

Response to Comments

Hanford Air Operating Permit

June 30 – August 2, 2013

November 17 – December 20, 2013

Summary of a public comment period and responses to comments

PUBLICATION AND CONTACT INFORMATION

This publication is available on the Department of Ecology's website at <https://fortress.wa.gov/ecy/publications/SummaryPages/1405012.html>

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Response to Public Comments

Hanford Air Operating Permit
June 30 – August 2, 2013
November 17 – December 20, 2013

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INTRODUCTION

The Washington State Department of Ecology's Nuclear Waste Program (NWP) regulates air pollution sources. In particular, we are the overall permitting authority for the Hanford Air Operating Permit (AOP). The AOP's term is five years. If the need for the permit extends beyond five years, it must be renewed. We also update the AOP periodically to incorporate changes and update or remove elements, as needed.

When a new permit or a significant modification to an existing permit is proposed, or when a permit is renewed, a public comment period held. In this case, NWP is renewing a permit, so we held a public comment period to allow the public to review the change and provide formal feedback.

Per WAC 173-401-800 (3), the Response to Comments is the last step before issuing the final permit, and its purpose is to:

- Specify which provisions, if any, of a permit will become effective upon issuance of the final permit, providing reasons for those changes.
- Describe and document public involvement actions.
- List and respond to all significant comments received during the public comment period and any related public hearings.

This Response to Comments is prepared for:

Comment period: Hanford Air Operating Permit, June 30 – August 2, 2013, and November 17 – December 20, 2013

Permit: Hanford Air Operating Permit

Original issuance date: June 2001

Permit effective date: May 1, 2014

To see more information related to the Hanford Site and nuclear waste in Washington, please visit our website: www.ecy.wa.gov/programs/nwp.

REASONS FOR ISSUING THE PERMIT

The AOP's purpose is to ensure Hanford's air emissions stay within safe limits that protect people and the environment. Three agencies contribute the underlying permits to the AOP.

- The Washington State Department of Ecology is the overall permitting authority and regulates toxic air emissions.
- The Washington State Department of Health regulates radioactive air emissions.
- The Benton Clean Air Agency regulates outdoor burning and the *Federal Clean Air Act* asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations.

This permit is a renewal of the AOP and also incorporates changes made during 2012 and 2013.

PUBLIC INVOLVEMENT ACTIONS

NWP held two public comment periods for the Hanford AOP in 2012 and early 2013, and issued the Hanford AOP, Renewal 2 on April 1, 2013.

In June 30, 2013, we invited public comment on the AOP, Renewal 2, Revision A. This comment period was held to address confusion we may have caused in notifications we issued during the comment periods for AOP, Renewal 2.

After closure of the June 30 through August 2, 2013, comment period, it was recognized that changes to the permit were “frozen” during the AOP, Renewal 2 process in 2012 and 2013. The permit was revised to incorporate these “frozen” changes, and a second comment period for the AOP, Renewal 2, Revision A was started in November 2013.

This Response to Comments document addresses comments received during both comment periods held for AOP Renewal 2, Revision A.

The June Comment Period

To publicize the June comment period, we:

- Emailed an advance notification about the comment period to the 1,185 people then on the [Hanford-Info email list](#).
- Mailed the public notice announcing the comment period to 2,059 members of the public.
- Emailed the public notice to the Hanford-Info list.
- Displayed copies of the public notice in the lobby of the Nuclear Waste Program building in Richland, Washington.
- Placed a public announcement legal classified advertisement in the *Tri-City Herald* on June 30, 2013.

NWP notified regional stakeholders via the public involvement calendar on the NWP website. The calendar is discussed at quarterly meetings with the Hanford Advisory Board public involvement committee. We also posted the comment period as an event on Ecology’s [Hanford Education & Outreach Facebook page](#).

The public information repositories in Richland, Spokane, and Seattle, Washington, and Portland, Oregon, received the following:

1. Final AOP Renewal 2.
2. Radioactive Air Emissions License from Department of Health.
3. License from Benton Clean Air Agency for asbestos and outdoor burning.
4. Response to Comments from previous comment periods.

5. Environmental Protection Agency review letter.
6. Statement of Basis for Ecology permitting decisions.
7. Statement of Basis for Department of Health permitting decisions.
8. Statement of Basis for Benton Clean Air Agency permitting decisions.
9. Statement of Basis for final permit (all three agencies).
10. 2013 renewal full, final permit (all three agencies).
11. Letter to permittee about new (June 30 – August 2, 2013) comment period.
12. Email announcing transmittal of comment period materials.

The November Comment Period

To publicize the November comment period, we:

- Emailed two advance notices about the comment period to the 1,196 people then on the [Hanford-Info email list](#).
- Mailed the public notice to 2,021 members of the public.
- Emailed the public notice to the HanfordInfo email list.
- Displayed copies of the public notice in the lobby of the Nuclear Waste Program building in Richland, Washington.
- Placed a public announcement legal classified advertisement in the *Tri-City Herald* on November 17, 2013.

NWP notified regional stakeholders via the public involvement calendar on the NWP website. The calendar is discussed at quarterly meetings with the Hanford Advisory Board's public involvement committee. We also posted the comment period as an event on Ecology's Hanford [Education and Outreach Facebook](#) page.

The public information repositories in Richland, Spokane, and Seattle, Washington, and Portland, Oregon, received the following:

1. Public notice.
2. Standard Terms and General Conditions.
3. Statement of Basis for Standard Terms and General Conditions.
4. Ecology's permitting conditions.
5. Statement of basis for Ecology's permitting conditions.
6. Department of Health's permitting conditions.
7. Statement of Basis for Department of Health's permitting conditions.
8. Benton Clean Air Agency permitting conditions.
9. Statement of Basis for Benton Clean Air Agency permitting conditions.

10. Supporting information (emails).
11. June 6, 2013, Transmittal letter.
12. Voiding of Approval order 98-NWP-004.
13. Response to comments re: Transition of the Cold Vacuum Drying Facility (CVDF) to Regulation under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
14. Supporting information – Re: Approval of non-Radioactive Air Emissions notice of Construction (NOC) Permit Amendment for the Operation of Ventilation Systems in Various Hanford Tank Farms.

The following public notices for this comment period are in Appendix A of this document:

1. Public notices.
2. Classified advertisements in the *Tri-City Herald*.
3. Notices sent to the Hanford-Info email list.
4. Events posted on Ecology's Hanford Education & Outreach Facebook page.

LIST OF COMMENTERS

The table below lists the names of organizations or individuals who submitted a comment on the Hanford Air Operating Permit modification and where you can find Ecology's response to the comment(s).

Commenter	Organization	Comment Number	Page Number
Arthur, Carol	Citizen	1	6
Johns, William	Citizen	2	6
Green, Bill	Citizen	3-37	6-20
U.S. Department of Energy	Permittee	38-61	20-27

RESPONSE TO COMMENTS

The NWP accepted comments on the draft AOP Permit from June 30 through August 2, 2013, and from November 17 through December 20, 2013. This section provides a summary of comments we received during the public comment period and our responses, as required by the Revised Code of Washington (RCW) 34.05.325(6)(a)(iii).

Comments are grouped by individual, and each comment is addressed separately. Please refer to the References section of this document for Exhibits A through F. The NWP's responses directly follow each comment in italic font. Verbatim copies of all written comments are attached in [Appendix B](#).

Comment # 1 from Carol Arthur, dated July 2, 2013

"I did not find any summary of items which might have changed since the last permit was issued. Are there any changes?
If not, I have no objection to the AOP (which 57 pages I read)."

Ecology Response:

No changes are present from the last permit issued during the first comment period (during which this comment was received); therefore no objection to issuance of AOP Revision A exists.

Comment # 2 from William Johns, dated June 24, 2013

The old permit expired on 12/31/11 and the new one was issued on 4/1/13, so why is a permit needed?

Ecology Response:

The permit is still needed, as the underlying conditions for the permit are still present. When an AOP expires, a provision in the Washington Administrative Code (WAC) allows for all of the terms and conditions of the expired permit to remain in effect until a renewed permit is issued if a timely and complete application has been submitted (WAC 173-401-710 (3)). The United States Department of Energy (USDOE) submitted a complete and timely application to Ecology. USDOE continued to operate and abide by the conditions of the expired permit until the new permit was issued on 4/1/13.

Comment # 3 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit D.

Contrary to Clean Air Act (CAA) section 502 (b)(5)(E)1 [42 U.S.C. 7661a (b)(5)(E)] and 40 C.F.R. 70.11 (a), the regulatory structure used in this draft AOP does not allow Ecology, the sole permitting authority, to enforce all standards or other requirements controlling emissions of radionuclides, a hazardous air pollutant under CAA § 112

Ecology Response:

The commenter is concerned the permitting authority; i.e., Ecology, does not have adequate authority to enforce the radionuclide requirements in a license issued by Health that are part of an air operating permit. This issue was previously raised in inquiries to the United States

Environmental Protection Agency and the Washington State Department of Health. Those agencies responded to the inquiry in letters dated October 11, 2012 and July 16, 2010 which are attached as Exhibit A and B respectively.

Please see Exhibit A at p. 1-4; Exhibit B at p. 3, Issue 1

No change in the AOP is required.

Comment # 4 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit D.

Contrary to Clean Air Act (CAA) section 502 (b)(5)(A) [42 U.S.C. 7661a (b)(5)(A)], 40 C.F.R. 702, and WAC 173-4013, the regulatory structure used in this draft AOP does not allow Ecology, the sole permitting authority, to issue a Title V permit containing all standards or other requirements controlling emissions of radionuclides, a hazardous air pollutant under CAA § 112.

Ecology Response:

The commenter is concerned the permitting authority; i.e., Ecology, does not have adequate authority to enforce the radionuclide requirements in a license issued by Health that are part of an air operating permit. This issue was previously raised in inquiries to the United States Environmental Protection Agency and the Washington State Department of Health. Those agencies responded to the inquiry in letters dated October 11, 2012 and July 16, 2010 which are attached as Exhibit A and B respectively.

Please see Exhibit A at p. 1-4; Exhibit B at p. 3, Issue 1.

No change in the AOP is required.

Comment # 5 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit D.

Contrary to *Clean Air Act* (CAA) section 502 (b)(6) [42 U.S.C. 7661a (b)(6)], 40.C.F.R. 70.7 (h)², RCW 70.94.161 (2)(a) & (7)³, and WAC 173-401-800 , the regulatory structure used in this draft AOP does not allow Ecology, the sole permitting authority, to offer for public review AOP terms and conditions controlling Hanford's radionuclide air emissions. Nor can Ecology provide for a public hearing on AOP terms and conditions controlling Hanford's radionuclide air emissions. Radionuclides are a *hazardous air pollutant* under CAA § 112.

Ecology Response:

Please refer to Exhibit A, last paragraph of p. 5 -p. 6; Exhibit B, Issue No.2, pp.3-4; and Exhibit C, p.2. The Exhibits specifically address the applicability of public notice requirements to underlying requirements.

Although not required to by law, Ecology can, and does, relay public comments concerning Health licenses to the Department of Health. Health is then able to take actions as appropriate on those comments. Health routinely considers public comments it receives, including any complaints regarding whether a licensee is complying with its license conditions.

No change in the AOP is required.

Comment # 6 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit D.

Contrary to *Clean Air Act* (CAA) section 502 (b)(6) [42 U.S.C. 7661a (b)(6)], 40 C.F.R. 70.4(b)(3)(x) and (xii)², and WAC 173-401-735 (2), the regulatory structure used in this draft AOP to control Hanford's radionuclide air emissions does not recognize the right of a public commenter to judicial review in State court of the final permit action.

Ecology Response:

Please refer to Exhibit A, last paragraph of page 5 and continued onto page 6, Exhibit B, Issue No. 3, pp. 4-5, and Exhibit C, p. 1.

No change in the AOP is required.

Comment # 7 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit D.

Contrary to RCW 70.94.161 (2)(a)¹ and WAC 173-400-700 (1)(b), the regulatory structure used in this draft AOP does not require pre-issuance review by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority for any term or condition controlling Hanford's radionuclide air emissions.

Ecology Response:

A requirement of pre-issuance professional engineer review isn't directly required for underlying conditions (e.g. FF-01 license). The underlying requirements to the Hanford Air Operating Permit (AOP) (e.g. Ecology Approval Orders, Health FF-01 License, etc. ...) have been finalized prior to revision of the AOP and cannot be changed using the AOP comment resolution process.

Corrections to the underlying requirements need to be made using the applicable process for that underlying requirement. This issue was addressed by the United States Environmental Protection Agency in Exhibit A, page 6, second full sentence which stated "... Part 70 cannot be used to revise or change applicable requirements."

The AOP was prepared and will be stamped by a licensed professional engineer in the State of Washington who is in the employ of the Department of Ecology.

No change in the AOP is required.

Comment # 8 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit D.

In this draft Hanford Site AOP regulation of radionuclides is inappropriately decoupled from 40 C.F.R. 70 (Part 70). Regulation of radionuclides occurs pursuant to a regulation that does not implement Part 70, and cannot be enforced by Ecology, the issuing permitting authority.

Ecology Response:

Please refer to Exhibit A.

No change in the AOP is required.

Comment # 9 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit D.

Contrary to Clean Air Act CAA § 505 [42 U.S.C. 7661d], 40 C.F.R. 70.8, RCW 70.94.161 (7), and WAC 173-401-810 and -820, the regulatory structure of the draft Hanford Site AOP does not allow for pre-issuance review by EPA, all affected states, and recognized Tribal Nations for terms and conditions regulating Hanford's radionuclide air emissions. Radionuclides are a hazardous air pollutant under CAA § 112.

Ecology Response:

Please refer to Exhibit A, last paragraph of p. 5 -p. 6; Exhibit B, Issue No.2, pp.3-4; and Exhibit C, p.2. The Exhibits specifically address the applicability of public notice requirements to underlying requirements.

Although not required to by law, Ecology can, and does, relay public comments concerning Health licenses to the Department of Health. Health is then able to take actions as appropriate on those comments. Health routinely considers public comments it receives, including any complaints regarding whether a licensee is complying with its license conditions.

No change in the AOP is required.

Comment # 10 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit D.

The regulatory structure under which radionuclide terms and conditions are addresses in Attachment 2 (License FF- 01) of the draft Hanford Site AOP (Permit) will not allow for compliance with the AOP revision requirements of Appendix B of the Permit, 40 C.F.R. 70.7, and WAC 173-401-720 through 725.

Ecology Response:

The comment mistakenly ties the Hanford Air Operating Permit (AOP) revision or renewal process with the process to implement changes to the underlying requirements in the Hanford AOP.

Please refer to Exhibit A, page 4, last paragraph and pp. 5-6, and response to Comment 9 above, related to the fact that underlying requirements such as the FF-01 license cannot be amended as part of the AOP revision. This is also covered in Appendix B of the Statement of Basis for Standard Terms and General Conditions, last sentence of the first paragraph page 30, that states [These forms and process are not to be used for any type of NOC approval or License revisions submitted to the agencies.]

The forms in Appendix B of the Statement of Basis for Standard Terms and General Conditions are for changes to the Hanford AOP, not the underlying requirements like the FF-01 license.

No change in the AOP is required.

Comment # 11 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit D.

The regulatory structure used by Ecology in this draft Hanford Site AOP inappropriately cedes regulation of Hanford's radionuclide air emissions to the Nuclear Energy and Radiation Act (NERA) and enforcement of these requirements to Health. NERA does not implement the CAA, 40 C.F.R. 70, the Washington Clean Air Act, or WAC 173-401, and Health has not been approved to enforce CAA Title V and 40 C.F.R. 70. Radionuclides are a hazardous air pollutant under CAA § 112.

Ecology Response:

The commenter is concerned the permitting authority; i.e., Ecology, does not have adequate authority to enforce the radionuclide requirements in a license issued by Health that are part of an air operating permit. This issue was previously raised in inquiries to the United States Environmental Protection Agency and the Washington State Department of Health. Those agencies responded to the inquiry in letters dated October 11, 2012, and July 16, 2010, which are attached as Exhibit A and B respectively.

Please see Exhibit A at p. 1-4; Exhibit B at p. 3, Issue 1.

No change in the AOP is required.

Comment # 12 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit D.

Contrary to Clean Air Act (CAA) § 1161 [42 U.S.C. 7416] and WAC 173-401-600 (4)2, the draft Hanford Site AOP does not provide both federal and state requirements for those requirements regulating Hanford's radionuclide air emissions. Radionuclides are a hazardous air pollutant under CAA § 112. EPA does not recognize either a regulatory de minimis or a health-effects de minimis for radionuclide air emissions appeal process above background³.

Ecology Response:

We have made every attempt to reflect both federal and state requirements and regulations concerning Hanford's radionuclide air emissions. Unless a specific reference is made, no change can be made.

The comment that "EPA does not recognize either a de minimis or a health-effects de minimis for radionuclide air emissions above background" refers to radiation in general, and is not specific to radioactive air emissions. Health physicists generally agree on limiting a person's exposure beyond background radiation to about 100 mrem per year from all sources. Exceptions are occupational, medical, or accidental exposures (medical X-rays generally deliver less than 10 mrem).

EPA and other regulatory agencies generally limit exposures from specific source to the public to levels well under 100 mrem. This is far below the exposure levels that cause acute health effects."

Of this 100 mrem, EPA and the State have set a limit to radioactive air emissions from a facility at no more than 10 mrem/year to the ambient air and strive to protect the public by setting restrictions on emissions to keep the facility emissions well below that standard.

No change in the AOP is required.

Comment # 13 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit D.

Specify the appeal process in state court applicable to requirements in Attachment 2 that are created and enforced by Health pursuant to RCW 70.98 and the regulations adopted thereunder.

Ecology Response:

Please refer to Exhibit A, last paragraph of page 5 and continued onto page 6, Exhibit B, Issue No. 3, pp. 4-5, and Exhibit C, p. 1.

No change in the AOP is required.

Comment # 14 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit D.

Section 5.11.4 should be revised to require submittal of the annual reports to only EPA and Ecology, both of which are permitting authorities under the CAA.

Ecology Response:

Adding additional people or agencies to a required submittal list is a matter between the permittee and the permitting authority. If the permittee has no objections to a submittal list above and beyond any minimally required listing, then no change is required.

As the permittee has not objected, no change to the AOP will be made.

Comment # 15 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit D.

Overlooked in both Table 5-1 and in this draft AOP is fact that radon, a radionuclide gas, remains a hazardous air pollutant under CAA § 112 (b) whether or not EPA has developed regulation for Hanford. While a literal reading of 40 C.F.R. 61 Subpart Q, “National Emission Standards for Radon Emissions from Department of Energy Facilities” overlooks Hanford, CAA § 112 (j) informs that a Title V permit may not disregard any hazardous air pollutant unaddressed by regulation.

Ecology Response:

Subpart Q protects the public and the environment from the emission of radon-222 to the ambient air from Department of Energy (DOE) storage or disposal facilities for radium-containing materials. Radon-222 is produced as a radioactive decay product of radium. The radon-222 emission rate from these facilities to the surrounding (ambient) air must not exceed 20 pico curies per square meter per second.

DOE's compliance with this standard is included in its Federal Facilities Agreements with EPA. Hanford is not one of these facilities and has never been subject to Subpart Q.

DOE administers many facilities, including government-owned, contractor-operated facilities across the country. At least six of these facilities have large stockpiles of radium-containing

material. Much of this material has high radium content and emits large quantities of radon, making it important to regulate emissions to the atmosphere around the facilities.

DOE is taking remedial action at these facilities under procedures defined by Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Remedial activities are complete at some facilities and the radium-containing residues placed in interim storage. Remedial activities aimed at long-term disposal of the materials are underway at other facilities.

No change in the AOP is required.

Comment # 16 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit D.

Overlooked in this draft Hanford Site AOP is the Columbia River as a source of radionuclide air emissions, including radon.

Ecology Response:

All registered and any unregistered sources of radioactive air emissions are monitored by DOE using ambient air samplers as described in Section 5 of Attachment 2 (FF-01). DOE reports the results of this monitoring program in the annual air emissions report. As a result of this monitoring, the Columbia River is not deemed a credible source of radionuclide air emissions. The Department of Health will submit a request to DOE to determine if this concern is valid.

Radon is reported for those sources with licensed emissions. Subpart Q protects the public and the environment from the emission of radon-222 to the ambient air from Department of Energy (DOE) storage or disposal facilities for radium-containing materials. Radon-222 is produced as a radioactive decay product of radium. The radon-222 emission rate from these facilities to the surrounding (ambient) air must not exceed 20 pico curies per square meter per second.

DOE's compliance with this standard is included in its Federal Facilities Agreements with EPA. Hanford is not one of these facilities and has never been subject to Subpart Q.

The DOE administers many facilities, including government-owned, contractor-operated facilities across the country. At least six of these facilities have large stockpiles of radium-containing material. Much of this material has high radium content and emits large quantities of radon, making it important to regulate emissions to the atmosphere around the facilities.

No change in the AOP is required.

Comment # 17 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit D.

Contrary to 40 C.F.R. 70.7 (a)(5) and WAC 173-401-700 (8), the permitting authority failed to address the legal and factual basis for regulating radionuclide air emissions in the draft Hanford Site AOP pursuant to RCW 70.98, The Nuclear Energy and Radiation Act (NERA) rather than in accordance with Title V of the Clean Air Act (CAA).

Ecology Response:

Please refer to Exhibit A.

No change in the AOP is required.

Comment # 18 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit D.

Overlooked in the Statements of Basis is the legal and factual basis for omitting the Columbia River as a source of radionuclide air emissions.

Ecology Response:

Please see comment # 16.

Comment # 19 from Bill Green, dated August 1, 2013

Ecology is only showing the first two paragraphs of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit D.

If the required dust control plan(s) have been prepared, then Ecology must provide the plan(s) to the public for review in accordance with WAC 173-401-800 and 40 C.F.R. 70.7 (h)(2)1. Ecology should then mark this condition as completed.

If the plans(s) have not been completed, then Ecology has no option but to require a compliance plan and schedule, both of which are also subject to public review.

