USDOE completes all the requirements of the Decree.

TERMS TO KNOW

Court Order: reflects judge's decision or ruling in case, can include directions to a party to take specific action according to specific timeframes

[If the lawsuit filed by the State is pursued to its conclusion, the state would seek an order from the court that would direct USDOE to complete the tank waste retrieval and treatment missions according to schedule imposed by the court. If the Court issued such an order in response to the State's request, the order would then be enforceable directly by the Court.]

Consent Decree: reflects: (a) an agreement between the parties to the case that resolves the case and embodies the parties' commitments to take action according to a specified schedule; and, once approved by the court (b) an order of the court that can be directly enforceable by the parties without the need for the State to begin a new lawsuit.

[The proposed settlement includes a proposed consent decree and, assuming the parties decide to finalize the proposed agreement after public notice and comment and other settlement contingencies are completed, the parties will jointly request the court to "approve" the consent decree. Once approved, the "proposed" consent decree will become a final consent decree and order of the court. The court will retain jurisdiction over the case and will be available to enforce the requirements of the consent decree should that become necessary.]

Enforcement of Either a Court Order or a Consent Decree: Once a court issues an order or approves a Consent Decree (thereby making the Consent Decree an order of the court), the Court's order is directly enforceable by the parties. This means the parties do not have to start a new lawsuit to ask for the court's assistance in a future dispute regarding compliance with the requirements because the court will already have jurisdiction over the existing case. Remedies available for non-compliance with a court order include: monetary penalties, orders requiring action or production of information as to why action cannot happen, and contempt orders (including jail time of a responsible official for serious malfeasance).

Consent Order: typically reflects an agreement between a regulator and a regulated entity, issued and entered under the authority of the regulator's relevant environmental statute(s). The Tri Party Agreement is an example of a Consent Order – it reflects an agreement between the parties and an order issued by the regulator (State department of Ecology) under applicable environmental statutes.

[As an order issued under applicable environmental statutes, the Consent Order embodies legal requirements. If the requirements are not complied with, the regulator has available to it all the remedies specified in the order and in the governing environmental statute(s). In the case of the TPA, remedies available to the State include the ability of the State to issue administrative penalties and orders, or to initiate a lawsuit and ask a court to provide relief. However, in contrast to the Court Order and the Consent Decree, there is no pending case that addresses the matter, so if court enforcement of a Consent Order is desired, the State would need to file a new lawsuit.]