Ecology Response:

The dust control plan requirements are found in the terms of the underlying requirement to the Air Operating Permit (AOP) in Approval Order DE02NWP-002, Amendment 4. DE02NWP-002, Amd 4 states a dust control plan shall be “developed and implemented”. Additionally, the dust control plan “shall be made “available to Ecology upon request.”

The dust control plan is the permittee’s document and under their direct control. The permittee updates the dust control plan as required for activities being performed. As such, the dust control plan does not become a direct permit document in the AOP. Because the document is not directly in the AOP and wasn’t used as supporting material in the issuance of the AOP, no requirement exists to provide the dust control plan for public review at this time.

As a secondary issue, the condition referenced in condition 8.1, pg. ATT 1-38 is written in a future tense as that is how the underlying Approval Order is written. As the AOP doesn’t change underlying requirements, the text was quoted verbatim. No schedule of compliance is needed or required as the Hanford Site has been and currently is compliant with fugitive dust requirements of DE02NWP-002, Amd. 4., since March 21, 2003.

No change in the AOP is required.

Comment # 20 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit D.

Edit the first sentence on the first page of Attachment 2 to correctly reflect that RCW 70.94, the Washington Clean Air Act, does not provide Health with the authority to issue licenses. The Washington Clean Air Act also does not provide Health with rulemaking authority. Attachment 2,

Section 3.10, Enforcement Actions, correctly captures Health's authority under the Washington Clean Air Act.

Ecology Response:

The underlying requirements to the Hanford Air Operating Permit (AOP) (e.g. Ecology Approval Orders, Health FF-01 License, etc...) have been finalized prior to revision of the AOP and cannot be changed using the AOP comment resolution process. Corrections to the underlying requirements need to be made using the applicable process for that underlying requirement.

This issue was addressed by the United States Environmental Protection Agency in Exhibit A, page 6, second full sentence which stated "...Part 70 cannot be used to revise or change applicable requirements."

The commenter is concerned the permitting authority; i.e., Ecology, does not have adequate authority to enforce the radionuclide requirements in a license issued by Health that are part of an air operating permit. This issue was previously raised in inquiries to the United States Environmental Protection Agency and the Washington State Department of Health. Those agencies responded to the inquiry in letters dated October 11, 2012 and July 16, 2010 which are attached as Exhibit A and B respectively.

Please see Exhibit A at p. 1-4; Exhibit B at p. 3, Issue 1.

No change in the AOP is required.

Comment # 21 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit D.

Address federally enforceable requirements as required by EPA's partial delegation of authority to enforce the radionuclide NESHAPs. 71 Fed. Reg. 32276 (June 5, 2006)

Ecology Response:

Please see Exhibit A.

No change in the AOP is required.

Comment # 22 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit D.

In Attachment 2, provide the specific monitoring, reporting, and recordkeeping requirements needed to demonstrate continuous compliance with each term or condition contained in the License FF-01 enclosures.

Ecology Response:

The underlying requirements to the Hanford Air Operating Permit (AOP) (e.g. Ecology Approval Orders, Health FF-01 License, etc...) have been finalized prior to revision of the AOP and cannot be changed using the AOP comment resolution process. Corrections to the underlying requirements need to be made using the applicable process for that underlying requirement.

This issue was addressed by the United States Environmental Protection Agency in Exhibit A, page 6, second full sentence which stated "...Part 70 cannot be used to revise or change applicable requirements."

No change in the AOP is required.

Comment # 23 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit D.

Overlooked in Attachment 2 (License FF-01) is the Columbia River as a source of radionuclide air emissions.

Ecology Response:

Please see response to Comment 16.

Comment # 24 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit E.

All comments submitted to Ecology during the June 30, 2013, through August 2, 2013, public comment period are incorporated by reference

Ecology Response:

Ecology agrees.

Comment # 25 from Bill Green, dated August 1, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit E.

Ecology failed to regulate radionuclide air emissions as required by Title V of the federal Clean Air Act (CAA) and 40 C.F.R. 70 in this draft AOP renewal.

Ecology Response:

Please see response to Comment 3.

Comment # 26 from Bill Green, dated December 19, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit E.

Ecology incorrectly assumes terms and conditions in an order issued only to Hanford pursuant to WAC 173-400 cannot be changed by actions taken in accordance with WAC 173-401.

Ecology Response:

The applicable requirements in the Hanford Air Operating Permit (AOP) (e.g. Ecology Approval Orders, Health FF-01 License, etc...) were all finalized prior to revision of the AOP and cannot be changed using the AOP comment resolution process. Corrections to these applicable requirements need to be made using the rules that govern the establishment of the applicable requirements.

EPA agrees with this interpretation of the air operating permit requirements, stating, “The promulgation and revision of applicable requirements are not subject to the public notice, judicial review, and other administrative processes of the Part 70 program. The establishment of or changes to such underlying applicable requirements must be made pursuant to the rules that govern the establishment of such applicable requirements, in this case, the RAD NESHAPs promulgated by the EPA and the license requirements promulgated by Ecology.” Exhibit A at 5, 6 [emphasis added].

Comment # 27 from Bill Green, dated December 19, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit E.

For Order NOC 94-07, Amendment A, require continuous monitoring and recording of ammonia concentration readings and stack flow rates. Require prompt reporting if the ammonia concentration limit is exceeded. Specify all approved calculation models and “other approved methods”, and provide these “other approved methods” to the public for review unless the approved method is EPA- approved, in which case supply the EPA method number(s).

Ecology Response:

On January 30, 1997, the United States Department of Energy submitted a modification request to Ecology (97-EAP-175) that proposed to use Industrial Hygienist instrumentation already on the Hanford Site to monitor ammonia emissions.

After evaluating the instrumentation and determining the instrumentation can perform the appropriate analysis, Ecology issued Revision 1 to NOC 94-07 on 12/22/97 approving this use of existing Industrial Hygienist instrumentation. Specifically, demonstration and approval was given to the Foxboro Toxic Vapor Analyzer 1000, MIRAN Portable Gas Ambient Air Analyzer (Model IBX), and Drager tubes. Revision 1 to NOC 94-07 is included as an applicable requirement in this AOP.

WAC 173-401-615(1)(a) requires each AOP to include all emissions monitoring requirements required by the underlying applicable requirements. If the underlying applicable requirement does not require periodic monitoring, WAC 173-401-615(1)(b) requires the addition of periodic monitoring “sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit.”

WAC 173-406-630(1) reiterates these requirements. Ecology has determined that the monitoring, reporting and recordkeeping requirements in NOC approval order 94-07 satisfy the requirements of WAC 173-401-615 and -630(1).

No change in the AOP is required.

Comment # 28 from Bill Green, dated December 19, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit E.

Missing from order NOC 94-07, the revisions, and the amendment, are applicable requirements needed to assure compliance with radionuclide air emissions. Radionuclides are regulated, without a de minimis above background, in 40 C.F.R. 61 subpart H (National Emission Standards for Emissions of Radionuclides Other Than Radon from Department of Energy Facilities).

Ecology Response:

WAC 173-400-113(1) states that Ecology may issue an NOC order of approval for a new or modified source in an attainment area only if Ecology determines that the proposal will comply with federal NSPS and NESHAPs. The provision does not say the NOC order of approval must include conditions requiring compliance with the NSPS and NESHAPs.

In this case, Ecology determined that the conditions in the Department of Health license (Attachment # 2 of the AOP) would ensure that the project would comply with the applicable NESHAP, 40 CFR part 61, subpart H. This analysis satisfies the requirement in WAC 173-400-113(1).

No change in the AOP is required.

Comment # 29 from Bill Green, dated December 19, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit E.

Include the specific language Ecology intends to enforce from sections 3.1 and 3.2 of NOC approval order DE05NWP-001 (2/18/2005) in this draft AOP and re- start public review. Rewrite monitoring, reporting, test methods, test frequency, and bi-annual assessments conditions to include specific requirements that can meet the continuous compliance and compliance verification mandates of WAC 173-401-615 and -630 (1).

Ecology Response:

The commenter may be confusing the requirement for continuous compliance with a requirement for continuous monitoring. Here, the requirement is for continuous compliance – not continuous monitoring.

WAC 173-401-615(1)(a) requires each AOP to include all emissions monitoring requirements required by the underlying applicable requirements. If the underlying applicable requirement does not require periodic monitoring, WAC 173-401-615(1)(b) requires the addition of periodic monitoring “sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit.”

WAC 173-406-630(1) reiterates these requirements. Ecology has determined that the monitoring, reporting and recordkeeping requirements in NOC approval order DE05NWP-001 satisfy the requirements of WAC 173-401-615 and -630(1).

The commenter mistakenly believes Ecology has incorporated certain provisions of NOC approval order DE05NWP-001 by reference without stating them in the AOP. In fact, all the monitoring, reporting and recordkeeping requirements in the NOC approval order are repeated in the AOP. The reference to the NOC approval order in the AOP is to point readers to the specific section of the approval order containing the requirements.

Comment # 30 from Bill Green, dated December 19, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit E.

Missing from amended order DE05NWP-001 are applicable requirements needed to assure compliance with radionuclide air emissions. Radionuclides are regulated, without a de minimis above background, in in 40 C.F.R. 61 subpart H (National Emission Standards for Emissions of Radionuclides Other Than Radon from Department of Energy Facilities).

Ecology Response:

WAC 173-400-113(1) states that Ecology may issue an NOC order of approval for a new or modified source in an attainment area only if Ecology determines that the proposal will comply with federal NSPS and NESHAPs. The provision does not say the NOC order of approval must include conditions requiring compliance with the NSPS and NESHAPs.

In this case, Ecology determined that the conditions in the Department of Health license (Attachment # 2 of the AOP) would ensure that the project would comply with the applicable NESHAP, 40 CFR part 61 subpart H. This analysis satisfies the requirement in WAC 173-400-113(1).

No change in the AOP is required.

Comment # 31 from Bill Green, dated December 19, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit E.

Include the specific language Ecology intends to enforce from sections 3.0 and 3.2 of NOC Approval Order DE12NWP-001, 3 Rev. (7/24/2013), incorporate these sections into the public review file, and restart public review.

Ecology Response:

Ecology will insert the language from the Notice of Construction Approval Order DE12NWP-001 to the AOP as follows:

Periodic Monitoring: ~~Emission estimation (Condition 3.2 of the NOC).~~ Annual collection and analysis of wastewater between the wastewater truck discharge point and the truck unloading chamber.

Test Method: ~~Surrogate wastewater sampling identified in the NOC section 3.0~~ analyzed with an EPA approved method in 40 CFR Part 136.

These additions to the AOP come directly from Approval Order DE12NWP-001, which is listed as an applicable requirement in this AOP. Therefore, restarting public review is not required.

Comment # 32 from Bill Green, dated December 19, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit E.

Remove line 9 on page 21 of 36 “~~Radiological contamination abatement~~” from the list of insignificant fugitive emission abatement activities. Delete the following sentence on page 21 of 36, lines 15 & 16: “~~The activities listed above may be conducted in radiological and/or chemically contaminated areas and may be conducted in portable containment structures i.e., exhausted greenhouses.~~”

Ecology Response:

The activities listed are examples of fugitive source insignificant emission unit processes/activities. Line 29 to 31, page 19 of 36, for the Attachment # 1 Statement of Basis states “Projects utilizing the functions or categories listed below will be evaluated on a case-by-case basis to determine applicable general requirements, new source review, and the definition of a new source.”

Therefore, each site will be evaluated independently to determine if a Notice of Construction is required before the activity starts. If a Notice of Construction is required and an Approval Order issued, then that Approval Order will be added to the AOP. Changing the language of line 9 on page 21 of 36 is not required.

Ecology does agree that conducting activities in portable containment structures, i.e. exhausted greenhouse, would route the emissions through a point source. As a result the language on page 21 of 36, lines 15 and 16 will be changed to:

The activities listed above may be conducted in radiological and/or chemically contaminated areas. ~~and may be conducted in portable containment structures i.e., exhausted greenhouses~~

Comment # 33 from Bill Green, dated December 19, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit E.

As required by WAC 173-401-700 (8) and 40 C.F.R. 70.7 (a)(5), provide the legal and factual basis for regulating radionuclide air emissions in accordance with WAC 246-247 rather than pursuant to WAC 173-400, 40 C.F.R. 70, and Title V of the Clean Air Act.

Ecology Response:

Please see exhibit A, pages 1 through 4.

Comment # 34 from Bill Green, dated December 19, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit E.

Provide the public with the opportunity to comment on both federally-enforceable terms and conditions implementing requirements of 40 C.F.R. 61 subpart H and on state-only enforceable requirements created pursuant to WAC 246-247.

Ecology Response:

Please refer to Exhibit A, last paragraph of p. 5 -p. 6; Exhibit B, Issue No.2, pp.3-4; and Exhibit C, p.2.

The Exhibits specifically address the applicability of public notice requirements to underlying requirements.

Although not required to by law, Ecology can, and does, relay public comments concerning Health licenses to the Department of Health. Health is then able to take actions as appropriate on those comments. Health routinely considers public comments it receives, including any complaints regarding whether a licensee is complying with its license conditions.

Comment # 35 from Bill Green, dated December 19, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit E.

As required by 40 C.F.R. 70.7 (h)(2), provide the public with all information used in the permitting process to justify:

- adding one (1) new emission unit,
- modifying 23 existing notice of construction (NOC) approvals, and
- deleting nine (9) emission units

from the previous final version of Attachment 2¹, and restart public review.

Ecology Response:

Attachment # 2 is included in the AOP as an applicable requirement. As an applicable requirement, corrections to the underlying requirements need to be made using the applicable process for that underlying requirement. Please see response to comment # 26.

Comment # 36 from Bill Green, dated December 19, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit E.

Make the following changes to the first (1st) sentence on the signature page of AOP Attachment 2, License FF-01.

Ecology Response:

Attachment # 2 is included in the AOP as an applicable requirement. As an applicable requirement, corrections to the underlying requirements need to be made using the applicable process for that underlying requirement. Please see response to comment # 26.

Comment # 37 from Bill Green, dated December 19, 2013

Ecology is only showing the first paragraph of this comment in this summary. For the complete comment with all citations, footnotes, and explanations, please refer to Exhibit E.

See Comment 19, incorporated here by reference. Neither Health nor Ecology can ignore federal-enforceability of emission limits imposed pursuant to WAC 246-247-040 (5). Limits on radionuclide air emission are required under 40 C.F.R. 61 subpart H, a Title V applicable requirement, and under 40 C.F.R. 70.6 (a)(1)1. In accordance with WAC 173-401-625 (2)2 and 40 C.F.R. 70.6 (b)(2)3 these emission limits must be federally enforceable. Additionally, 40 C.F.R. 61 subpart H does not recognize a regulatory de minimis above background for radionuclide air emissions.

Ecology Response:

Please see Exhibit A.

No change in the AOP is required.

Comment # 38 from U.S. Department of Energy, dated December 19, 2013

At Section 4.1, the AOP Statement of Basis describes a step-wise process for transition of a particular facility from regulation of emissions through the Air Operating Permit, to regulation instead under the authority of CERCLA. Though it is stated that the Statement “is not intended

for enforcement purposes” (see Background), the agencies have been requiring DOE to follow the described transition process. Although it is good to have specific recognition in the permit that such transitions take place periodically at the Hanford Site, CERCLA Section 121 (42 U.S.C. 9621) specifically provides that response actions carried out on a CERCLA site (here, the Hanford Site) are exempt from requirements for permitting and other procedural compliance activities. Instead, the CERCLA program itself identifies substantive requirements in promulgated regulations (called Applicable, or Relevant and Appropriate, Requirements (ARARs), and, when practicable, designs CERCLA remedial activities to meet those substantive standards.

CERCLA Section 121 preemption takes place immediately upon the determination by the lead CERCLA agency (in this case, the Department of Energy) that it will undertake a CERCLA response action at a facility. That CERCLA decision is not conditional upon concurrence by another regulatory agency, or any formal procedure that relinquishes jurisdiction under another environmental regulation. Section 121 specifically preempts the authority of other environmental agencies to issue permits or enforce their own regulations affecting the CERCLA-designated facility. Additionally, Section 113(h) of CERCLA preempts the jurisdiction of courts to hear legal challenges to ongoing CERCLA cleanup activities, so no enforcement of other environmental regulations can be undertaken against any CERCLA removal or remedial action.

This means that no regulatory permitting program under another environmental law can lawfully delay the transition of a facility into CERCLA jurisdiction. No such program can prescribe requirements as prerequisites for CERCLA jurisdiction, such as prescribing that the transition be effected via a Non-Time Critical Removal Action, as distinct from a Time –Critical Removal Action, or even the initiation of a Remedial Investigation, or requiring a specified period of public comment prior to the effective date of CERCLA jurisdiction, or resolution of any public comment prior to the transition.

Ecology Response:

This process description is for transitioning an emission unit from the Hanford AOP to the CERCLA process. The process described does not delay transition of a unit into CERCLA, it facilitates the removal of the emission unit from the AOP once it is a CERCLA unit.

No Change to the AOP is needed.

Comment # 39 from U.S. Department of Energy, dated December 19, 2013

There appears to be extraneous information for these Discharge Points.

Delete “Calculation Model” and “Not applicable.”

Ecology Response:

Ecology agrees.

Comment # 40 from U.S. Department of Energy, Permittee, dated December 19, 2013

Stationary Engine Location for MO-414 (200 East) 2 of 2 should be “North of MO-414 (200 East) 2 of 2”

Insert “North of” in front of MO-414 (200 East) 2 of 2

Ecology Response:

Ecology agrees.

Comment # 41 from U.S. Department of Energy, dated December 19, 2013

Condition (1) states: “Operate and Maintain the engine in accordance with Manufacturer’s recommendations or instructions”. 40 CFR 63.6625(e) also allows the owner or operator to develop a maintenance plan consistent with good air pollution control practice for minimizing emissions.

Change the text to read as follows:

Operate and Maintain the engine in accordance with Manufacturer’s recommendations or instructions, or develop a written maintenance plan in a manner consistent with good air pollution control practice for minimizing emissions.

Ecology Response:

Ecology agrees.

Comment # 42 from U.S. Department of Energy, dated December 19, 2013

Compliance Requirement (1) states: “Compliance will be determined by operating and maintaining the engine in accordance with the manufacturer’s recommendations or instructions.” 40 CFR 63.6625(e) also allows the owner or operator to develop a maintenance plan consistent with good air pollution control practice for minimizing emissions.

Change the text to read as follows:

“Compliance will be determined by operating and maintaining the engine in accordance with the manufacturer’s recommendations or instructions, or a written maintenance plan in a manner consistent with good air pollution control practice for minimizing emissions.

Ecology Response:

Ecology agrees

Comment # 43 from U.S. Department of Energy, dated December 19, 2013

Condition (3) should be replaced with the following language: “Inspect spark plugs every 1000 hours of operation or annually, whichever comes first.” This is not a diesel engine, it is a propane engine (spark ignition).

Replace Condition (3) with “Inspect spark plugs every 1000 hours of operation or annually, whichever comes first.”

Ecology Response:

Ecology agrees

Comment # 44 from U.S. Department of Energy, dated December 19, 2013

The statement “It will also apply to Table 1.5 after the 2013 compliance dates in 40 CFR 63 Subpart ZZZZ” was removed from the text but Table 1.5 was not added.

Revise text to read “This monitoring provision is for Tables 1.2, 1.3, 1.4, 1.5, 1.6, and 1.7.”

Ecology Response:

Ecology agrees

Comment # 45 from U.S. Department of Energy, dated December 19, 2013

The statement “It will also apply to Table 1.5 after the 2013 compliance dates in 40 CFR 63 Subpart ZZZZ” was removed from the text but Table 1.5 was not added.

Revise text to read “This monitoring provision is for Tables 1.2, 1.3, 1.4, and 1.5.”

Ecology Response:

Ecology agrees

Comment # 46 from U.S. Department of Energy, dated December 19, 2013

The statement “It will also apply to Table 1.5 after the 2013 compliance dates in 40 CFR 63 Subpart ZZZZ” was removed from the text but Table 1.5 was not added.

Revise text to read “This monitoring provision is for Tables 1.2, 1.3, 1.4, and 1.5 of Attachment 1

Ecology Response:

Ecology agrees

Comment # 47 from U.S. Department of Energy, dated December 19, 2013

The parenthetical in the third bullet [(i.e., <= 500 brakehorsepower)] should be deleted because this renewal is essentially reclassifying certain engines < 500 bhp to the significant emissions unit status. (Note this is the same language as is presently in Renewal 2).

Delete parenthetical in the third bullet [(i.e., <= 500 brake horsepower)]

Ecology Response:

Ecology agrees

Comment # 48 from U.S. Department of Energy, dated December 19, 2013

The pre filter is missing from the list of abatement technology and the description section requires clarification.

Modify the Abatement Technology Additional Description to read as follows:

Pre Filter: 2 2 in parallel flow paths
HEPA: 2 2 in parallel flow paths with 2 in series
Fan: 1 1 fan abandoned in place

Ecology Response:

The underlying requirements to the Hanford Air Operating Permit (AOP) (e.g. Ecology Approval Orders, Health FF-01 License, etc. ...) have been finalized prior to revision of the AOP and cannot be changed using the AOP comment resolution process. Corrections to the underlying requirements need to be made using the applicable process for that underlying requirement.

Please see Exhibit A page 5 and 6 and Exhibit B, Issue No.2, pp.4, first paragraph, second sentence

No change to the AOP will be made.

Comment # 49 from U.S. Department of Energy, dated December 19, 2013

The damper does not perform an abatement function, and is the reason it is not included in any of the other stack's abatement technology descriptions (with the exception of 296-A-43 with the same comment for removal).

Remove the Radial Damper from the Abatement Technology table for 296-A-20.

Ecology Response:

Please see response to Comment 48.

Comment # 50 from U.S. Department of Energy, dated December 19, 2013

The damper does not perform an abatement function, and is the reason it is not included in any of the other stack's abatement technology descriptions (with the exception of 296-A-20 with the same comment for removal).

Remove the Isolation Damper from the Abatement Technology table for 296-A-43.

Ecology Response:

Please see response to Comment 48.

Comment # 51 from U.S. Department of Energy, dated December 19, 2013

Corrections are needed to the Abatement Technology Additional Description Section. 296-A-18 ventilation system contains only 1 abatement train. The heater is non-operational. This stack exhaust system is identical to the 296-A-19 (EU218) system.

Abatement Technology, Additional Description:

Remove "2 parallel flow paths" from the HEPA, Fan, and Heater descriptions.

Ecology Response:

Please see response to Comment 48.

Comment # 52 from U.S. Department of Energy, dated December 19, 2013

Additional Requirements section states: "Radial breather filters shall be replaced every 365 days." This filter is an open face filter and this requirement is not applicable.

Replace the additional requirement with the following:

"Breather filters shall be aerosol tested every 365 days."

Ecology Response:

Please see response to Comment 48.

Comment # 53 from U.S. Department of Energy, dated December 19, 2013

Additional Requirements section states: "Radial breather filters shall be replaced every 365 days." This filter is an open face filter and this requirement is not applicable.

Replace the additional requirement with the following:

"Breather filters shall be aerosol tested every 365 days."

Ecology Response:

Please see response to Comment 48.

Comment # 54 from U.S. Department of Energy, dated December 19, 2013

Several radionuclides are listed in the “Radionuclides Requiring Measurement” Table that are not listed in the application. The applicable NOC application transmittal (04-ED-028, Attachment 1, Table 9 and Table 10) identify Cs-137, Sr-90, and Am-241 as isotopes contributing greater than 10% of the potential effective dose equivalent. WAC 246-247-035(1)(ii) and 40CFR61.93(4)(i) state: “All radionuclides which could contribute greater than 10% of the potential effective dose equivalent for a release point shall be measured.”

Remove the following isotopes from the “Radionuclides Requiring Measurement” Table: Y-90, Cs-134, Pa-231, Pu-238, Pu-239, Pu-240, Pu-241.

Ecology Response:

Please see response to Comment 48.

Comment # 55 from U.S. Department of Energy, dated December 19, 2013

Several radionuclides are listed in the “Radionuclides Requiring Measurement” Table that are not listed in the application. The applicable NOC application transmittal (04-ED-028, Attachment 1, Table 9 and Table 10) identify Cs-137, Sr-90, and Am-241 as isotopes contributing greater than 10% of the potential effective dose equivalent. WAC 246-247-035(1)(ii) and 40CFR61.93(4)(i) state: “All radionuclides which could contribute greater than 10% of the potential effective dose equivalent for a release point shall be measured.”

Remove the following isotopes from the “Radionuclides Requiring Measurement” Table: Y-90, Cs-134, Pa-231, Pu-238, Pu-239, Pu-240, Pu-241.

Ecology Response:

Please see response to Comment 48.

Comment # 56 from U.S. Department of Energy, dated December 19, 2013

Several radionuclides are listed in the “Radionuclides Requiring Measurement” Table that are not listed in the application. The applicable NOC application transmittal (04-ED-028, Attachment 1, Table 9 and Table 10) identify Cs-137, Sr-90, and Am-241 as isotopes contributing greater than 10% of the potential effective dose equivalent. WAC 246-247-035(1)(ii) and 40CFR61.93(4)(i) state: “All radionuclides which could contribute greater than 10% of the potential effective dose equivalent for a release point shall be measured.”

Remove the following isotopes from the “Radionuclides Requiring Measurement” Table: Y-90, Cs-134, Pa-231, Pu-238, Pu-239, Pu-240, Pu-241.

Ecology Response:

Please see response to Comment 48.

Comment # 57 from U.S. Department of Energy, dated December 19, 2013

Several radionuclides are listed in the “Radionuclides Requiring Measurement” Table that are not listed in the application. The applicable NOC application transmittal (04-ED-028, Attachment 1, Table 9 and Table 10) identify Cs-137, Sr-90, and Am-241 as isotopes contributing greater than

10% of the potential effective dose equivalent. WAC 246-247-035(1)(ii) and 40CFR61.93(4)(i) state: "All radionuclides which could contribute greater than 10% of the potential effective dose equivalent for a release point shall be measured."

Remove the following isotopes from the "Radionuclides Requiring Measurement" Table: Y-90, Cs-134, Pa-231, Pu-238, Pu-239, Pu-240, Pu-241.

Ecology Response:

Please see response to Comment 48.

Comment # 58 from U.S. Department of Energy, dated December 19, 2013

AIR 13-607, 6-20-13, approved the demolition and removal of the old 296-A-21 K-1 exhauster (EU486); closed the 296-A-21 stack (EU 141); and inadvertently obsoleted the new 296-A-21A K-1 Exhauster upgrade stack.

Tanks Farms currently operates two stacks at the 242A Evaporator: 1) 296-A-21A Evaporator building vent (242A-003, EU1294), and 2) 296-A-22 Evaporator vessel vent (242A-002, EU142).

Re-instate EU 1294, P-242A-003 (296-A-21A) back into the FF-01 license.

Ecology Response:

Please see response to Comment 48.

Comment # 59 from U.S. Department of Energy, dated December 19, 2013

This approval is only applicable to Emission Unit 93 (as correctly shown earlier in this table). It should not be associated with Emission Units 447, 455 and 476 as shown here. There must have been an editorial error in this table because the AIR 13-707 approval does not show up under these emission units in the body of Attachment 2 - FF-01 license.

Remove these three emission unit entries from under AIR 13-707.

Ecology Response:

AIR 13-707 is the letter authorizing the removal of NOC 840. Emission Units 93, 447, 455, and 476 were associated with NOC 840. When NOC 840 was removed all associated emission units were revised in the FF-01.

No change to the Statement of Basis will be made.

Comment # 60 from U.S. Department of Energy, dated December 19, 2013

This list is exactly the same as the one in the version of the SOB issued with AOP renewal 2 in April 2013. There are additional EUs that have been obsoleted since this list was compiled.

Update the list to reflect additional EUs that are obsolete.

Ecology Response:

Section 5.0 has additional information which is contained in the "Table of Changes from FF-01 2-23-12." This table summarizes all of the changes to the FF-01 license since 2-23-12.

No change to the Statement of Basis will be made.

Comment # 61 from U.S. Department of Energy, dated December 19, 2013

This list is exactly the same as the one in the version of the SOB issued with AOP renewal 2 in April 2013. There are additional applicable requirements/NOCs/etc. that have been obsoleted since this list was compiled.

Update the list to reflect additional requirements that are obsolete

Ecology Response:

Section 6.0 has additional information which is contained in the “Table of Changes from FF-01 2-23-12.” This table summarizes all of the changes to the FF-01 license since 2-23-12.

No change to the Statement of Basis will be made.

APPENDIX A: COPIES OF ALL PUBLIC NOTICES

Public notices for this comment period:

1. Public notices.
2. Classified advertisements in the *Tri-City Herald*.
3. Notices sent to the Hanford-Info email list.
4. Event posted on Ecology Hanford Education & Outreach Facebook page.

Hanford Air Operating Permit Renewal – Reopened!

The [Washington State Department of Ecology](#) (Ecology) is reopening the comment period for the Hanford Air Operating Permit (AOP). We held two comment periods on this permit last year and issued the permit on April 1, 2013.

Ecology is now inviting comments on the issued permit. We are holding this comment period because of potential confusion we may have caused in previous notifications sent to our mailing lists.

The permit, supporting documents, the previous draft permit, and the Response to Comments for the draft permit are available. (See “Online Access to Permit Information” in sidebar.)

About the Permit

This permit regulates the [U.S. Department of Energy \(USDOE\) Hanford site](#) in south-central Washington, north of Richland. USDOE is cleaning up wastes from making plutonium for the nation’s nuclear arsenal.

USDOE has two offices jointly applying for the permit. The Richland Operations Office has the lead. Its address is PO Box 500, Richland, WA 99352. The Office of River Protection’s address is PO Box 450, Richland, WA 99352.

State regulations for AOPs limit their duration to five years. Hanford still emits pollutants to the air and still requires a permit. The previous permit expired on December 31, 2011. The new permit was issued April 1, 2013, and remains in effect during this comment period.

Three agencies contribute underlying permits to the AOP.

- Ecology is the overall permitting authority and focuses on nonradioactive criteria and toxic air emissions.
- The [Washington State Department of Health](#) focuses on radioactive air emissions.
- The [Benton Clean Air Agency](#) focuses on outdoor burning and asbestos handling.

WHY IT MATTERS

The permit ensures Hanford’s air emissions stay within safe limits that protect people and the environment.

PUBLIC COMMENT PERIOD

June 30 – August 2, 2013

TO SUBMIT COMMENTS

Send comments or questions by e-mail (preferred), U.S. mail, or hand deliver them to:

Philip Gent
3100 Port of Benton Blvd.
Richland, WA 99354
Hanford@ecy.wa.gov

PUBLIC HEARING

A public hearing is not scheduled, but if there is enough interest, we will consider holding one.

To request a hearing or for more information, contact:

Madeleine Brown
800-321-2008
Hanford@ecy.wa.gov

ONLINE ACCESS TO PERMIT INFORMATION

<http://www.ecy.wa.gov/programs/nwp/commentperiods.htm>

SPECIAL ACCOMMODATIONS

If you require special accommodations or need this document in a version for the visually impaired, call the Nuclear Waste Program at 509-372-7950.

Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call 877-833-6341.

Public Comment Period (Reopened)
Hanford's Air Operating Permit
June 30 – August 2, 2013

How do you find the permit and supporting info? You can find the permit and supporting information online at Ecology's Nuclear Waste Program [comment periods web page](#) (see page 1 sidebar for the full web address) and at the information repositories below.

What's next? When the comment period closes, we will consider the comments received and revise the permit as needed. Then we will issue the revised permit and another Response to Comments.



3100 Port of Benton Blvd
Richland, WA 99354

Hanford's Public Information Repositories

University of Washington
Suzzallo Library, Govt. Pubs Dept.
Seattle, WA 98195
Hilary Reinert (206) 543-5597
Reinerth@uw.edu

Portland State University
Government Information
Branford Price Millar Library
1875 SW Park Avenue
Portland, OR 97207-1151
Claudia Weston (503) 725-4542
westonc@pdx.edu

Gonzaga University
Foley Center Library
502 East Boone Ave.
Spokane, WA 99258
John S. Spencer (509) 313-6110
spencer@gonzaga.edu

Department of Ecology
Nuclear Waste Program
Resource Center
3100 Port of Benton Boulevard
Richland, WA 99354
Valarie Peery (509) 372-7920
Valarie.Peery@ecy.wa.gov

Washington State University
Consolidated Information Center
2770 Crimson Way
Richland, WA 99352
Janice Parthree (509) 372-7443
Janice.parthree@pnnl.gov

Department of Energy
Administrative Record
2440 Stevens Drive, room 1101
Richland, WA 99354
Heather Childers (509) 376-2530
Heather_M_Childers@rl.gov

Hanford Air Operating Permit

The [Washington State Department of Ecology](#) (Ecology) invites you to comment on proposed changes to the Hanford Air Operating Permit.

Ecology is incorporating new information into the permit. In particular, the [Washington State Department of Health](#) (Health) has issued a new radioactive air emissions license.

Also, since January 2012, Ecology has issued several “Notice of Construction” (NOC) approvals to the U.S. Department of Energy (USDOE), the permittee. Most of the approvals were for using diesel engines to continue cleanup work. For example, we approved NOCs to:

- Add a diesel-fired water heater for water used in tank waste retrievals.
- Make a temporary diesel engine permanent.
- Allow diesel-powered pumps to run longer for testing emergency equipment.
- Slightly raise ammonia limits from Hanford tank farms.

About the Permit

The Air Operating Permit regulates the [Hanford Site](#) in south-central Washington, north of Richland. USDOE is cleaning up wastes from making plutonium for the nation’s nuclear arsenal.

Two USDOE offices are applying jointly for the permit. The Richland Operations Office has the lead. The address is PO Box 500, Richland, WA 99352. The Office of River Protection’s address is PO Box 450, Richland, WA 99352.

Three agencies contribute underlying permits to the Air Operating Permit.

- Ecology is the overall permitting authority and regulates nonradioactive criteria and toxic air emissions.
- Health regulates radioactive air emissions.
- The [Benton Clean Air Agency](#) regulates outdoor burning and asbestos handling.

WHY IT MATTERS

The permit ensures Hanford’s air emissions stay within limits that protect people and the environment.

PUBLIC COMMENT PERIOD

November 17 – December 20, 2013

TO SUBMIT COMMENTS

Send comments or questions by e-mail (preferred), U.S. mail, or hand deliver them to:

Philip Gent
3100 Port of Benton Blvd.
Richland, WA 99354
Hanford@ecy.wa.gov

PUBLIC HEARING

A public hearing is not scheduled, but if there is enough interest, we will consider holding one. To request a hearing or for more information, contact:

Madeleine Brown
800-321-2008
Hanford@ecy.wa.gov

ONLINE ACCESS TO PERMIT INFORMATION

<http://www.ecy.wa.gov/programs/nw/p/commentperiods.htm>

SPECIAL ACCOMMODATIONS

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Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call 877-833-6341.

Public Comment Period
Hanford's Air Operating Permit
November 17 – December 20, 2013

How do you find the permit and supporting info? You can find the permit and supporting information online at Ecology's Nuclear Waste Program [comment periods web page](#) (see page 1 sidebar for the full web address) and at the information repositories below.

What's next? When the comment period closes, we will consider the comments received and revise the permit as needed. Then we will issue the revised permit and a Response to Comments.



3100 Port of Benton Blvd
Richland, WA 99354

Hanford's Public Information Repositories

University of Washington
Suzzallo Library, Govt. Pubs Dept.
Seattle, WA 98195
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Reinerth@uw.edu

Portland State University
Government Information
Branford Price Millar Library
1875 SW Park Avenue
Portland, OR 97207-1151
Claudia Weston (503) 725-4542
westonc@pdx.edu

Gonzaga University
Foley Center Library
502 East Boone Ave.
Spokane, WA 99258
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spencer@gonzaga.edu

Department of Ecology
Nuclear Waste Program
Resource Center
3100 Port of Benton Boulevard
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Valarie Peery (509) 372-7920
Valarie.Peery@ecy.wa.gov

Washington State University
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Richland, WA 99352
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Janice.parthree@pnml.gov

Department of Energy
Administrative Record
2440 Stevens Drive, room 1101
Richland, WA 99354
Heather Childers (509) 376-2530
Heather_M_Childers@rl.gov

Classified Legals

D6 TRI-CITY HERALD | SUNDAY, JUNE 30, 2013

which could result in permanent loss of your parental rights, if you do not appear at the hearing. The court may enter an order in your absence terminating your parental rights.

To request a copy of the Notice, Summons, and Dependency Petition, call DSHS at (509) 737-2800. To view information about your rights, including rights to a lawyer, go to www.wa.gov/DPY.dpx.

DATED this 10th day of June, 2013.
#13-5746 0 & 6/23 & 6/30/2013

new permit was issued April 1, 2013, and remains in effect during this comment period.

Three agencies contribute underlying permits to the AOP.

Ecology is the overall permitting authority and focuses on non-radioactive criteria and toxic air emissions.

The Washington State Department of Health focuses on radioactive air emissions.

The Benton Clean Air Agency focuses on outdoor burning and asbestos handling.

To submit your comments, send them by email (preferred), U.S. mail, or hand-deliver them to Phillip Gent, 3100 Port of Benton Blvd, Richland WA 99354. Email: Hanford@ecy.wa.gov.

When the comment period closes, we will consider the comments received and revise the permit as needed. Then we will issue the revised permit and another Response to Comments.

Document repository locations

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Suzzallo Library,
Govt. Pub. Dept.
Seattle, WA 98195
Hilary Helmer
(206) 543-5597
Helmerh@uw.edu

Portland State University
Government Information
Branford Price Millar Library
1875 SW Park Avenue
Portland, OR 97207-1151
Claudia Weston
(503) 725-4542
westonc@pdx.edu

Gonzaga University
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Spokane, WA 99258
John S. Spencer
(509) 313-6110
spencer@gonzaga.edu

Department of Ecology
Nuclear Waste Program
Resource Center
3100 Port of Benton
Boulevard
Richland, WA 99354
Valerie Peery
(509) 372-7920
Valerie.Peery@ecy.wa.gov

Washington State
University Consolidated
Information Center
2770 Crimson Way
Richland, WA 99352

Janice Parthree
(509) 372-7443
Janice.parthree@pnml.gov

Department of Energy
Administrative Record
2440 Stevens Drive,
room 1101
Richland, WA 99354

Heather Childers
(509) 376-2530
Heather.M.Childers@ri.gov
#13-5604 6/30/2013

The Washington Department of Ecology (Ecology) is reopening the comment period for the Hanford Air Operating Permit (AOP). The public comment period runs from June 30, 2013, through August 2, 2013.

Ecology held two comment periods on this permit last year and issued the permit on April 1, 2013. We are now inviting comments on the issued permit. We are holding this comment period because of potential confusion we may have caused in previous notifications sent to our mailing lists.

The permit ensures Hanford's air emissions stay within safe limits that protect people and the environment. The permit, supporting documents, the previous draft permit, and the Response to Comments for the draft permit are available.

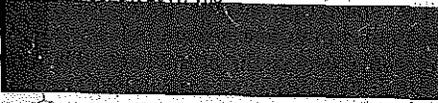
You can find them online at <http://www.ecy.wa.gov/programs/nwp/commentperiods.htm>, and at the locations listed at the bottom of this notice.

A public hearing is not scheduled, but if there is enough interest, we will consider holding one. To request a hearing, or for more information, contact Madeline Brown at 800-321-2008, or Hanford@ecy.wa.gov.

This permit regulates the U.S. Department of Energy (USDOE) Hanford site in south-central Washington, north of Richland. USDOE is cleaning up wastes from making plutonium for the nation's nuclear arsenal.

USDOE has two offices jointly applying for the permit. The Richland Operations Office has the lead. Its address is PO Box 500, Richland, WA 99352. The Office of River Protections address is PO Box 450, Richland, WA 99352.

State regulations for AOPs limit their duration to five years. Hanford still emits pollutants to the air and still requires a permit. The previous permit expired on December 31, 2011. The



APPLY: Download application/complete job description at: www.pasco-wa.gov
 City of Pasco, Human Resources Office located at, 525 N. 3rd Ave., Pasco, WA 99301. Contact HR at (509) 545-3408, with questions regarding employment opportunities. No fax/email or incomplete applications accepted. EOE

Sell your vehicle fast with in the Tri-City Herald

- PA
- RN or LPN
- Clinical Team Leader
- Therapist
- Crisis Outreach Professional
- Transition Coach/ Care Manager

Comprehensive is committed to building strong communities through the efforts of its staff, clients, and collaborative partnerships. If you are interested in joining a

second service and the Pastor(s). Must be a team player. Will affirm and highlight the vision and mission of First Presbyterian Church. Responsible to set up weekly times to rehearse with the musicians. Must be open to new ideas and creativity in worship. Salary depends on experience & qualifications. This is a 10-20 hour a week position.

Closing Date:
 Open Until Filled
 (1st Consideration closes Jan. 5, 2014 at 11:59 PM PST)
 The Vice President for Student Services is responsible for the administration of a comprehensive student services program that supports the College's access and student success mission.
 To see a detailed position description and/or apply, please visit:
<http://www.columbia-basin.edu/index.aspx?page=205>
 Applications will ONLY be accepted through our website.
 CBC is an EEO/AA Employer. Protected groups are encouraged to apply.

CADWELL
 QA-RA Manager
 Join the team at Cadwell a world-renowned mechanical equipment manufacturer. As the QA-RA Manager you will drive the Cadwell Quality Systems covering internal systems and activities. In addition you will lead our strategy, interactions, and approvals with external regulatory bodies. A minimum of a bachelor's degree required. The ideal candidate will have a proven track record of leading a team in an intense regulatory environment. Please send resume to: cathy@cadwell.com

Classified Legals

Thursday 12/5/13
 The Benton and Franklin Counties Human Services Advisory Board will meet on December 5th, 2013 at 4:00 pm at the Benton Franklin Health District Board Room, 7102 W. Okanogan Place, Kennewick, WA 99336. Topics of discussion will be: Interviews for potential board members, updates on mental health projects and Affordable Care implementation.
#13-6365 11/17/2013

City of Pasco
 The City Council of the City of Pasco will hold a public hearing on December 16, 2013 to discuss the 2013 Operating and Capital Improvements Budget Supplement. The Council meeting will begin at 7:00 pm at Pasco City Hall at 525 N. 3rd Ave., Pasco, WA 99301.
#13-6416 11/17 & 11/24/2013

Hanford Air Operating Permit
 Washington Department of Ecology invites you to comment on proposed changes to the Hanford Air Operating Permit.
 The public comment period runs from November 17 through December 20, 2013.
 To submit comments, send them to: Phillip.Gent@hanford.ecy.wa.gov (preferred), or via postal mail at 3100 Port of Benton Blvd, Richland, WA 99354.

A public hearing is not scheduled, but if there is enough interest we will consider holding one. To request a hearing or for more information, contact Madeline Brown at Hanford@ecy.wa.gov or 800-321-2008.
 The changes are to incorporate new information into the permit. In particular, the Washington State Department of Health has issued a new radioactive air emissions license.

Also, since January 2012, Ecology has issued several "Notice of Construction" (NOC) approvals to the U.S. Department of Energy (USDOE) for the permit. The approvals were mostly for using diesel engines to continue cleanup work. For example, the NOCs were to:

- Add a diesel-fired water heater for water used in tank waste retrievals.
- Make a temporary diesel engine permanent.
- Allow diesel-powered

pumps to run longer for testing emergency equipment. Slightly raise ammonia limits for Hanford tank farms.

When the comment period closes, we will consider the comments received and revise the permit as needed. Then we will issue the revised permit and a Response to Comments.

Permittee/Site Owner
 U.S. Department of Energy
 Office of River Protection
 P.O. Box 450
 Richland, WA 99352

Below are the places you can find the materials to review:

Online
www.ecy.wa.gov/programs/nwp/commentperiods.htm
Richland
 Ecology's Nuclear Waste Program Resource Center
 3100 Port of Benton Blvd, Richland, WA 99354
 Contact: Valarie Peery 509-372-7950
Valarie.Peery@ecy.wa.gov

Dept. of Energy Administrative Record
 2440 Stevens Drive, Room 1101
 Richland, WA 99354
 Contact: Heather Childers 509-376-2530
Heather.M.Childers@rl.gov
Department of Energy Reading Room
 2770 Crimson Way, Room 101L
 Richland, WA 99354
 Contact: Janice Parthree 509-375-3308
Janice.Parthree@pnnl.gov

Portland
 Portland State University
 Branford Price Millar Library
 1875 SW Park Avenue
 Portland, OR 97207
 Contact: Claudia Weston 503-725-4542
Westonc@pdx.edu

Seattle
 University of WA
 Suzzallo Library
 P.O. Box 352900
 Seattle, WA 98195
 Contact: Hilary Reinert 206-543-4664
Reinert@uw.edu

Spokane
 Gonzaga University
 Foley Center
 502 E Boone Avenue
 Spokane, WA 99258
 Contact: John S. Spencer 509-323-6110
spencer@gonzaga.edu
#13-6396 11/17/2013

NOTICE OF EQUALIZATION
 NOTICE IS HEREBY GIVEN THAT the 2014 Assessment Roll of lands comprising the Roza Irrigation District, Yakima and Benton Counties, State of Washington, is now on file and open to inspection at the office of the Secretary of the District, Tom Monroe, Sunnyside, Washington, and will remain open to inspection until and during the hearing as herein stated; that the Board of Directors of said Roza Irrigation District will meet to equalize said Assessments at the Roza Irrigation District office, corner of 13th Street and Blaine Avenue in Sunnyside, Washington on Tuesday December 10, 2013 at the hour of 9:00 o'clock A.M., and will then consider any objections to said Roll, and will equalize and adopt the same, adjourning from day to day, if necessary, until the same is completed, not exceeding (10) ten days from said December 10, 2013.
 DATED this 12th day of November, 2013.
 President - Ric Vallicoff
 Vice-President - Jim Willard
 Director - Dave Minick
 Director - Jerry Haak
 Director - Mike Miller
#13-6406 11/17 & 11/24/2013

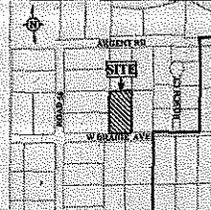
NOTICE OF PUBLIC HEARING
 PLEASE TAKE NOTICE that the Pasco Planning Commission will hold a public hearing to consider revisions to PMC Chapter 25.42 dealing with Auto Sales in C-1 Zones. The proposal would amend the code to permit used auto sales in the C-1 Zone east of Highway 395 and west of Highway 395 under certain circumstances.
 THEREFORE, LET ALL CONCERNED TAKE NOTICE that a Public Hearing will be held by the Pasco Planning Commission, in the City Council Chambers, Pasco City Hall, 525 N. 3rd Ave., at the hour of 7:00 p.m., Thursday, November 21, 2013, so that all concerned may appear and present any objections or support for the proposed code amendment.
 For additional information or copies of the proposed revisions, please contact the Pasco City Planner at (509) 545-3441.
 David I. McDonald, Secretary
 Planning Commission
 Pasco, Washington
#13-6323 11/10 & 11/17/2013

NOTICE OF FINAL ACCEPTANCE
 Booth Building First Floor Remodel
 Notice is hereby given that the Board of Education of Pasco School District No.1 has, by resolution at a regularly scheduled meeting thereof on November 12, 2013, accepted the following project as final and complete.

Owner:
 Pasco School District No.1
Project:
 Booth Building First Floor Remodel
General Contractor:
 Industrial Constructors, Inc.
 8524 W. Gage Blvd, A285
 Kennewick, WA 99336
Date of Contract:
 April 30, 2013
Date of Final Acceptance:
 November 12, 2013
Date for Release of Retainage:
 January 23, 2014

Any person or party having claim against the general contractor, the District, or the retainage bond arising out of said project must make claim with notice to the District and others according to the law.
Dated this 13th Day of November 2013
Pasco School District No.1
 1215 W. Lewis Street
 Pasco, WA 99301
 (509) 543-6700
 By **Saundra L. Hill, Superintendent**
#13-6409 11/17 & 11/24/2013

NOTICE OF PUBLIC HEARING
 THEREFORE, LET ALL CONCERNED TAKE NOTICE that a Public Hearing will be held by the Planning Commission of the City of Pasco, Washington, in the City Council Chambers, Pasco City Hall, 525 N. Third Avenue at the hour of 7:00 p.m., Thursday, November 21, 2013, so that all concerned may appear and present any objections or support for the proposed zone change.
 State law permits only one open record public hearing on this matter. This will be the only opportunity to provide input on this issue. For additional information, please contact the Pasco City Planner at (509) 545-3441.
 David I. McDonald, Planning Commission Secretary
 Pasco, Washington
#13-6321 11/10 & 11/17/2013

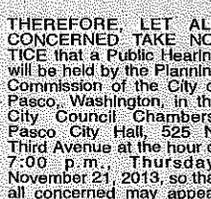


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 For additional information or copies of the proposed revisions, please contact the Pasco City Planner at (509) 545-3441.
 David I. McDonald, Secretary
 Planning Commission
 Pasco, Washington
#13-6323 11/10 & 11/17/2013

NOTICE OF PUBLIC HEARING
 PLEASE TAKE NOTICE that the Pasco Planning Commission will hold a public hearing to consider revisions to PMC Chapters 25.22, 25.24, 25.26, 25.28, 25.34, 25.36 and 25.38 dealing with building heights for detached garages and shops in the RS-20, RS-12, RS-1, R-1, R-2, R-3 and R-4 zones.
 THEREFORE, LET ALL CONCERNED TAKE NOTICE that a Public Hearing will be held by the Pasco Planning Commission, in the City Council Chambers, Pasco City Hall, 525 N. 3rd Ave., at the hour of 7:00 p.m., Thursday, November 21, 2013, so that all concerned may appear and present any objections or support for the proposed code amendment.
 For additional information or copies of the proposed revisions, please contact the Pasco City Planner at (509) 545-3441.
 David I. McDonald, Secretary
 Planning Commission
 Pasco, Washington
#13-6324 11/10 & 11/17/2013

NOTICE OF PUBLIC HEARING
 PLEASE TAKE NOTICE that Daniel Martinez has filed a petition (MF # SP2013-014) with the Pasco Planning Commission requesting a special permit to construct a residential accessory garage 23.5 feet in height in an RS-20 (Suburban) zone on the following described property:
 Legal: Lot 9, Bosch Estates
 General Location: 5417 W. Dradie Street

NOTICE OF PUBLIC HEARING
 PLEASE TAKE NOTICE that Hayden Homes has filed a petition (MF# Z 2013-005) requesting a rezoning from RT (Residential Transition) to R-1 (Low-Density Residential) and R-2 (Medium-Density Residential) for approximately 46 acres on the following described property:
 Legal:
 The east 822 feet of Franklin County tax parcel #116-020-010, lying south of Powline Road, west of Convent Drive and north of Sandfur Parkway.
 Location:
 The northwest corner of Sandfur Parkway and Convent Drive

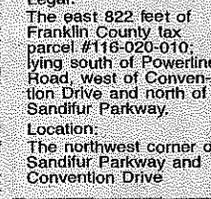


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 State law permits only one open record public hearing on this matter. This will be the only opportunity to provide input on this issue. For additional information, please contact the Pasco City Planner at (509) 545-3441.
 David I. McDonald, Planning Commission Secretary
 Pasco, Washington
#13-6322 11/10 & 11/17/2013

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 State law permits only one open record public hearing on this matter. This will be the only opportunity to provide input on this issue. For additional information, please contact the Pasco City Planner at (509) 545-3441.
 David I. McDonald, Planning Commission Secretary
 Pasco, Washington
#13-6322 11/10 & 11/17/2013

ENGINEER:
 Riedesel Engineering, Inc.
 Richland, Washington
 Sealed bids for the following described construction will be received by the Owner at:
 Port of Benton offices located at 3100 Georgi Washington Way, Richland Washington 99354, until 2:00 pm local prevailing time Tuesday, December 3, 2013, at which time the bid will be publicly opened and read aloud. Those submitting bids will be notified of the results immediately after the Bid Opening.
 Bids will only be accepted from contractors who are included on the Port of Benton Small Works Roster at the time of bid opening. Applications to be included on the Small Works roster may be obtained by contacting the Port of Benton offices at (509) 375-3060 or by visiting the Port of Benton website at www.portofbenton.com. Minority Business (MBE) and Women Owned Business (WBE) are encouraged to submit.
 Bids must be completed on a lump sum and unit price basis as indicated on the Bid Proposal, and the total will be used for the purpose of comparison of bids for the Crow Butte Park 2013 Marina Improvement Project Award of the construction contract will be to the lowest responsible bidder. It is required that Washington State Department of Labor & Industries current Prevailing Wage Rates for South Central Washington shall be utilized for this project.
 The Project will be bid as four (4) lump sum bids schedules, including Washington State Sales Tax, as follows:

Port of Benton Crow Butte Park 2013 Marina Improvements Project
ADVERTISEMENT FOR BIDS
OWNER:
 Port of Benton, Washington
PROJECT:
 Crow Butte Park 2013 Marina Improvements Project

Advertisement for Bids
 Bid Schedule 1 - Boat Launch Area Improvements - New Gangway with New 8' Dock System & Removal of Existing Oreosote Pile and Installation of New Steel Piles
 Bid Schedule 2 - New Boat Basin Gangway Area Improvements including ADA Access replacement of existing wood decking on float with installation of new steel grating & 12 New Boat Slips with New Steel Piles
 Bid Schedule 3 - Installation of Port Provided Vault Restroom and Port Provided Fish Cleaning Station and related vehicular parking improvements
 Bid Schedule 4 - Envir

From: [Brown, Madeleine \(ECY\)](#)
To: hanford-Info@listserv.wa.gov
Subject: Advance Notice - Public Comment Period for Hanford Air Operating Permit
Date: Tuesday, May 28, 2013 5:16:00 PM

Advance notice

Hanford Site Air Operating Permit renewal public comment period

The Washington Department of Ecology will hold a public comment period starting Sunday, June 30, 2013, and running through Friday, August 2, 2013 for the Hanford Air Operating Permit (AOP) renewal.

Ecology held two public comments periods on this permit last year, and we reissued the permit on April 1, 2013. We are holding another comment period because we became aware of some confusion in notifications sent to our mailing list. To remove any confusion and to encourage public comments, we are providing another review of the entire permit and supporting materials.

The permit holder is the U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland WA 99352.

During the comment period you can view the entire AOP at the Department of Ecology, Nuclear Waste Program, 3100 Port of Benton Blvd, in Richland. To make an appointment to review the documents, call 509-372-7920. You can also view the documents online at www.ecy.wa.gov/programs/nwp/commentperiods.htm or at one of the [public information repositories](#).

For more information, contact Phil Gent at Hanford@ecy.wa.gov.

Madeleine C. Brown

Washington Department of Ecology

Nuclear Waste Program

Hanford@ecy.wa.gov

From: [Brown, Madeleine \(ECY\)](#)
To: hanford-info@listserv.wa.gov
Cc: [Brown, Madeleine \(ECY\)](#)
Subject: Comment period is underway for Hanford's Air Operating Permit
Date: Monday, July 01, 2013 9:40:40 AM

This message is from the Washington Department of Ecology.

Comment Period Started Sunday

The Washington Department of Ecology (Ecology) is reopening the comment period for the Hanford Air Operating Permit (AOP). The public comment period runs from June 30, 2013, through August 2, 2013.

Ecology held two comment periods on this permit last year and issued the permit on April 1, 2013. We are now inviting comments on the issued permit. We are holding this comment period because of potential confusion we may have caused in previous notifications sent to our mailing lists.

The permit ensures Hanford's air emissions stay within safe limits that protect people and the environment. The permit, supporting documents, the previous draft permit, and the Response to Comments for the draft permit are available.

You can find them online at <http://www.ecy.wa.gov/programs/nwp/commentperiods.htm> and at the locations listed at the bottom of this notice.

A public hearing is not scheduled, but if there is enough interest, we will consider holding one. To request a hearing, or for more information, call 800-321-2008, or email Hanford@ecy.wa.gov.

This permit regulates the U.S. Department of Energy (USDOE) Hanford site in south-central Washington, north of Richland. USDOE is cleaning up wastes from making plutonium for the nation's nuclear arsenal.

USDOE has two offices jointly applying for the permit. The Richland Operations Office has the lead. Its address is PO Box 500, Richland, WA 99352. The Office of River Protection's address

is PO Box 450, Richland, WA 99352.

State regulations for AOPs limit their duration to five years. Hanford still emits pollutants to the air and still requires a permit. The previous permit expired on December 31, 2011. The new permit was issued April 1, 2013, and remains in effect during this comment period.

Three agencies contribute underlying permits to the AOP.

- Ecology is the overall permitting authority and focuses on nonradioactive criteria and toxic air emissions.
- The Washington State Department of Health focuses on radioactive air emissions.
- The Benton Clean Air Agency focuses on outdoor burning and asbestos handling.

To submit your comments, send them by email (preferred), U.S. mail, or hand-deliver them to Philip Gent, 3100 Port of Benton Blvd, Richland WA 99354. Email: Hanford@ecy.wa.gov.

When the comment period closes, we will consider the comments received and revise the permit as needed. Then we will issue the revised permit and another Response to Comments.

Document repository locations

University of Washington

Suzzallo Library, Govt. Pubs Dept.

Seattle, WA 98195

Hilary Reinert (206) 543-5597

Reinerth@uw.edu

Portland State University

Government Information

Branford Price Millar Library

1875 SW Park Avenue

Portland, OR 97207-1151

Claudia Weston (503) 725-4542

westonc@pdx.edu

Gonzaga University

Foley Center Library

502 East Boone Ave.

Spokane, WA 99258

John S. Spencer (509) 313-6110

spencer@gonzaga.edu

Department of Ecology

Nuclear Waste Program

Resource Center

3100 Port of Benton Boulevard

Richland, WA 99354

Valarie Peery (509) 372-7920

Valarie.Peery@ecy.wa.gov

Washington State University

Consolidated Information Center

2770 Crimson Way

Richland, WA 99352

Janice Parthree (509) 372-7443

Janice.parthree@pnnl.gov

Department of Energy

Administrative Record

2440 Stevens Drive, room 1101

Richland, WA 99354

Heather Childers (509) 376-2530

Heather_M_Childers@rl.gov

From: [Brown, Madeleine \(ECY\)](#)
To: hanford-info@listserv.wa.gov
Subject: Advance notice - comment period for Hanford Air Operating Permit
Date: Thursday, August 15, 2013 8:26:00 AM

Upcoming public comment period for changes to the Hanford Air Operating Permit

The Department of Ecology plans to hold a 30-day comment period starting September 22 on some changes to Hanford's Air Operating Permit (AOP).

The proposed changes would add a new radioactive air emissions license from the Department of Health and a number of recent "Notices of Construction" (NOC). The NOCs were for minor changes, such as running diesel engines a little longer to allow proper fire suppression testing, making a temporary diesel generator permanent, and adding diesel-fired water heaters to support tank waste retrieval.

The permit holder is the U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland WA 99352.

When the comment period starts, you can view the entire AOP at Ecology's office in Richland, 3100 Port of Benton Blvd. To make an appointment to review the documents, call 509-372-7920. You will also be able to view the documents online at www.ecy.wa.gov/programs/nwp/commentperiods.htm or at one of the [public information repositories](#).

We do not intend to hold a public hearing, but if significant interest arises, we will consider it.

For more information, email Hanford@ecy.wa.gov or call 1-800-321-2008.

From: [Brown, Madeleine \(ECY\)](#)
To: hanford-info@listserv.wa.gov
Subject: Updated advance notice - comment period for changes to Hanford Air Operating Permit starts in November
Date: Monday, September 30, 2013 11:12:00 AM

Advance notice - public comment period for changes to the Hanford Air Operating Permit moved to November

The Department of Ecology has rescheduled our Hanford Air Operating Permit (AOP) comment period. We will hold a 30-day comment period starting November 17 to incorporate changes into Hanford's AOP. The comment period was expected to start September 22 or September 29, but the application materials were not ready in time to meet this schedule.

The changes will add a new radioactive air emissions license from the Department of Health, and a number of recent "Notices of Construction" in the past two years. The NOCs were for minor changes, such as:

- Running diesel engines a little longer to allow proper fire suppression testing.
- Making a temporary diesel generator permanent.
- Adding diesel-fired water heaters to support tank waste retrieval.

The permit holder is the U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland WA 99352.

When the comment period starts, you can view the entire AOP at the Department of Ecology, Nuclear Waste Program, 3100 Port of Benton Blvd, in Richland. To make an appointment to review the documents, call 509-372-7920. You will also be able to view the Hanford AOP online at www.ecy.wa.gov/programs/nwp/commentperiods.htm and at the [public information repositories](#).

We don't plan to hold a public hearing, but if significant interest arises, we will consider it.

Do you want to know more? Email Hanford@ecy.wa.gov or call 1-800-321-2008.

From: [Brown, Madeleine \(ECY\)](#)
To: hanford-info@listserv.wa.gov
Subject: Hanford Air Operating Permit comment period underway
Date: Monday, November 18, 2013 10:28:00 AM

This is a message from Washington Department of Ecology

Comment period underway!

Ecology invites you to comment on proposed changes to the Hanford Air Operating Permit. The comment period on these changes began Sunday and runs through December 20, 2013.

The changes are to incorporate new information into the permit. In particular, the [Washington State Department of Health](#) (Health) has issued a new radioactive air emissions license.

Also, since January 2012, Ecology has issued several "Notice of Construction" (NOC) approvals to the U.S. Department of Energy (USDOE), the permittee. The approvals were mostly for using diesel engines to continue cleanup work. For example, the NOCs were to:

- Add a diesel-fired water heater for water used in tank waste retrievals.
- Make a temporary diesel engine permanent.
- Allow diesel-powered pumps to run longer for testing emergency equipment.
- Slightly raise ammonia limits from Hanford tank farms.

About the Permit

The Air Operating Permit regulates the [Hanford Site](#) in south-central Washington, north of Richland. USDOE is cleaning up wastes from making plutonium for the nation's nuclear arsenal.

Two USDOE offices are applying jointly for the permit. The Richland Operations Office has the lead. Its address is PO Box 550, Richland, WA 99352. The Office of River Protection's address is PO Box 450, Richland, WA 99352.

Three agencies contribute underlying permits to the Air Operating Permit.

- Ecology is the overall permitting authority and regulates certain nonradioactive and toxic air emissions.
- Health regulates radioactive air emissions.
- The [Benton Clean Air Agency](#) regulates outdoor burning and asbestos handling.

What's next?

When the comment period closes, we will consider the comments received and revise the permit as needed. Then we will issue the revised permit and a Response to Comments.

Permittee/Site Owner

U.S. Department of Energy

Richland Operations Office

P.O. Box 550

Richland, WA 99352

To Submit Comments

Send comments or questions by e-mail (preferred), U.S. mail, or hand deliver them to:

Philip Gent

Department of Ecology

3100 Port of Benton Blvd.

Richland, WA 99354

Hanford@ecy.wa.gov

Public Hearing

A public hearing is not scheduled, but if there is enough interest, we will consider holding one. To request a hearing or for more information, contact:

Madeleine Brown

Department of Ecology

800-321-2008

Hanford@ecy.wa.gov

Below are the places you can find the materials to review:

Online

www.ecy.wa.gov/programs/nwp/commentperiods.htm

Richland

Ecology's Nuclear Waste Program Resource Center

3100 Port of Benton Blvd.

Richland, WA 99354

Contact: Valarie Peery 509-372-7950

Valarie.Peery@ecy.wa.gov

Dept. of Energy Administrative Record

2440 Stevens Drive, Room 1101

Richland, WA 99354

Contact: Heather Childers 509-376-2530

Heather_M_Childers@rl.gov

Department of Energy Reading Room

2770 Crimson Way, Room 101L

Richland, WA 99354

Contact: Janice Parthree 509-375-3308

Janice.Parthree@pnnl.gov

Portland

Portland State University

Branford Price Millar Library

1875 SW Park Avenue

Portland, OR 97207

Contact: Claudia Weston 503-725-4542

Westonc@pdx.edu

Seattle

University of WA Suzzallo Library

P.O. Box 352900

Seattle, WA 98195

Contact: Hilary Reinert 206-543-4664

Reinerth@uw.edu

Spokane

Gonzaga University Foley Center

502 E Boone Avenue

Spokane, WA 99258

Contact: John S. Spencer 509-323-6110

spencer@gonzaga.edu



Public Comment Period: Hanford Air Operating Permit (AOP)

Page Events Share Edit

Public · By Ecology's Hanford Education & Outreach Network

Export

June 30 at 8:00am until August 2 at 5:00pm

The Washington State Department of Ecology (Ecology) is reopening the comment period for the Hanford Air Operating Permit (AOP) from June 30 to August 2, 2013. Ecology is now inviting comments on the issued permit. We are holding this comment period because of potential confusion we may have caused in previous notifications sent to our mailing lists.

Submit comments by August 2 to:

Philip Gent (Hanford@ecy.wa.gov)
3100 Port of Benton Blvd
Richland, WA 99354

More information: http://www.ecy.wa.gov/programs/nwp/permitting/AOP/renewal/two/revision_a/



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Public Comment Period: Hanford Air Operating Permit (AOP)



The Washington State Department of Ecology (Ecology) is...

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APPENDIX B: COPIES OF ALL WRITTEN COMMENTS

From: narfie13@comcast.net

Sent: Tuesday, July 02, 2013 5:59:45 AM (UTC-08:00) Pacific Time (US & Canada)

To: Hanford (ECY)

Subject: AOP public comment

I did not find any summary of items which might have changed since the last permit was issued.

Are there any changes?

If not, I have no objection to the AOP (which 57 pages I read).

I shall be happy to attend any public meetings you offer.

The advantages of the public meetings are several:

Public interest organisations (Including you sometimes) bring clear accounts of what pollutants are currently being permitted to occur, choices for reduction of said pollutants, and what monitoring of emissions is occurring.

Humanising of the monitoring of Hanford Waste Management and Cleanup by meeting people involved, and developing friendly cooperative relationships.

Also: I learned at the Oregon Hanford Cleanup Board meeting in June 2013 from the Umatilla tribe representative, that several tribes have asked that Rattlesnake Mountain on the Hanford site be formally declared a sacred site, which it has been for generations.

We might all be able to agree that having prayers offered for the ecosystem on this site would not hurt cleanup!

I have confidence the tribes will restrict air quality concerns to burning a little sage or cedar for purification.

I am very much in favor of this sacred site designation, and that the tribes manage the area.

All the best with cleanup and monitoring! Chris Carol Arthur.

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Review & Recycle

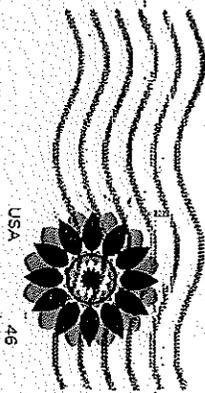
Mr. William Johns
12608 S Scribner Rd
Cheney, WA 99004

Mr. William Johns
12608 S Scribner Rd
Cheney, WA 99004

Since the old
permit expired 12/31/11
and the new one
was issued 4/1/13,
why do we need
a permit at all?
also I get two
announcements
enclosed. I do not
need two.
WJ

✓
Ariel Coert
3100 Port of Benton Blvd
Richland, WA, 99354
99354157000

SPokane WA 990
24 JUN 2013 PM 11



DEPARTMENT OF
ECOLOG
of Washington
Benton Blvd
354

BILL JOHNS
12608 S SCRIBNER RD
CHENEY WA 99004-9592



3100 Port of Benton Blvd
Richland, WA 99354

WILLIAM JOHNS
12608 S SCRIBNER RD
CHENEY WA 99004-9592

August 1, 2013

RECEIVED

AUG 01 2013

DEPARTMENT OF ECOLOGY
NWP - RICHLAND

Mr. Philip Gent
Washington State Department of Ecology
Nuclear Waste Program
3100 Port of Benton Blvd.
Richland, WA 99354

Re: Public comments on draft Hanford Site Air Operating Permit renewal

Dear Mr. Gent:

I am pleased the Washington State Department of Ecology (Ecology) again offered the draft Hanford Site Air Operating Permit (AOP) renewal for public comment. Enclosed are my comments.

I hope you find my comments useful in implementing a public involvement process consistent with Ecology regulation and with 40 C.F.R. 70. I also hope you find the comments useful in crafting a proposed AOP that complies with both the federal *Clean Air Act* and the *Washington Clean Air Act*.

Of particular concern is the choice of statute under which Ecology regulates Hanford's radionuclide air emissions in the draft AOP. By choosing to regulate Hanford's radionuclide air emissions in accordance with RCW 70.98, *The Nuclear Energy and Radiation Act* (NERA), Ecology overlooks all requirements of the federal *Clean Air Act* (CAA) and RCW 70.94, *The Washington Clean Air Act* (WCAA). One defect of particular concern resulting from the regulation of radionuclide air emissions under NERA, is that NERA does not allow for public involvement. RCW 70.98.080 (2) Thus, some 780 pages of terms and conditions regulating all of Hanford's radionuclide air emissions are removed from public involvement. The fact that the WCAA, Title V of the CAA, and 40 C.F.R. 70 all mandate public involvement, informs that Ecology's use of NERA is a fatal flaw. Ecology is encouraged to offer the public a draft AOP that complies with binding authority.

I also couldn't help but notice Ecology edited my last three (3) sets of comments before they were sent to EPA to support review required by WAC 173-401-810 and 40 C.F.R. 70.8; removing footnotes, removing some footnote call-numbers, and changing the citation format used in those comments. The footnotes supported and strengthened points made in my comments. Furthermore, the first page of each set of comments clearly specified the comments included any associated footnote(s). The formatting style I used when citing regulatory and other legal references is after that prescribed by the Bluebook¹ as modified by the *Washington State Court Rules*. Because Ecology cites such references differently, does not provide Ecology with license to edit my citations. Please refrain from altering any of the enclosed comments.

¹ *The Bluebook: A Uniform System of Citation*, (Columbia Law Review Ass'n et al. eds., 18th ed. 2005)

Mr. Philip Gent
August 1, 2013
Page 2 of 2

Thank you again for providing another opportunity to comment on the draft
Hanford Site AOP renewal.

Regards,

A handwritten signature in black ink, appearing to read 'Bill Green', with a long horizontal flourish extending to the right.

Bill Green
424 Shoreline Ct.
Richland, WA 99354-1938

Enclosure
cc: w/encl. via email
P. Gent, Ecology
J. Martell, Health
T. Beam, MSA Hanford

As used below, the term(s):

– **permitting authority** is as defined in CAA § 501 (4) [42 U.S.C. 7661 (4)] and 40 C.F.R. 70.2.

“The term “permitting authority” means the Administrator or the air pollution control agency authorized by the Administrator to carry out a permit program under this subchapter.”

CAA § 501 (4) [42 U.S.C. 7661 (4)];

“*Permitting authority* means either of the following: (1) The Administrator, in the case of EPA-implemented programs; or (2) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under this part.” 40 C.F.R. 70.2

- **AOP, Part 70 Permit, and Title V permit** are synonymous, meaning any permit that is required by 40 C.F.R. 70, and Title V of the CAA.
- **CAA or Act** is the *Clean Air Act*, 42 U.S.C. 7401, *et seq.*
- **Health, DOH, or WDOH** is the Washington State Department of Health

Comments include any associated footnote(s).

Comment 1: (general AOP structure): **Contrary to *Clean Air Act (CAA)* section 502 (b)(5)(E)¹ [42 U.S.C. 7661a (b)(5)(E)] and 40 C.F.R. 70.11 (a), the regulatory structure used in this draft AOP does not allow Ecology, the sole permitting authority, to enforce all standards or other requirements controlling emissions of radionuclides, a hazardous air pollutant under CAA § 112.**

Because radionuclides are listed in CAA § 112 (b) as a *hazardous air pollutant*, conditions regulating radionuclide air emissions are CAA Title V (AOP) applicable requirements, subject to inclusion in AOPs pursuant to CAA § 502 (a) [42 U.S.C. 7661a (a)], 40 C.F.R. 70.2 *Applicable requirement* (4), RCW 70.94.161 (10)(d), and WAC 173-401-200 (4)(a)(iv).

In this draft Hanford Site AOP radionuclides are regulated solely in *Attachment 2* (License FF-01) in accordance with RCW 70.98, the *Nuclear Energy and Radiation Act* (NERA). NERA implements neither Title V of the CAA nor 40 C.F.R. 70, nor is NERA obligated by either the CAA or 40 C.F.R. 70. Only the Washington State Department of Health (Health) has Legislative authorization to enforce NERA through regulations adopted thereunder. (*See* RCW 70.98.050 (1))

Absent Legislative authorization Ecology cannot act, in any way, on *Attachment 2* (License FF-01) or on any of the terms and conditions contained therein². Furthermore, according to *Appendix A* of 40 C.F.R. 70, Health is not a permitting authority under the CAA and therefore does not have an EPA-approved program implementing CAA Title V and 40 C.F.R. 70. Thus, neither NERA nor Health-adopted regulations promulgated under authority of NERA, have been approved to implement requirements of CAA Title V and 40 C.F.R. 70.

Ecology, the issuing permitting authority, is required by the CAA to have all authority necessary to enforce permits, including the authority to recover civil penalties and provide for criminal penalties. In plain language, the CAA requires:

“. . .the minimum elements of a permit program to be administered by any air pollution control agency. . . shall include each of the following: . . . (5) A requirement that the permitting authority

have adequate authority to: . . . (E) enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties . . . , and provide appropriate criminal penalties;" [CAA § 502 (b); 42 U.S.C. 7661a (b)]

EPA addresses this obligation in 40 C.F.R. 70.11 (a), which requires, in part, that:

"[a]ny agency administering a program shall have the following enforcement authority to address violations of program requirements by part 70 sources: (1) To restrain or enjoin immediately and effectively any person by order or by suit in court from engaging in any activity in violation of a permit that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment. (2) To seek injunctive relief in court to enjoin any violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit. (3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, . . ." 40 C.F.R. 70.11 (a)

Ecology does not have authority to sue to recover civil penalties or to provide appropriate criminal penalties for any activity in violation of any term or condition in *Attachment 2*, nor can Ecology seek injunctive relief in court to enjoin any violation of *Attachment 2* (License FF-01). Under the codified structure used in this draft AOP, Ecology, the sole permitting authority, has no authority to enforce any term or condition in *Attachment 2* (License FF-01), including those terms and conditions implementing federally enforceable requirements in 40 C.F.R. 61, subpart H. Only Health, a "permitting agency", can enforce these permit terms and conditions. Therefore, Ecology lacks the minimum authority specified in CAA § 502 (b) [42 U.S.C. 7661a (b)] and 40 C.F.R. 70.11 (a), with regard to *Attachment 2* (License FF-01).

Contrary to CAA § 502 (b)(5)(E) [42 U.S.C. 7661a (b)(5)(E)] and 40 C.F.R. 70.11 (a), the regulatory structure used in this draft AOP does not allow Ecology, the sole permitting authority, to enforce all standards or other requirements controlling emissions of radionuclides, a *hazardous air pollutant* under CAA § 112.

¹ "[T]he minimum elements of a permit program to be administered by any air pollution control agency. . . **shall** include each of the following: . . . (5) A requirement that the permitting authority have adequate authority to: . . . (E) enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties . . . , and provide appropriate criminal penalties;" (emphasis added) CAA § 502 (b); 42 U.S.C. 7661a (b)

² The Washington State Supreme Court addressed the issue of limits on an administrative agency's authority, stating: "[There is] a fundamental rule of administrative law - an agency may only do that which it is authorized to do by the Legislature (citations omitted). . . [Additionally an] administrative agency cannot modify or amend a statute through its own regulation." *Rettkowski v. Department of Ecology*, 122 Wn.2d 219, 226-27, 858 P.2d 232 (1993)

Comment 2: (general AOP structure): **Contrary to *Clean Air Act (CAA) section 502 (b)(5)(A)*¹ [42 U.S.C. 7661a (b)(5)(A)], 40 C.F.R. 70², and WAC 173-401³, the regulatory structure used in this draft AOP does not allow Ecology, the sole permitting authority, to issue a Title V permit containing all standards or other requirements controlling emissions of radionuclides, a *hazardous air pollutant* under CAA § 112.**

The regulatory structure of this Permit denies Ecology, the sole permitting authority, the legal ability to enforce terms and conditions in *Attachment 2*. Terms and conditions in *Attachment 2* (License FF-01) include all those implementing requirements

of 40 C.F.R. 61 subpart H. *Attachment 2* (License FF-01) was created in accordance with RCW 70.98, the *Nuclear Energy Radiation Act* (NERA) rather than in accordance with Title V of the CAA and 40 C.F.R. 70. Health, the sole agency with authority to enforce NERA and *Attachment 2*, is not a permitting authority, according to *Appendix A* of 40 C.F.R. 70, and therefore does not have a program authorized to implement CAA Title V and 40 C.F.R. 70.

Ecology does not have Legislative authorization to enforce NERA⁴. Absent Legislative authorization, Ecology lacks jurisdiction over *Attachment 2* (License FF-01). This jurisdictional limitation does not allow Ecology to take any action regarding *Attachment 2* (License FF-01) including the act of issuing License FF-01⁵. Without the legal ability to issue and enforce a permit containing terms and conditions implementing requirements of 40 C.F.R. 61 subpart H, Ecology cannot issue permits that “assure compliance . . . with each applicable standard, regulation or requirement under this chapter” CAA § 502 (b)(5)(A); 42 U.S.C. 7661a (b)(5)(A)

Contrary to CAA § 502 (b)(5)(A)¹ [42 U.S.C. 7661a (b)(5)(A)], 40 C.F.R. 70², and WAC 173-401³, the regulatory structure used in this draft AOP does not allow Ecology, the sole permitting authority, to issue a Title V permit containing all standards or other requirements controlling emissions of radionuclides, a hazardous air pollutant under CAA § 112.

¹ “[T]he minimum elements of a permit program to be administered by any air pollution control agency. . . **shall** include each of the following: . . . (5) A requirement that the permitting authority have adequate authority to: . . . (A) issue permits and assure compliance . . . with each applicable standard, regulation or requirement under this chapter;” (emphasis added) CAA § 502 (b); 42 U.S.C. 7661a (b)

² 40 C.F.R. 70.1 (b), -70.3 (c), -70.6 (a), and -70.7 (a)

³ WAC 173-401-100 (2), -600, -605, -700 (1)

⁴ “The department of health is designated as the state radiation control agency,. . . and shall be the state agency having sole responsibility for administration of the regulatory, licensing, and radiation control provisions of this chapter.” (emphasis added) RCW 70.98.050 (1).

⁵ Absent legal ability to act on requirements developed pursuant to RCW 70.98 (NERA) and the regulations adopted thereunder Ecology cannot subject *Attachment 2* to any requirement of 40 C.F.R. 70. “[there is] a fundamental rule of administrative law- an agency may only do that which it is authorized to do by the Legislature. *In re Puget Sound Pilots Ass'n*, 63 Wash.2d 142, 146 n. 3, 385 P.2d 711 (1963); *Neah Bay Chamber of Commerce v. Department of Fisheries*, 119 Wash.2d 464, 469, 832 P.2d 1310 (1992).” *Rettkowski v. Department of Ecology*, 122 Wn.2d 219, 226, 858 P.2d 232 (1993).]

Comment 3: (general AOP structure): **Contrary to *Clean Air Act* (CAA) section 502 (b)(6)¹ [42 U.S.C. 7661a (b)(6)], 40.C.F.R. 70.7 (h)², RCW 70.94.161 (2)(a) & (7)³, and WAC 173-401-800⁴, the regulatory structure used in this draft AOP does not allow Ecology, the sole permitting authority, to offer for public review AOP terms and conditions controlling Hanford’s radionuclide air emissions. Nor can Ecology provide for a public hearing on AOP terms and conditions controlling Hanford’s radionuclide air emissions. Radionuclides are a *hazardous air pollutant* under CAA § 112.**

Attachment 2 (License FF-01) is not a “rule” as defined by the *Administrative procedure Act*⁵ (RCW 34.05), and therefore modifications of this license are not subject to the rulemaking process. Modifications of *Attachment 2* (License FF-01) are also not

subject to the CAA, 40 C.F.R. 70, the *Washington Clean Air Act* (RCW 70.94), and WAC 173-401; this because *Attachment 2* was created and is enforced under authority of RCW 70.98, the *Nuclear Energy Radiation Act* (NERA), a statute that does not accommodate either public review or a public hearing. RCW 70.98.080 (2)

Clean Air Act (CAA) § 502 (b)(6) [42 U.S.C. 7661a (b)(6)], 40 C.F.R. 70.7 (h), RCW 70.94.161 (2)(a) & (7), and WAC 173-401-800 all require the public be provided with the opportunity to comment on draft AOPs and the opportunity for a public hearing⁶. However, RCW 70.98, the statute under which License FF-01 is issued, does not allow for public comments or public hearings. RCW 70.98.080 Revised Code of Washington (RCW) 70.98.080 (2) specifically exempts licenses pertaining to Hanford from any pre-issuance notification or review requirements⁷. Whereas 40 C.F.R. 70 and WAC 173-401 require the general public be provided with the opportunity for a review of thirty (30) or more days on any draft AOP. 40 C.F.R. 70.7 (h), WAC 173-401-800

The Washington State Supreme Court addressed the issue of limits on an administrative agency's authority, stating:

“[There is] a fundamental rule of administrative law-an agency may only do that which it is authorized to do by the Legislature (citations omitted). . . [Additionally an] administrative agency cannot modify or amend a statute through its own regulation.”

Rettkowski v. Department of Ecology, 122 Wn.2d 219, 226-27, 858 P.2d 232 (1993)

According to *Rettkowski*, absent statutory authorization, Ecology can neither enforce NERA or the regulations adopted thereunder, nor can Ecology modify NERA or the regulations adopted thereunder to provide for public review or public hearings required by CAA § 502 (b)(6) [42 U.S.C. 7661a (b)(6)], 40 C.F.R. 70.7 (h), RCW 70.94.161 (2)(a) & (7), and WAC 173-401-800.

Only Health has been authorized by statute to enforce NERA and the regulations adopted thereunder. [See RCW 70.98.050 (1)] However, under *Rettkowski*, even Health cannot modify NERA to allow for public comments or public hearings required by the CAA, 40 C.F.R. 70, RCW 70.94, and WAC 173-401.

Contrary to CAA § 502 (b)(6) [42 U.S.C. 7661a (b)(6)], 40.C.F.R. 70.7 (h), RCW 70.94.161 (2)(a) & (7), and WAC 173-401-800, the regulatory structure used in this draft AOP does not allow Ecology, the sole permitting authority, to offer for public review AOP terms and conditions controlling Hanford's radionuclide air emissions. Nor can Ecology provide for a public hearing on AOP terms and conditions controlling Hanford's radionuclide air emissions.

¹ “[T]he minimum elements of a permit program to be administered by any air pollution control agency. . . shall include each of the following: . . . (6) Adequate, streamlined, and reasonable procedures . . . including **offering an opportunity for public comment and a hearing**. . .” (emphasis added) CAA § 502 (b) [42 U.S.C. 7661a (b)]

² state operating permit programs “. . .shall provide adequate procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit.” 40 C.F.R. 70.7 (h). Additionally “[t]he permitting authority shall provide at least 30 days for public comment and shall give notice of any public hearing . . .” 40 C.F.R. 70.7 (h)(4)

³ “(2)(a) Rules establishing the elements for a statewide operating permit program and the process for permit application and renewal consistent with federal requirements shall be established . . . (7) All draft permits shall be subject to public notice and comment.” RCW 70.94.161

⁴ “(3) . . . [T]he permitting authority shall provide a minimum of thirty days for public comment . . . (4). . . [t]he applicant, any interested governmental entity, any group or any person may request a public hearing within the comment period required under subsection (3) of this section.” WAC 173-401-800

⁵ “Rule” means any agency order, directive, or regulation of general applicability . . . RCW 34.05.010 (16) License FF-01 applies to only Hanford and therefore is not “of general applicability”.

⁶ “[T]he minimum elements of a permit program to be administered by any air pollution control agency. . . shall include each of the following: . . . (6) Adequate, streamlined, and reasonable procedures . . . including offering an opportunity for public comment and a hearing. . . .” (emphasis added) CAA § 502 (b) [42 U.S.C. 7661a (b)]; state operating permit programs “. . . shall provide adequate procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit.” 40 C.F.R. 70.7 (h). Additionally “[t]he permitting authority shall provide at least 30 days for public comment and shall give notice of any public hearing . . .” 40 C.F.R. 70.7 (h)(4); “(2)(a) Rules establishing the elements for a statewide operating permit program and the process for permit application and renewal consistent with federal requirements shall be established . . . (7) All draft permits shall be subject to public notice and comment.” RCW 70.94.161; “(3) . . . [T]he permitting authority shall provide a minimum of thirty days for public comment . . . (4). . . [t]he applicant, any interested governmental entity, any group or any person may request a public hearing within the comment period required under subsection (3) of this section.” WAC 173-401-800

⁷ “This subsection [concerning the 20-day license review afforded to a single government executive] shall not apply to activities conducted within the boundaries of the Hanford reservation.” RCW 70.98.080 (2)

Comment 4: (general AOP structure): **Contrary to *Clean Air Act (CAA)* section 502 (b)(6)¹ [42 U.S.C. 7661a (b)(6)], 40 C.F.R. 70.4(b)(3)(x) and (xii)², and WAC 173-401-735 (2)³, the regulatory structure used in this draft AOP to control Hanford’s radionuclide air emissions does not recognize the right of a public commenter to judicial review in State court of the final permit action.**

Attachment 2 (License FF-01) of this draft AOP contains all terms and conditions regulating Hanford’s radioactive air emissions. License FF-01 was produced pursuant to RCW 70.98, the *Nuclear Energy and Radiation Act (NERA)*, rather than in accordance with Title V of the CAA and 40 C.F.R. 70. NERA does not provide an opportunity for judicial review by any person who participated in the public comment process. RCW 70.98.080 Furthermore, Ecology, the single permitting authority for the draft Hanford Site AOP, has no authority to require Health provide for such judicial review.

Washington State law requires all appeals of AOP terms and conditions be filed only with the Pollution Control Hearings Board (PCHB) in accordance with RCW 43.21B. [See RCW 70.94.161 (8) and WAC 173-401-620(2)(i)] However, PCHB jurisdictional limitations (RCW 43.32B.110) prevent the PCHB from acting on AOP conditions developed and enforced by Health.

Contrary to CAA § 502 (b)(6) [42 U.S.C. 7661a (b)(6)], 40 C.F.R. 70.4(b)(3)(x) and (xii), and WAC 173-401-735 (2), the regulatory structure used in this draft AOP to control Hanford’s radionuclide air emissions does not recognize the right of a public commenter to judicial review in State court of the final permit action.

¹ “[T]he minimum elements of a permit program to be administered by any air pollution control agency. . . shall include . . . (6) . . . an opportunity for judicial review in State court of the final permit action by [] any person who participated in the public comment process . . .” (emphasis added) CAA § 502 (b)

[42 U.S.C. 7661a (b)]

² 40 C.F.R. 70.4(b)(3)(xii) provides “that the opportunity for judicial review described in paragraph (b)(3)(x) of this section shall be the exclusive means for obtaining judicial review of the terms and conditions of permits . . .”

³ “Parties that may file the appeal . . . include any person who participated in the public participation process” WAC 173-401-735 (2)

Comment 5: (general AOP structure): Contrary to RCW 70.94.161 (2)(a)¹ and WAC 173-400-700 (1)(b), the regulatory structure used in this draft AOP does not require pre-issuance review by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority for any term or condition controlling Hanford’s radionuclide air emissions.

All terms and conditions regulating Hanford’s radionuclide air emissions were developed and are enforced under authority provided by RCW 70.98, the *Nuclear Energy and Radiation Act* (NERA), rather than in accordance with the RCW 70.94, *Washington Clean Air Act* (WCAA). NERA does not require “that every proposed permit must be reviewed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority” as is required by RCW 70.94.131 (2)(a). Neither NERA nor the rules adopted under NERA recognize either a “proposed permit” or a “permitting authority”.

Ecology is the permitting authority for the Hanford AOP. However, because Ecology lacks Legislative authorization to enforce NERA, Ecology is prohibited from acting, in any way, on a regulatory product developed pursuant to NERA; including requiring a review by a professional engineer or affecting any changes to *Attachment 2* resulting from such a review.

Contrary to RCW 70.94.161 (2)(a) and WAC 173-401-700 (1)(b), the regulatory structure used in this draft AOP does not require pre-issuance review by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority for any term or condition controlling Hanford’s radionuclide air emissions.

¹ “. . . The rules shall provide that every proposed permit must be reviewed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority. . . .” RCW 70.94.131 (2)(a)

Comment 6: (general AOP structure, Attachment 2, License FF-01): In this draft Hanford Site AOP regulation of radionuclides is inappropriately decoupled from 40 C.F.R. 70 (Part 70). Regulation of radionuclides occurs pursuant to a regulation that does not implement Part 70, and cannot be enforced by Ecology, the issuing permitting authority.

Because radionuclides are listed in CAA § 112 (b) as a *hazardous air pollutant*, conditions regulating radionuclide air emissions are CAA Title V (AOP) applicable requirements, subject to inclusion in AOPs pursuant to CAA § 502 (a) [42 U.S.C. 7661a

(a)], 40 C.F.R. 70.2 *Applicable requirement* (4), RCW 70.94.161 (10)(d), and WAC 173-401-200 (4)(a)(iv).

In this draft Hanford Site AOP radionuclides are regulated only in *Attachment 2* (License FF-01) in accordance with RCW 70.98, the *Nuclear Energy and Radiation Act* (NERA) rather than in accordance with Title V of the CAA and 40 C.F.R. 70. Only the Washington State Department of Health (Health) has Legislative authorization to enforce NERA through regulations adopted under rulemaking authority provided by NERA. (See RCW 70.98.050 (1)) According to *Appendix A* of 40 C.F.R. 70, Health is not a permitting authority under the CAA and therefore does not have an EPA-approved program implementing CAA Title V and 40 C.F.R. 70. Furthermore, neither NERA nor Health-adopted regulations promulgated thereunder, implement requirements of CAA Title V and 40 C.F.R. 70.

Contrary to CAA Title V and 40 C.F.R. 70, regulation of radionuclide air emissions in this draft Hanford Site AOP occurs pursuant to a regulation that does not implement requirements of CAA Title V and 40 C.F.R. 70, and is not enforceable by Ecology, the issuing permitting authority.

Comment 7: (general AOP structure, *Attachment 2*, License FF-01): *Contrary to Clean Air Act CAA § 505 [42 U.S.C. 7661d], 40 C.F.R. 70.8, RCW 70.94.161 (7), and WAC 173-401-810 and -820, the regulatory structure of the draft Hanford Site AOP does not allow for pre-issuance review by EPA, all affected states, and recognized Tribal Nations for terms and conditions regulating Hanford's radionuclide air emissions. Radionuclides are a hazardous air pollutant under CAA § 112.*

Attachment 2 (License FF-01) of the draft Hanford Site AOP contains all terms and conditions regulating Hanford's radionuclide air emissions. License FF-01 was produced pursuant to RCW 70.98, the *Nuclear Energy and Radiation Act* (NERA), rather than in accordance with Title V of the CAA, 40 C.F.R. 70, the *Washington Clean Air Act*, and WAC 173-401. NERA does not provide an opportunity for review by EPA, and affected states, including recognized Tribal Nations. NERA does not address action regarding any comments resulting from such reviews, and NERA does not grant EPA veto power over a license, such as FF-01, for any reason. Furthermore, Ecology, the sole permitting authority, has no statutory power to require that Health provide License FF-01 for review by EPA, review by all affected states, and review by recognized Tribal Nations, nor does Ecology have the statutory authority to address comments pertaining to License FF-01, or any terms and conditions contained therein, should any comments be received.

Because the issuance process required by NERA for License FF-01 does not provide for EPA review, review by affected state, and review by recognized Tribal Nations, *Attachment 2* cannot be issued in compliance with CAA § 505 [42 U.S.C. 7661d], 40 C.F.R. 70.8, RCW 70.94.161 (7), and WAC 173-401-810 and 820.

Comment 8: (general AOP structure; Section 9, Appendix B, *Statement of Basis for Standard Terms and General Conditions*, pgs. 30-50): *The regulatory structure under which radionuclide terms and conditions are addresses in Attachment 2 (License FF-*

01) of the draft Hanford Site AOP (Permit) will not allow for compliance with the AOP revision requirements of Appendix B of the Permit, 40 C.F.R. 70.7, and WAC 173-401-720 through 725.

Attachment 2 (License FF-01) of the draft Hanford Site AOP contains all terms and conditions regulating Hanford's radioactive air emissions. License FF-01 was produced pursuant to RCW 70.98, the *Nuclear Energy and Radiation Act* (NERA), rather than in accordance with Title V of the CAA, 40 C.F.R. 70, the *Washington Clean Air Act*, and WAC 173-401. As a result, the AOP revision processes required by Permit *Appendix B*, 40 C.F.R. 70.7, and WAC 173-401-720 through 725 cannot be met.

Permit *Appendix B* addresses AOP revisions through a form-driven process based on potential-to-emit regulated air pollutants. However, all revisions, including those correcting an address or a typographical error [40 C.F.R. 70.7 (d) and WAC 173-401-720] require a notification be sent to EPA. There is no such EPA notification requirement in NERA or in the regulations adopted under the authority of NERA. Furthermore, Ecology lacks legislative authorization to act in any regard on NERA, or to require Health follow AOP revision processes specified in WAC 173-401 and 40 C.F.R. 70.

Under Permit *Appendix B*, 40 C.F.R. 70.7, and WAC 173-401-725 all AOP revisions that have a potential to increased air emissions require the opportunity for public participation, review by any affected state(s), and review by EPA [40 C.F.R. 70.7 (e)(2)-(e)(4); WAC 173-401-725 (2)(c) – (e), -725 (3)(c) – (e), and -725 (4)(b)]. NERA and the regulations adopted thereunder do not accommodate public participation [RCW 70.98.080 (2)] and do not address review by any affected state(s) or review by EPA. Additionally, neither NERA nor the regulations adopted thereunder provide an opportunity for review by any permitting authority.

While EPA does allow some flexibility in meeting the permit revision requirements, EPA is adamant that any approved state program include public participation, affected state's review, EPA review, and review by the permitting authority¹. However, the regulatory structure under which radionuclides are addressed in the draft Hanford Site AOP does not support amendment and modification of License FF-01 consistent with requirements of Permit *Appendix B*, 40 C.F.R. 70.7, and WAC 173-401-720 through 725.

¹“The State may also develop different procedures for different types of modifications depending on the significance and complexity of the requested modification, but EPA will not approve a part 70 program that has modification procedures that provide for less permitting authority, EPA, or affected State review or public participation than is provided for in this part.” 40 C.F.R. 70.7 (e)(1) (emphasis added)

Comment 9: (general AOP structure): **The regulatory structure used by Ecology in this draft Hanford Site AOP inappropriately cedes regulation of Hanford's radionuclide air emissions to the *Nuclear Energy and Radiation Act* (NERA) and enforcement of these requirements to Health. NERA does not implement the CAA, 40 C.F.R. 70, the *Washington Clean Air Act*, or WAC 173-401, and Health has not been approved to enforce CAA Title V and 40 C.F.R. 70. Radionuclides are a *hazardous air pollutant* under CAA § 112.**

Without Legislative authorization and approval by EPA, Ecology cannot use an AOP to delegate enforcement of radionuclide air emissions to Health. Ecology also cannot choose to remove regulation of radionuclides, a *hazardous air pollutant* under CAA § 112, from requirements of the CAA, 40 C.F.R. 70, the *Washington Clean Air Act* (WCAA), and WAC 173-401. Rather Ecology should have regulated Hanford's radionuclide air emissions through orders issued pursuant to WAC 173-400. In WAC 173-400-075 (1) Ecology incorporates all NESHAPs by reference, including the radionuclide NESHAPs¹. These NESHAPs are enforceable state-wide². Thus, Ecology has all necessary authority to appropriately regulate Hanford's radionuclide air emissions in accordance with the CAA Title V, 40 C.F.R. 70, the WCAA, and WAC 173-401. However, in the draft Hanford Site AOP Ecology ceded regulation of Hanford's radionuclide air emissions to NERA and enforcement of these requirements to Health; actions that are contrary to CAA Title V, 40 C.F.R. 70, and the WCAA.

¹ "National emission standards for hazardous air pollutants (NESHAPs). 40 C.F.R. Part 61 and Appendices in effect on July 1, 2010, are adopted by reference. The term "administrator" in 40 C.F.R. Part 61 includes the permitting authority." WAC 173-400-075 (1)

² The NESHAPs are enforceable statewide. WAC 173-400-020

Comment 10: (general AOP structure): **Contrary to *Clean Air Act* (CAA) § 116¹ [42 U.S.C. 7416] and WAC 173-401-600 (4)², the draft Hanford Site AOP does not provide both federal and state requirements for those requirements regulating Hanford's radionuclide air emissions. Radionuclides are a *hazardous air pollutant* under CAA § 112. EPA does not recognize either a regulatory *de minimis* or a health-effects *de minimis* for radionuclide air emissions above background³.**

In this draft Hanford Site AOP Ecology does not have the option to overlook either requirements of the CAA or requirements in Ecology's regulation.

¹ "However, if both a State or local regulation and a Federal regulation apply to the same source, both must be complied with, regardless of whether the one is more stringent than the other, pursuant to the requirements of section 116 of the Clean Air Act." *Partial Approval of the Clean Air Act, Section 112(l), Delegation of Authority to the Washington State Department of Health*, 71 Fed. Reg. 32276, 32278 (June 5, 2006)

² "Where an applicable requirement based on the FCAA and rules implementing that act (including the approved state implementation plan) is less stringent than an applicable requirement promulgated under state or local legal authority, both provisions shall be incorporated into the permit in accordance with WAC 173-401-625." WAC 173-401-600 (4)

³ "There is no firm basis for setting a "safe" level of exposure [to radiation] above background. . .'
http://www.epa.gov/rpdweb00/understand/health_effects.html#anyamount

Comment 11: (Standard Terms and General Conditions, Section 4.12, pg. 13 & 14 of 57): **Specify the appeal process in state court applicable to requirements in *Attachment 2* that are created and enforced by Health pursuant to RCW 70.98 and the regulations adopted thereunder.**

The appeal process specified in *Section 4.12* does not apply to *Attachment 2* because the Pollution Control Hearings Board (PCHB) does not have jurisdiction over actions by Health¹. Health is not a permitting authority nor does Health have the legal

ability to issue an AOP in accordance with RCW 70.94, Title V of the CAA, and 40 C.F.R. 70.

Identify the appeal process in state court applicable to *Attachment 2*.

¹“The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department [Ecology], the director, local conservation districts, and the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, or local health departments [regarding issuance and enforcement of solid waste permits and permits to use or dispose of biosolids]. . .” RCW 43.21B.110 (1).

Comment 12: (Standard Terms and General Conditions, Section 5.11.4, pg. 24 of 57):
Section 5.11.4 should be revised to require submittal of the annual reports to only EPA and Ecology, both of which are permitting authorities under the CAA.

Health and the regulations it enforces have no legal basis to even appear in an AOP issued in accordance with Title V of the CAA, 40 C.F.R. 70, RCW 70.94.161, or WAC 173-401. Health cannot issue an AOP. Health is not authorized to enforce 40 C.F.R. 70, nor do the regulations Health can enforce implement Title V of the CAA, 40 C.F.R. 70, RCW 70.94.161, or WAC 173-401. Furthermore, Ecology does not have Legislative authorization to obligate Health through requirements in an AOP.

While EPA did grant Health partial authority to enforce the radionuclide NESHAPs¹, that delegation did not impact the EPA determinations regarding agencies in Washington State authorized to enforce CAA Title V and 40 C.F.R. 70². Specifically, EPA did not authorize Health to enforce CAA Title V and 40 C.F.R. 70. Thus, EPA’s partial delegation is outside the framework of CAA Title V and 40 C.F.R. 70³.

Ecology adopted all NESHAPs by reference in WAC 173-400-075 (1)⁴, including the radionuclide NESHAPs. Therefore, under WAC 173-400 Ecology has all necessary authority to regulate radionuclide air emissions addressed by 40 C.F.R. 61 subpart H, including authority to enforce the reporting requirements of 40 C.F.R. 61.94 (b)(9).

Consistent with CAA Title V, 40 C.F.R. 70, and WAC 173-400, change *Section 5.11.4* to require submittal of reports called for in 40 C.F.R. 61.94 (b)(9) to only EPA, a permitting authority under the CAA, and Ecology, the issuing permitting authority. Health remains free to enforce its regulations outside of and independent of a permit issued in accordance with Title V of the CAA, 40 C.F.R. 70, RCW 70.94.161, and WAC 173-401.

¹ See 40 C.F.R. 61.04 (c)(10)

² See Appendix A to 40 C.F.R. 70

³ “Although WDOH works with the Washington Department of Ecology (Ecology) in issuing Title V permits to radionuclide sources, Ecology, not WDOH is the EPA-approved Title V permitting program for such sources.” 71 Fed. Reg. 9059, 9061 (Feb. 22, 2006)

⁴ “National emission standards for hazardous air pollutants (NESHAPs). 40 C.F.R. Part 61 and Appendices in effect on July 1, 2010, are adopted by reference. The term "administrator" in 40 C.F.R. Part 61 includes the permitting authority.” WAC 173-400-075 (1); The NESHAPs are enforceable statewide. WAC 173-400-020

Comment 13: (Standard Terms and General Conditions, Table 5-1, pg. 45 of 57):

Overlooked in both Table 5-1 and in this draft AOP is fact that radon, a radionuclide gas, remains a *hazardous air pollutant* under CAA § 112 (b) whether or not EPA has developed regulation for Hanford. While a literal reading of 40 C.F.R. 61 Subpart Q, “National Emission Standards for Radon Emissions from Department of Energy Facilities” overlooks Hanford, CAA § 112 (j) informs that a Title V permit may not disregard any *hazardous air pollutant* unaddressed by regulation.

Radon is a byproduct of radioactive decay from some radioactive isotopes and is of considerable concern on the Hanford Site. Several of these isotopes exit the Hanford Site via the Columbia River, wind erosion, and as airborne emissions. Furthermore, those members of the public touring Hanford Site facilities, such as the historic B Reactor, were formerly, and perhaps still are, screened for radon contamination on exit.

Radon is a radioactive gas that EPA has determined is the second-leading cause of lung cancer after smoking, and is a serious public health problem.

<http://iaq.supportportal.com/link/portal/23002/23007/Article/14270/Are-we-sure-that-radon-is-a-health-risk> The CAA considers all radionuclide air emissions as a *hazardous air pollutant* (see CAA § 112). Even though 40 C.F.R. 61 subpart H does not regulate radon, and even though a strict interpretation of 40 C.F.R. subpart Q overlooks Hanford, radon remains a regulated air pollutant under CAA § 112 (j) and 40 C.F.R. 70.2¹. Ecology cannot ignore any pollutant subject to regulation under CAA § 112, including § 112 (j), in a permit required by Title V of the CAA and 40 C.F.R. 70. Conditions controlling any pollutant subject to CAA § 112, including § 112 (j), must be included in any permit required by Title V of the CAA and 40 C.F.R. 70.

Include terms and conditions regulating radon in the Hanford Site AOP.

¹“*Regulated air pollutant* means the following: . . . [(5)] (i) Any pollutant subject to requirements under section 112(j) of the Act. . . .” 40 C.F.R. 70.2; ““*Regulated air pollutant*” means the following: . . . (e) pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the FCAA, including sections 112 (g), (j), and (r), . . .” WAC 173-401-200 (26)

Comment 14: (Overlooked emission unit): **Overlooked in this draft Hanford Site AOP is the Columbia River as a source of radionuclide air emissions, including radon.**

The Columbia River is the only credible conduit for radionuclides of Hanford Site origin found in the sediments behind McNary Dam and possibly beyond. This AOP should address the Columbia River as a radionuclide air emissions source, given:

- 1) the recent discovery of significant radionuclide-contamination in the 300 Area groundwater entering the Columbia River; plus
- 2) radionuclide-contaminated groundwater entering the Columbia River from other Hanford Site sources, some, like the 618-11 burial trench, with huge curie inventories;
- 3) the fact that radionuclide decay results in production of airborne radionuclide isotopes such as radon, the second-leading cause of lung cancer and a serious public health problem¹; and
- 4) neither Health nor EPA recognize either a regulatory *de minimis* or a health-effects *de minimis* for radionuclide air emissions above background².

Airborne radionuclides resulting from Hanford's radionuclide contamination of the Columbia River should be subject to monitoring, reporting, and recordkeeping in accordance with the CAA.

¹ Radon is a radioactive gas that EPA has determined is the second-leading cause of lung cancer and is a serious public health problem.

<http://iaq.supportportal.com/link/portal/23002/23007/Article/14270/Are-we-sure-that-radon-is-a-health-risk>

² '[t]here is no firm basis for setting a "safe" level of exposure [to radiation] above background . . . EPA makes the conservative (cautious) assumption that any increase in radiation exposure is accompanied by an increased risk of stochastic effects.'

http://www.epa.gov/rpdweb00/understand/health_effects.html#anyamount (last visited May 3, 2013)

Comment 15: (Statements of Basis, general enforcement authority): **Contrary to 40 C.F.R. 70.7 (a)(5) and WAC 173-401-700 (8), the permitting authority failed to address the legal and factual basis for regulating radionuclide air emissions in the draft Hanford Site AOP pursuant to RCW 70.98, *The Nuclear Energy and Radiation Act* (NERA) rather than in accordance with Title V of the *Clean Air Act* (CAA).**

An AOP is the regulatory product required by Title V of the CAA. The purpose of an AOP is to capture all of a source's obligations with respect to each of the air pollutants it is required to control. Among the pollutants the Hanford Site is required to control are *hazardous air pollutants*, such as radionuclides. However, in the draft Hanford Site AOP radionuclide applicable requirements, and the terms and conditions developed thereunder, are enforced pursuant to NERA rather than in accordance with Title V of the CAA.

The incompatibilities between the CAA and NERA are near total. Some of these incompatibilities are as follows:

- The CAA is a legislative product of the U.S. Congress while NERA (RCW 70.98) was created by the Washington State Legislature.
- State and federal governmental agencies and departments authorized to enforce the CAA cannot enforce NERA.
- The Hanford Site Title V permit is required by the CAA and not required by NERA.
- The CAA requires public involvement to include a minimum public comment period of thirty (30) days. NERA provides for no public involvement. The CAA requires the opportunity for review by EPA and affected states; NERA does not.
- The CAA calls for an opportunity for judicial review in State court of the final permit action by any person who participated in the public participation process. NERA does not provide an opportunity for such judicial review by a qualified public commenter.
- The CAA defines specific processes for permit issuance, modification, and renewal, all of which include EPA notification and public review. NERA does not provide for such modification processes and associated notification and public review.

In short, the CAA and NERA are not compatible in almost every regard.

What then is the legal and factual basis for using NERA rather than the CAA to regulate a CAA *hazardous air pollutant* in a CAA-required permit?

Comment 16: (Statements of Basis): **Overlooked in the Statements of Basis is the legal and factual basis for omitting the Columbia River as a source of radionuclide air emissions.**

The Columbia River is the only credible conduit for radionuclides of Hanford Site origin found in the sediments behind McNary Dam and possibly beyond. This AOP should address the Columbia River as a radionuclide air emissions source, given:

- 1) the recent discovery of significant radionuclide-contamination in the 300 Area groundwater entering the Columbia River; plus
- 2) radionuclide-contaminated groundwater entering the Columbia River from other Hanford Site sources, some with huge curie inventories like the 618-11 burial trench;
- 3) the fact that radionuclide decay results in production of airborne radionuclide isotopes; and
- 4) neither Health nor EPA recognize either a regulatory *de minimis* or a health-effects *de minimis* for radionuclide air emissions above background.

Comment 17: (Attachment 1, page ATT 1-38, condition 8.1): **If the required dust control plan(s) have been prepared, then Ecology must provide the plan(s) to the public for review in accordance with WAC 173-401-800 and 40 C.F.R. 70.7 (h)(2)¹. Ecology should then mark this condition as completed.**

If the plans(s) have not been completed, then Ecology has no option but to require a compliance plan and schedule, both of which are also subject to public review.

Ecology did use the referenced dust control plan(s) in the permitting process but failed to provide them to the public for review.

¹ “EPA has determined that the phrase ‘materials available to the permitting authority that are relevant to the permit decision,’ 40 C.F.R. § 70.7(h)(2), means the information that the permitting authority has deemed to be relevant by using it in the permitting process. . . .” (emphasis added) *Sierra Club v. Johnson*, 436 F.3d 1269, 1284, (11th Cir. 2006)

The following comments are offered on permit *Attachment 2* (License FF-01) even though this license is not required by Title V of the CAA, does not implement Title V of the CAA, cannot be enforced under Title V of the CAA, and cannot be acted upon by any state agency with the authority to enforce Title V of the CAA:

Comment 18: (*Attachment 2*, 1st page) **Edit the first sentence on the first page of *Attachment 2* to correctly reflect that RCW 70.94, the *Washington Clean Air Act*, does not provide Health with the authority to issue licenses. The *Washington Clean Air Act* also does not provide Health with rulemaking authority. *Attachment 2*, Section 3.10, *Enforcement Actions*, correctly captures Health’s authority under the *Washington Clean Air Act*.**

The first sentence should read:

“Under the Nuclear Energy and Radiation Control Act, RCW 70.98 ~~the State Clean Air Act, RCW 70.94 and the Radioactive Air Emissions Regulations~~ Radiation Protection regulation, Chapters

246-247 WAC, and in reliance on statements and representations made by the Licensee designated below before the effective date of this license, the Licensee is authorized to vent radionuclides from the various emission units identified in this license.”

Health cannot claim RCW 70.94 authorizes it to issue any license including a license that allows “the Licensee . . . to vent radionuclides from the various emission units identified in this license.” Furthermore, Health does not have rulemaking authority under RCW 70.94, nor can Health enforce RCW 70.94. RCW 70.94 does grant Health certain enforcement authority for licenses issued in accordance with RCW 70.98 and the rules adopted thereunder¹. *Attachment 2*, Section 3.10, correctly captures Health’s authority under RCW 70.94.

¹ “The department of health shall have all the enforcement powers as provided in RCW 70.94.332, 70.94.425, 70.94.430, 70.94.431 (1) through (7), and 70.94.435 with respect to emissions of radionuclides. This section does not preclude the department of ecology from exercising its authority under this chapter.” (emphasis added) RCW 70.94.422 (1)

Comment 19: (*Attachment 2*, general): **Address federally enforceable requirements as required by EPA’s partial delegation of authority to enforce the radionuclide NESHAPs. 71 Fed. Reg. 32276 (June 5, 2006)**

EPA obligated Health to follow CAA § 116 as a condition of receiving partial delegation of authority to enforce the radionuclide NESHAPs. Health agreed to this condition when it accepted the partial delegation¹. EPA determined CAA § 116 requires Health to include both the “state-only” enforceable requirement plus the federally enforceable analog, regardless of which is the more stringent.

“However, if both a State or local regulation and a Federal regulation apply to the same source, both must be complied with, regardless of whether the one is more stringent than the other, pursuant to the requirements of section 116 of the Clean Air Act.” *Partial Approval of the Clean Air Act, Section 112(l), Delegation of Authority to the Washington State Department of Health*, 71 Fed. Reg. 32276, 32278 (June 5, 2006)

License FF-01 confuses “state-only” enforceable regulation (i.e. not federally enforceable under the CAA) with “state-only” enforceable requirement. While WAC 246-247 is a “state-only” enforceable regulation, requirements developed pursuant to WAC 246-247 implementing federal requirements remain federally enforceable (i.e., enforceable by the Administrator of EPA and the public in accordance with the CAA). Such requirements include:

- those terms and conditions that are required by the CAA or any of its applicable requirements (40 C.F.R. 70.6 (b)) (*see* WAC 173-401-620 (2) for some examples) [WAC 173-401 is “state-only” enforceable yet requirements in WAC 173-401-620 (2) are federally enforceable];
- those requirements clarified by the 1994-95 *Memorandum of Understanding Between the U.S. Environmental Protection Agency and the U.S. Department of Energy*²;
- those requirements that impact emissions (40 C.F.R. 70.6 (a)(1));
- those requirements that set emission limits (*id.*);

- those requirements that address monitoring (40 C.F.R. 70.6 (a)(3)(C)(i)), reporting (40 C.F.R. 70.6 (a)(3)(C)(ii)), or recordkeeping (40 C.F.R. 70.6 (a)(3)(C)(iii)); and
- those requirements enforceable pursuant to 40 CFR 70.11(a)(3)(iii)³.

Health cannot seek to avoid federal enforceability by incorporating federal requirements by reference (*see* WAC 246-247-035⁴) then creating License conditions pursuant to WAC 246-247, overlooking the federal analogs. For example, included with the requirements for emission units in *Enclosure 1* of License FF-01, is the following text:

“state only enforceable: WAC 246-247-010(4), 040(5), 060(5)”.

However, all three WAC citations have federal NESHAP analogs pertaining to control technology (WAC 246-247-010(4)⁵), limitations on emissions (WAC 246-247-040(5)⁶), and the need to follow WAC 246-247 requirements, including federal regulations incorporated by reference (WAC 246-247-060(5)⁷; *see* WAC 246-247-035). The designation “state-only” enforceable applies to only those requirements that cannot also be enforced pursuant to a federal regulation. The radionuclide NESHAPs are federal regulations that exist independent of and in addition to WAC 246-247. Health simply cannot remove radionuclides from the CAA by incorporating the radionuclide NESHAPs into WAC 246-247.

Minimally, all License FF-01 conditions that are required by the CAA or any CAA applicable requirement, any conditions that impact emissions, or set emission limits, or address monitoring, reporting, or recordkeeping, and any requirements enforceable pursuant to 40 CFR 70.11(a)(3)(iii) are federally enforceable.

Even if Health assumes that every requirement created pursuant to WAC 246-247 is “state-only” enforceable, Health is still required by CAA § 116 to include in License FF-01 both the “state-only” enforceable requirement and the federally enforceable analog.

Radionuclides remain federally enforceable pursuant to the CAA regardless of how Health regulates radionuclides under WAC 246-247. A federal CAA requirement implemented by a state regulation is still a federal requirement.

Include all federally enforceable requirements in accordance with CAA §116, as required by EPA.

¹ “Per our discussions over the last few months, we are in agreement to the acceptance of the partial delegation of the requested parts of 40 CFR 61.” email from John Schmidt, WDOH, to Davis Zhen and Julie Vergeront, USEPA Region 10, Dec. 20, 2005 (copy obtained through *foia*)

² *Memorandum of Understanding Between the U.S. Environmental Protection Agency and the U.S. Department of Energy Concerning The Clean Air Act Emission Standards for Radionuclides 40 CFR 61 Including Subparts H, I, O & T*, signed 9/29/94 by Mary D. Nichols, EPA Assistant Administrator for Air and Radiation, and on 4/5/95 by Tara J. O’Toole, DOE Assistant Secretary for Environment, Safety and Health.

³ “The reason for EPA’s decision to grant partial rather than full approval was that WDOH does not currently have express authority to recover criminal fines for knowingly making a false material statement, representation, or certificate in any form, notice or report, or knowingly rendering inadequate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii)” *Partial Approval of the Clean Air Act, Section 112(l), Delegation of Authority to the Washington State Department of Health*, 71 Fed. Reg. 32276 (June 5, 2006); While Health (WDOH) did amend WAC 246-247 to address the cited shortcoming, EPA has not yet announced rulemaking needed to grant Health delegation of authority to enforce 40 CFR 70.11(a)(3)(iii).

⁴ “(1) The following federal standards . . . are adopted by reference . . .

(a) For federal facilities: . . .(i) 40 CFR Part 61, Subpart A . . .(ii) 40 CFR Part 61, Subpart H . . .(iv) 40 CFR Part 61, Subpart Q . . .” WAC 246-247-035

⁵ “The control technology standards and requirements of this chapter apply to the abatement technology and indication devices of facilities and emission units subject to this chapter. Control technology requirements apply from entry of radionuclides into the ventilated vapor space to the point of release to the environment.” WAC 246-247-010(4)

⁶ “In order to implement these standards, the department may set limits on emission rates for specific radionuclides from specific emission units and/or set requirements and limitations on the operation of the emission unit(s) as specified in a license.” WAC 246-247-040(5)

⁷ “The license shall specify the requirements and limitations of operation to assure compliance with this chapter. The facility shall comply with the requirements and limitations of the license.” WAC 246-247-060(5)

Comment 20: (*Attachment 2*, general): **In *Attachment 2*, provide the specific monitoring, reporting, and recordkeeping requirements needed to demonstrate continuous compliance with each term or condition contained in the License FF-01 enclosures.**

Absent specific monitoring, reporting, and recordkeeping requirements, neither Health nor the licensee can determine what constitutes continuous compliance and how continuous compliance can be demonstrated. Also, absent such requirements, the public cannot be assured the licensee is properly controlling Hanford’s radionuclide air emissions. Radionuclide air emissions are so hazardous there is no regulatory *de minimis* nor is there a health-effects *de minimis* for exposure to radiation above background.

Comment 21: (Overlooked emission unit): **Overlooked in *Attachment 2* (License FF-01) is the Columbia River as a source of radionuclide air emissions.**

The Columbia River is the only credible conduit for radionuclides of Hanford Site origin found in the sediments behind McNary Dam and possibly beyond. Health’s license (FF-01) should address the Columbia River as a source for Hanford’s off-site radionuclide air emissions, given:

- 1) the recent discovery of significant radionuclide-contamination in the 300 Area groundwater entering the Columbia River; plus
- 2) radionuclide-contaminated groundwater entering the Columbia River from other Hanford Site sources, some, like the 618-11 burial trench, with huge curie inventories;
- 3) the fact that radionuclide decay results in production of airborne radionuclide isotopes; and
- 4) neither Health nor EPA recognize either a regulatory *de minimis* or a health-effects *de minimis* for radionuclide air emissions above background.

Airborne radionuclides resulting from Hanford’s radionuclide contamination of the Columbia River should be subject to monitoring, reporting, and recordkeeping in accordance with WAC 246-247.

December 19, 2013

RECEIVED

DEC 19 2013

Mr. Philip Gent
Washington State Department of Ecology
Nuclear Waste Program
3100 Port of Benton Blvd.
Richland, WA 99354

DEPARTMENT OF ECOLOGY
NWP - RICHLAND

Re: Public comments on draft Hanford Site Air Operating Permit Renewal 2, Rev. A

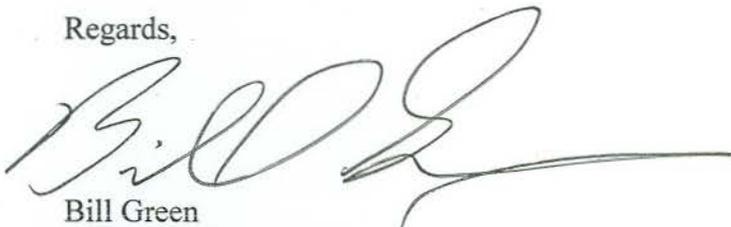
Dear Mr. Gent:

Thank you for providing the opportunity to comment on Revision A of the draft Hanford Site Air Operating Permit (AOP) Renewal. Enclosed are my comments.

I hope you find my comments useful in implementing a public involvement process consistent with the federal *Clean Air Act* (CAA) and with 40 C.F.R. 70. I also hope you find the comments useful in crafting a proposed AOP that complies with both the CAA and the *Washington Clean Air Act*.

Please feel free to contact me at the address below should you have any questions regarding my comments.

Regards,

A handwritten signature in black ink, appearing to read "Bill Green", with a long horizontal flourish extending to the right.

Bill Green
424 Shoreline Ct.
Richland, WA 99354-1938

Enclosure
cc: w/encl. via email
P. Gent, Ecology
J. Martell, Health
T. Beam, MSA Hanford

The following definitions apply when the associated terms are used in the comments below.

– **permitting authority** is as defined in CAA § 501 (4) [42 U.S.C. 7661 (4)] and 40 C.F.R. 70.2.

“The term ‘‘permitting authority’’ means the Administrator or the air pollution control agency authorized by the Administrator to carry out a permit program under this subchapter.”

CAA § 501 (4) [42 U.S.C. 7661 (4)];

“*Permitting authority* means either of the following: (1) The Administrator, in the case of EPA-implemented programs; or (2) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under this part.” 40 C.F.R. 70.2

- **AOP, Part 70 Permit, and Title V permit** are synonymous, meaning any permit that is required by 40 C.F.R. 70, and Title V of the CAA.

- **CAA or Act** is the *Clean Air Act*, 42 U.S.C. 7401, *et seq.*

- **Health, DOH, or WDOH** is the Washington State Department of Health

Comments include any associated endnote(s) or footnote(s).

Comment 22: All comments submitted to Ecology during the June 30, 2013, through August 2, 2013, public comment period are incorporated by reference.

This commenter submitted 21 comments in accordance with timeframes specified for the earlier public comment period. Ecology has not yet released its response to public comments submitted during the June 30 through August 2, 2013, comment period. Ecology also has not prepared a *proposed permit* and submitted the *proposed permit* and the response to public comments document to EPA for EPA’s 45-day review. Therefore, all comments submitted during the June 30, 2013, through August 2, 2013, comment period continue to apply and are incorporated by reference. Comments include any associated endnote(s) or footnote(s).

Comment 23: (general, AOP) Ecology failed to regulate radionuclide air emissions as required by Title V of the federal Clean Air Act (CAA) and 40 C.F.R. 70 in this draft AOP renewal.

Ecology is the issuing permitting authority and is required by the CAA § 502 (b)(5)(E) and 40 C.F.R. 70.11 (a) to have all necessary authority to enforce permits including authority to recover civil penalties and provide appropriate criminal penalties. However, the regulation used in this draft AOP renewal to control all radionuclide air emissions cannot be enforced by Ecology.

Title V of the CAA and 40 C.F.R. 70 require the public be provided with the opportunity to comment on all draft AOPs. The portion of this draft AOP containing all terms and conditions regulating radionuclide air emissions (*Attachment 2*), including those implementing 40 C.F.R. 61 subpart H, was issued as final without public review, contrary to CAA § 502 (b)(6) [42 U.S.C. 7661a (b)(6)] and 40 C.F.R. 70.7 (h).

Federal law requires a qualified member of the public have the right of judicial review in state court of terms and conditions in the final permit, and that this judicial

review be the exclusive means of obtaining such review in state court. [40 C.F.R. 70.4 (b)(3)(x) & -(xii)] Washington State law requires any appeal of AOP terms and conditions occur before the Pollution Control Hearings Board (PCHB) in accordance with RCW 43.21B. [RCW 70.94.161 (8) and WAC 173-401-620(2)(i)] However, the PCHB does not have jurisdiction over any terms and conditions in this draft AOP renewal that regulate radionuclide air emissions, because these terms and conditions are regulated solely in accordance with RCW 70.98, *The Nuclear Energy and Radiation Act*. RCW 43.21B.110 Thus, in this draft AOP renewal, judicial review in state court of terms and conditions regulating radionuclide air emissions is contrary to 40 C.F.R. 70.4 (b)(3)(xii) and WAC 173-401-620(2)(i).

Comment 24: (general, AOP revision process) **Ecology incorrectly assumes terms and conditions in an order issued only to Hanford pursuant to WAC 173-400 cannot be changed by actions taken in accordance with WAC 173-401.**

Ecology theorizes that because orders issued to Hanford pursuant to WAC 173-400 (Orders) are defined as an “applicable requirement” under WAC 173-401, conditions in these orders are not subject to change to meet requirements of the operating permit regulation. This theory overlooks that: 1) Orders issued to Hanford pursuant to WAC 173-400 are neither rules¹ nor the product of rulemaking. Thus, changing terms and conditions in these Orders does not require use of the rulemaking process; and 2) Orders issued under WAC 173-400 to Hanford cannot change requirements of WAC 173-401, a rule that is the product of rulemaking. When terms and conditions in an Ecology Order are inconsistent with requirements of WAC 173-401, public comments on an AOP can illuminate these inconsistencies, which Ecology is obligated to correct. Ecology’s theory results in an Order, which is not the product of rulemaking, improperly changing a regulation, which is the product of rulemaking.

What an AOP and the AOP issuance process cannot do is change an applicable requirement that is the product of rulemaking. For example, chapter 70.94 RCW and the rules adopted thereunder are products of rulemaking, and therefore, are not subject to change by terms and conditions in an AOP.

Some of the comments below address Ecology’s failure to include monitoring, reporting, and recordkeeping requirements called for by WAC 173-401 in orders Ecology issued to Hanford under WAC 173-400. WAC 173-401 requires monitoring, reporting, and recordkeeping be sufficient to assure continuous compliance throughout the term of the AOP. [WAC 173-401-615 and -630 (1)] Apparently, conditions in an order issued pursuant to WAC 173-400 are held to a lesser standard. An additional oversight is that WAC 173-400-113 (1) demands Ecology address all applicable pollutants subject to a NESHAPs. However, no order incorporated into this draft AOP addresses radionuclides for those emission units where radionuclide air emissions are implicated. Radionuclides are a *hazardous air pollutant* under CAA § 112 and are subject to requirements in several NESHAPs, including 40 C.F.R. 61 subpart H.

¹ “Rule” means any agency order, directive, or regulation of general applicability. . .” (emphasis added)
RCW 34.05.010 (16)

Comment 25: (Draft Attachment 1, NOC 94-07, Amendment A, pg. 37 of 128, ln. 10)
For Order NOC 94-07, Amendment A, require continuous monitoring and recording of ammonia concentration readings and stack flow rates. Require prompt reporting if the ammonia concentration limit is exceeded. Specify all approved calculation models and “other approved methods”, and provide these “other approved methods” to the public for review unless the approved method is EPA-approved, in which case supply the EPA method number(s).

This condition increases ammonia emissions from 0.34 lbs/hr in the earlier permit offered for review to 2.4 lbs/hr. The operating permit regulation, WAC 173-401, requires monitoring, reporting, and recordkeeping be sufficient to demonstrate continuous compliance with the permit terms and conditions throughout the duration of the AOP. Monitoring, reporting, and recordkeeping for this condition are insufficient to so demonstrate. The referenced condition requires that “[e]missions of ammonia shall not exceed 2.5 lbs/hr from the primary tank ventilation exhaust system”, yet verifying calculations based on ammonia concentration readings and flow rates are only required semi-annually. Continuous compliance demanded by this condition (“shall not exceed 2.5 lbs/hr”) cannot be verified with only semi-annual monitoring using field instruments. Also, Ecology needs to specify all “other approved methods” for this federally-enforceable¹ requirement. (line 19, pg. 37)

¹ All terms and conditions in an AOP are federally-enforceable if not designated as “state-only” enforceable. On line 18 of page 37, Ecology reports this condition as **not** being State-Only enforceable, therefore federally enforceable. See WAC 173-401-625 & 40 C.F.R. 70.6 (b).

Comment 26: (NOC 94-07 (8/29/1994), Rev 1 (12/22/1997), 3 Rev 2 (10/25/1999), Rev 3 (5/7/2008), and Amd A (3/26/2013), Draft Attachment 1, pgs. 36 & 37 of 128)
Missing from order NOC 94-07, the revisions, and the amendment, are applicable requirements needed to assure compliance with radionuclide air emissions. Radionuclides are regulated, without a *de minimis* above background, in 40 C.F.R. 61 subpart H (*National Emission Standards for Emissions of Radionuclides Other Than Radon from Department of Energy Facilities*).

Under WAC 173-400, Ecology is barred from acting on an application that does not contain all applicable standards for *hazardous air pollutants* (WAC 173-400-113)¹, including the NESHAP codified in 40 C.F.R. 61 subpart H. Once subject to Title V of the federal *Clean Air Act* and 40 C.F.R. 70, Ecology is required to both issue a permit containing all applicable requirements and be capable of enforcing all applicable requirements.

¹ “The permitting authority . . . shall issue an order of approval if it determines that the proposed project satisfies each of the following requirements: (1) The proposed new source or modification will comply with all applicable new source performance standards, **national emission standards for hazardous air pollutants**, . . .” (emphasis added) WAC 173-400-113

Comment 27: (3/26/2013, DE05NWP-001 Amd. A, Draft Attachment 1, pg. 59 of 128, ln. 1) **Include the specific language Ecology intends to enforce from sections 3.1 and 3.2 of NOC approval order DE05NWP-001 (2/18/2005) in this draft AOP and re-start public review. Rewrite monitoring, reporting, test methods, test frequency, and bi-annual assessments conditions to include specific requirements that can meet the continuous compliance and compliance verification mandates of WAC 173-401-615 and -630 (1).**

The condition from DE05NWP-001 Amendment A starting on line 1 of page 59 increases ammonia emissions from 0.22 lbs/hr in the earlier draft AOP to 2.9 lbs/hr. The operating permit regulation, WAC 173-401, requires monitoring, reporting, and recordkeeping be sufficient to demonstrate continuous compliance with the permit terms and conditions throughout the duration of the AOP. In this draft AOP Ecology basis monitoring, test methods, test frequency, and bi-annual assessments on particular sections in the original NOC approval order. Ecology is thus obligated to provide these sections of the NOC approval order to support public review. The public was offered this order for review in accordance with WAC 173-400. However, the public has never been offered the opportunity to review the referenced sections of this order as they apply to the more robust continuous compliance and verification requirements of WAC 173-401.

Incorporating NOC order conditions by reference into an AOP does save Ecology permit writers' some energy. However, this practice is at odds with the purpose of CAA Title V¹. Ecology's energy-saving approach fails to provide the permittee, the permitting authority, and the public with specific compliance requirements and the means to easily determine what the permittee must do to demonstrate continuous compliance with these requirements.

¹ "The air permit program will ensure that all of a source's obligations with respect to each of the air pollutants it is required to control will be contained in one permit document. . . . This system will enable the State, EPA, and the public to better determine the requirements to which the source is subject, and whether the source is meeting those requirements." S. Rep. 101-228, 3730 (12-20-89); "Title V permits...consolidate all applicable requirements in a single document." *New York Public Research Interest Group v. Whitman*, 321 F.3d 316, 320 (2d Cir. 2003)

Comment 28: (3/26/2013, DE05NWP-001, Amd A, Draft Attachment 1, pg. 59 of 128, ln. 1) **Missing from amended order DE05NWP-001 are applicable requirements needed to assure compliance with radionuclide air emissions. Radionuclides are regulated, without a *de minimis* above background, in in 40 C.F.R. 61 subpart H (*National Emission Standards for Emissions of Radionuclides Other Than Radon from Department of Energy Facilities*).**

Under WAC 173-400, Ecology is barred from issuing an order that does not comply with all applicable standards for *hazardous air pollutants* (WAC 173-400-113)¹, including NESHAPs codified in 40 C.F.R. 61 subpart H. Once subject to Title V of the federal *Clean Air Act* and 40 C.F.R. 70, Ecology is required to issue a permit containing all applicable requirements and be capable of enforcing all applicable requirements.

¹ “The permitting authority . . . shall issue an order of approval if it determines that the proposed project satisfies each of the following requirements: (1) The proposed . . . modification will comply with all applicable . . . national emission standards for hazardous air pollutants, . . .” (emphasis added) WAC 173-400-113

Comment 29: (NOC Approval Order DE12NWP-001, 3 Rev. (7/24/2013), pg. 90 of 128, ln. 1) **Include the specific language Ecology intends to enforce from sections 3.0 and 3.2 of NOC Approval Order DE12NWP-001, 3 Rev. (7/24/2013), incorporate these sections into the public review file, and restart public review.**

An AOP is to contain all of a source’s obligations with respect to each pollutant the source is required to control. Incorporating sections of the NOC approval order by reference does not satisfy this purpose. Absent language Ecology intends to enforce in the AOP, Ecology, the permittee, and the public have no means of determining, from the AOP, if the more robust continuous compliance and verification requirements of WAC 173-401 can be met.

Provide the permittee, the permitting authority, and the public with specific compliance requirements and the means to easily determine what the permittee must do to demonstrate continuous compliance with these requirements.

Comment 30: (Draft Statement of Basis for Attachment 1, pg. 21 of 36) **Remove line 9 on page 21 of 36 “Radiological contamination abatement” from the list of insignificant fugitive emission abatement activities. Delete the following sentence on page 21 of 36, lines 15 & 16: “The activities listed above may be conducted in radiological and/or chemically contaminated areas and may be conducted in portable containment structures i.e., exhausted greenhouses.”**

Page 21 of 36 includes “Radiological contamination abatement” as an insignificant fugitive source emission abatement activity. On page 19 of 36 Ecology explains that the activities listed as insignificant, and thus exempt from further AOP program requirements, may involve operation of one or more associated point sources. Ecology further explains that categories listed as insignificant will be evaluated on a case-by-case basis to determine applicable requirements.

Ecology overlooks that, by definition, any pollutants entering the environment through a point source cannot be considered fugitive emissions¹. Ecology also overlooks that radionuclide air emissions from Hanford are regulated, without a *de minimis* above background, by 40 C.F.R. 61 subpart H^{2, 3}, a *National Emission Standard for Hazardous Air Pollutants* (NESHAPs). No activity subject to a federal requirement can be considered as insignificant⁴.

Ecology overreaches when it fails to regulate radionuclides, a *hazardous air pollutant* subject to a NESHAPs, as it is required to do pursuant to both WAC 173-400 and Title V of the federal *Clean Air Act*. Ecology further overreaches when it determines “radiological contamination abatement” is an insignificant activity and thus exempt from permit program requirements under WAC 173-401 and 40 C.F.R. 70. Ecology cannot use a 401-permit to rewrite a portion of its own regulation nor can Ecology use an AOP to void a federal regulation.

¹ “**Fugitive emissions**” means emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.’ WAC 173-400-030 (39)

² . See also, *Memorandum of Understanding Between the U.S. Environmental Protection Agency and the U.S. Department of Energy Concerning The Clean Air Act Emission Standards for Radionuclides 40 CFR 61 Including Subparts H, I, O & T*, signed 9/29/94 by Mary D. Nichols, EPA Assistant Administrator for Air and Radiation, and on 4/5/95 by Tara J. O’Toole, DOE Assistant Secretary for Environment, Safety and Health. Available at: http://www.epa.gov/radiation/docs/neshaps/epa_doe_caa_mou.pdf

³ Additionally, EPA does not recognize a *de minimis* for exposure to radionuclides above background, with regard to adverse effects on human health. “There is no firm basis for setting a "safe" level of exposure [to radiation] above background. . . EPA makes the conservative (cautious) assumption that any increase in radiation exposure is accompanied by an increased risk of stochastic effects.’

http://www.epa.gov/rpdweb00/understand/health_effects.html#anyamount (last visited December 5, 2013)

⁴ “[N]o emissions unit or activity subject to a federally enforceable applicable requirement . . . shall qualify as an insignificant emissions unit or activity.” WAC 173-401-530 (2)(a)

Comment 31: (general, statements of basis) As required by WAC 173-401-700 (8) and 40 C.F.R. 70.7 (a)(5), provide the legal and factual basis for regulating radionuclide air emissions in accordance with WAC 246-247 rather than pursuant to WAC 173-400, 40 C.F.R. 70, and Title V of the *Clean Air Act*.

Comment 32: (general, Attachment 2, signature pg.) Provide the public with the opportunity to comment on both federally-enforceable terms and conditions implementing requirements of 40 C.F.R. 61 subpart H and on state-only enforceable requirements created pursuant to WAC 246-247.

Permit *Attachment 2* contains more than 700 pages of terms and conditions regulating all radionuclide air emissions from the Hanford Site, including those terms and conditions implementing requirements of 40 C.F.R. 61 subpart H, (*National Emission Standards for Emissions of Radionuclides other than Radon from Department of Energy Facilities*). Title V of the federal *Clean Air Act*, 40 C.F.R. 70, RCW 70.94.161, and WAC 173-401 all require the public be provided with the opportunity to comment before the permit can be issued as final. According to the signature page, the version of *Attachment 2* presented to the public for the current review was issued as final on February 23, 2012, became effective on February 23, 2012, and was approved on August 30, 2013, 18 months after it was issued and became effective. Even the August 30, 2013, approval date precedes this public comment period, and precedes Ecology’s public release of a response to public comments, Ecology’s preparation of a *proposed permit*, and submittal of both the *proposed permit* and response to public comments to EPA for its 45 day review.

WAC 173-401 does define RCW 70.98 and the rules adopted thereunder as an “applicable requirement”. WAC 173-401-200 (4)(b) While License FF-01 (*Attachment 2*) does implement requirements of RCW 70.98 and the rules adopted thereunder, FF-01 is not a rule¹ and has never been subjected to the rulemaking process². Once License FF-01 is included in the Hanford Title V permit, terms and conditions in this License implementing federally-enforceable requirements are subject to requirements for public participation specified in 40 C.F.R. 70.7 (h). Under WAC 173-401-625 (2), even state-only enforceable requirements are subject to public involvement specified in WAC 173-401-800.

¹ “Rule” means any agency order, directive, or regulation of general applicability. . .” (emphasis added)
RCW 34.05.010 (16) License FF-01 is specific to Hanford, and thus not of general applicability.

² No records were returned from a *Public Records Act* (RCW 42.56) request seeking a copy of forms required for rulemaking under the *Administrative Procedure Act* (RCW 34.05) specific to License FF-01. See Letter to Ms. Phyllis Barney, Public Disclosure Coordinator, Washington State Department of Health, from Bill Green, Re: *Public Records Act* (RCW 42.56) Request, sent certified mail (# 7012 0470 0000 5721 8006), April 26, 2013.

Comment 33: (general, *Attachment 2*) **As required by 40 C.F.R. 70.7 (h)(2), provide the public with all information used in the permitting process to justify:**

- **adding one (1) new emission unit,**
- **modifying 23 existing notice of construction (NOC) approvals, and**
- **deleting nine (9) emission units**

from the previous final version of *Attachment 2*¹, and restart public review.

In interpreting language in 40 C.F.R. 70.7 (h)(2) EPA determined information that must be provided to support public review consists of all information deemed relevant by being used in the permitting process. EPA’s view is captured as a finding in case law. In *Sierra Club v. Johnson*, the phrase “materials available to the permitting authority that are relevant to the permit decision” means “information that the permitting authority has deemed to be relevant by using it in the permitting process”.

“EPA has determined that the phrase ‘materials available to the permitting authority that are relevant to the permit decision,’ 40 C.F.R. § 70.7(h)(2), means the information that the permitting authority has deemed to be relevant by using it in the permitting process. . .” (emphasis added)
Sierra Club v. Johnson, 436 F.3d 1269, 1284, (11th Cir. 2006)

This version of *Attachment 2* contains one (1) new emission unit (200W W-SXPWET-001) and 23 new NOC approvals replacing older versions. In addition there are nine (9) emission units that were either closed or transferred to regulation under CERCLA. All these changes occurred since the final version of *Attachment 2* in existence on August 30, 2013. These changes were affected without providing the public with any information. No NOC applications containing information required by WAC 246-247-110 *Appendix A* were provided; no modification requests or applications for modifications were provided; no closure requests and supporting information were provided. In accordance with 40 C.F.R. 70.7 (h)(2), provide all information used to justify these changes and restart public review.

¹ Draft Statement of Basis for Attachment 2, Table of Changes from FF-01 2-23-12, pgs. 20-25 of 25

Comment 34: (*Attachment 2*, signature page, 1st sentence) **Make the following changes to the first (1st) sentence on the signature page of AOP *Attachment 2*, License FF-01.**

The first (1st) sentence on the signature page of Permit *Attachment 2* reads:

“Under the Nuclear Energy and Radiation Control , RCW 70.98 the Washington Clean Air Act, RCW 70.94 and the Radioactive Protection- Air Emissions, Chapters 246-247 WAC, and in reliance on statements and representations made by the Licensee designated below before the

effective date of this license, the Licensee is authorized to vent radionuclides from the various emission units identified in this license.”

Make the following changes to this sentence:

1. Replace the word “Control” with “Act” so it reads “Nuclear Energy and Radiation Act”. The *Nuclear Energy and Radiation Act* is the correct title of RCW 70.98¹.
2. Remove the “s” from the end of the word ‘Chapters’ to reflect that WAC 246-247 is only one (1) chapter in the Washington Administrative Code (WAC).
3. Remove “the Washington Clean Air Act, RCW 70.94”. While the Washington Clean Air Act (WCAA) does provide Health with the ability to enforce a License issued pursuant to RCW 70.98 in accordance with several paragraphs of the WCAA², the WCAA does not provide Health with the authority to issue a License authorizing “the Licensee [] to vent radionuclides from the various emission units identified in this license”. Only the *Nuclear Energy and Radiation Act* (NERA), RCW 70.98 provides Health with the authority to issue Licenses. Furthermore, Health does not have rulemaking authority under the WCAA.

Quoting from *Attachment 2*, Section 3.10, *Enforcement actions*:

In accordance with RCW 70.94.422, the department may take any of the following actions to **enforce compliance** with the provisions of this chapter:

- (a) Notice of violation and compliance order (RCW 70.94.332).
- (b) Restraining order or temporary or permanent injunction (RCW 70.94.425; also RCW 70.98.140).
- (c) Penalty: Fine and/or imprisonment (RCW 70.94.430).
- (d) Civil penalty: Up to ten thousand dollars for each day of continued noncompliance (RCW 70.94.431 (1) through (7)).
- (e) Assurance of discontinuance (RCW 70.94.435).
(emphasis added) *Attachment 2*, Section 3.10

Thus, in Section 3.10 of *Attachment 2* Health correctly acknowledges its authority under the WCAA is confined to various enforcement actions.

¹ See <http://apps.leg.wa.gov/RCW/default.aspx?cite=70.98&full=true>

² “The department of health shall have all the enforcement powers as provided in RCW 70.94.332, 70.94.425, 70.94.430, 70.94.431 (1) through (7), and 70.94.435 with respect to emissions of radionuclides.” RCW 70.94.422 (1)

Comment 35: (*Attachment 2*, overlooked federally enforceable requirements) *See Comment 19, incorporated here by reference. Neither Health nor Ecology can ignore federal-enforceability of emission limits imposed pursuant to WAC 246-247-040 (5). Limits on radionuclide air emission are required under 40 C.F.R. 61 subpart H, a Title V applicable requirement, and under 40 C.F.R. 70.6 (a)(1)¹. In accordance with WAC 173-401-625 (2)² and 40 C.F.R. 70.6 (b)(2)³ these emission limits must be federally enforceable. Additionally, 40 C.F.R. 61 subpart H does not recognize a regulatory *de minimis* above background for radionuclide air emissions.*

Condition 1 in the notice of construction (NOC) approval orders in AOP *Attachment 2*, Enclosure 1, seems to generally specify an emission limit for the licensed

activity. Health incorrectly credits only WAC 246-247-040 (5) as providing the authority to set these limits. In doing so, Health overlooks 40 C.F.R. 61 subpart H⁴. Forty (40) C.F.R. 61 subpart H requires emission limits for radionuclide air emissions from any point source or fugitive source on the Hanford Site. Health and Ecology also overlook WAC 173-401-625 (2)² and 40 C.F.R. 70.6 (b)(2)³ that prohibit a “state-only” enforceable designation for any requirement subject to either a federal requirement under the CAA (such as 40 C.F.R. 61 subpart H), or subject to any CAA applicable requirement. Forty (40) C.F.R. 70.6 (a)(1)¹ is an applicable requirement under the CAA and 40 C.F.R. 70.6 (a)(1) does require emission limits.

¹“(a) *Standard permit requirements.* Each permit issued under this part shall include the following elements: (1) Emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance. . . .” 40 C.F.R. 70.6

² “[T]he permitting authority shall specifically designate as not being federally enforceable under the FCAA any terms and conditions included in the permit **that are not required under the FCAA or under any of its applicable requirements.**” (emphasis added) WAC 173-401-625 (2)

³ “[T]he permitting authority shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit **that are not required under the Act or under any of its applicable requirements.**” (emphasis added) 40 C.F.R. 70.6 (b)(2) Radionuclides are listed in CAA § 112 and therefore, their control is required in accordance with CAA § 502 (a). 40 C.F.R. 61 subpart H is an applicable requirement mandated by CAA § 112.

⁴ See also: *Memorandum of Understanding Between the U.S. Environmental Protection Agency and the U.S. Department of Energy Concerning The Clean Air Act Emission Standards for Radionuclides 40 CFR 61 Including Subparts H, I, O & T*, signed 9/29/94 by Mary D. Nichols, EPA Assistant Administrator for Air and Radiation, and on 4/5/95 by Tara J. O’Toole, DOE Assistant Secretary for Environment, Safety and Health. Available at: http://www.epa.gov/radiation/docs/neshaps/epa_doe_caa_mou.pdf

Comment 36: (editorial, Statement of Basis, Standard Terms and General Conditions, Renewal 2, Revision A, pg. iv, lines 1 & 2) **Lines 1 and 2 on page iv of the Statement of Basis for Standard Terms and General Conditions contain the following statement: “Health regulates radioactive air emissions under the authority of RCW 70.92, . . .”. Citing RCW 70.92 is likely an error. The title of RCW 70.92 is “PROVISIONS IN BUILDINGS FOR AGED AND HANDICAPPED PERSONS”. Health probably doesn’t regulate radioactive air emissions using authority derived from RCW 70.92.**

From: [Kaldor, Reed A](#)
To: [Hanford \(ECY\)](#)
Cc: [Gent, Philip \(ECY\)](#); [Jackson, Dale E](#); [Bowser, Dennis W](#); "TOM.MCDERMOTT@PN.SO.SCIENCE.DOE.GOV"; [MacAlister, Edward D \(Ed\)](#); [Shattuck, Ann E](#)
Subject: Submittal of Comments on Draft AOP-00-05-006 Renewal 2 - Revision A
Date: Thursday, December 19, 2013 7:14:44 AM
Attachments: [Hanford Site Comments - draft AOP Renewal 2 Revision A.pdf](#)

Mr. Phil Gent
Nuclear Waste Program
State of Washington
Department of Ecology

Dear Mr. Gent,

Attached for your consideration are Hanford Site comments on the draft Hanford Air Operating Permit Renewal 2, Revision A transmitted by Ecology to the U.S. Department of Energy (DOE) on November 14, 2013 (Letter 13-NWP-115). Mission Support Alliance (MSA) is submitting these comments as DOE's integrating contractor responsible for management of the Hanford Site AOP. These comments have been developed in joint cooperation with DOE and the other Hanford Site contractors.

We appreciate the efforts of the Ecology, DOH and BCAA staff in preparing a complete, accurate and workable draft Hanford Site AOP Renewal 2, Revision A that meets the needs of all parties.

I respectfully request and will appreciate a reply confirmation that you have received these comments and we have met Ecology's 12/20/2013 deadline.

We look forward to receiving Ecology's responses to our comments. If you have questions or would like to discuss any of them further, please contact me at the number below. Thank you.

Sincerely,

Reed Kaldor
Mission Support Alliance, LLC
509-376-4876

U.S. Department of Energy (USDOE) Comments
Draft Hanford Site Air Operating Permit 00-05-006 Renewal 2, Revision A

Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change
1.	Statement of Basis for Standard Terms and General Conditions, Subsection 4.1, Pages 8 and 9.	<p>At Section 4.1, the AOP Statement of Basis describes a step-wise process for transition of a particular facility from regulation of emissions through the Air Operating Permit, to regulation instead under the authority of CERCLA. Though it is stated that the Statement “is not intended for enforcement purposes” (see Background), the agencies have been requiring DOE to follow the described transition process. Although it is good to have specific recognition in the permit that such transitions take place periodically at the Hanford Site, CERCLA Section 121 (42 U.S.C. 9621) specifically provides that response actions carried out on a CERCLA site (here, the Hanford Site) are exempt from requirements for permitting and other procedural compliance activities. Instead, the CERCLA program itself identifies substantive requirements in promulgated regulations (called Applicable, or Relevant and Appropriate, Requirements (ARARs), and, when practicable, designs CERCLA remedial activities to meet those substantive standards.</p> <p>CERCLA Section 121 preemption takes place immediately upon the determination by the lead CERCLA agency (in this case, the Department of Energy) that it will undertake a CERCLA response action at a facility. That CERCLA decision is not conditional upon concurrence by another regulatory agency, or any formal procedure that relinquishes jurisdiction under another environmental regulation. Section 121 specifically preempts the authority of other environmental agencies to issue permits or enforce their own regulations affecting the CERCLA-designated facility. Additionally, Section 113(h)</p>	<p>Delete the text as indicated below.</p> <p>“Regulations promulgated under statutory authority other than the FCAA [e.g., Resource Conservation and Recovery Act (RCRA) of 1976 and Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980] are not Title V applicable requirements and are not included in this AOP, e.g., Subparts AA, BB, and CC of 40 CFR 264 and 265. In addition, actions taken pursuant to CERCLA, after proper documentation and verification of removal and remediation activities, are exempt from clean air permitting requirements. There are two key considerations to satisfy in the transition process: (1) proper public notice and review, and (2) no lapse from CAA permitting requirements to onset of CERCLA activities.</p> <p>The following process delineates the steps to remove AOP permitting conditions/certifications for facilities or activities under CERCLA transition:</p> <ul style="list-style-type: none"> • Permittee will prepare Engineering Evaluation/Cost Analysis (EE/CA) or equivalent CERCLA documentation for a facility (or activity) identified for CERCLA transition. This document shall be reviewed by regulators, stakeholders, and the public. • This document will clearly identify general CAA requirements to be transitioned to CERCLA. Consistent with the WAC 173 401 800 requirement, the public review period shall be a minimum of days with proper notification on the AOP Permit Register and local newspaper. The notice on the AOP permit

U.S. Department of Energy (USDOE) Comments
Draft Hanford Site Air Operating Permit 00-05-006 Renewal 2, Revision A

Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change
		<p>of CERCLA preempts the jurisdiction of courts to hear legal challenges to ongoing CERCLA cleanup activities, so no enforcement of other environmental regulations can be undertaken against any CERCLA removal or remedial action.</p> <p>This means that no regulatory permitting program under another environmental law can lawfully delay the transition of a facility into CERCLA jurisdiction. No such program can prescribe requirements as prerequisites for CERCLA jurisdiction, such as prescribing that the transition be effected via a Non-Time Critical Removal Action, as distinct from a Time –Critical Removal Action, or even the initiation of a Remedial Investigation, or requiring a specified period of public comment prior to the effective date of CERCLA jurisdiction, or resolution of any public comment prior to the transition.</p>	<p>register will state that the facility's air permits will be discontinued upon onset of remediation activity in the field.</p> <ul style="list-style-type: none"> ● After the EE/CA or equivalent is approved, permittee will prepare a Risk Assessment Work Plan (RAWP) or equivalent Applicable or Relevant and Appropriate Requirements (ARAR) implementation document, such as an Air Monitoring Plan (AMP) to identify method to meet the substantive portions of existing air permit conditions, and describe the transition plan for CERCLA air monitoring. EPA, Ecology, and Health will review the ARAR implementation document, as directed by the lead agency. ● Concurrently, permittee will submit to Ecology, Health and/or EPA a Notice of Transition (NOT) (from CAA to CERCLA) for review and approval. The NOT shall reference the CERCLA authority documentation, identify any/all documentation of agency air approvals (EPA/Health/Ecology) in place prior to and after CERCLA transition. ● Ecology/Health/EPA will review the NOT. If the NOT is contested by an agency, an issue resolution process will be initiated between the lead agency and the lead regulatory agency. For actions not contested, the effective date (not the approval date) will coincide with the onset of the CERCLA remediation activity in the field. The facility's air permits can be discontinued after the effective date of the NOT. ● Via formal correspondence, permittee will notify affected agencies of date to begin remediation activity. It is important to notify Ecology and/or

**U.S. Department of Energy (USDOE) Comments
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Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change
			<p>Health that physical fieldwork of the CERCLA action has commenced. Upon receiving the notice of fieldwork commencement, Ecology will then notify the public that the previously applicable permits, licenses, NOC and AOP requirements have now been supplanted by the ARAR implementation document (e.g., RAWP and AMP). Permittee is no longer required to certify to AOP requirements after the onset of the actual D&D activity.</p> <ul style="list-style-type: none"> • Ecology and Health will delete the affected licenses/NOCs from the enforceable list, and remove permitting conditions from the AOP as an administrative modification at the next significant modification. • The CAA transition to CERCLA process is deemed complete at this point."
2.	Attachment 1, Contents, Page vi, Discharge Point 242-A and Yakima Barricade	There appears to be extraneous information for these Discharge Points.	Delete "Calculation Model" and "Not applicable".
3.	Attachment 1, Table 1.5, Page 21.	Stationary Engine Location for MO-414 (200 East) 2 of 2 should be "North of MO-414 (200 East) 2 of 2"	Insert "North of" in front of MO-414 (200 East) 2 of 2
4.	Attachment 1, Discharge Point 242-A (Table 1.5 Engine) and Discharge Point 222-SE (Table 1.5 Engine)	Condition (1) states: "Operate and Maintain the engine in accordance with Manufacturer's recommendations or instructions". 40 CFR 63.6625(e) also allows the owner or operator to develop a maintenance plan consistent with good air pollution control practice for minimizing emissions.	<p>Change the text to read as follows:</p> <p>Operate and Maintain the engine in accordance with Manufacturer's recommendations or instructions, or develop a written maintenance plan in a manner consistent with good air pollution control practice for minimizing emissions.</p>

U.S. Department of Energy (USDOE) Comments
Draft Hanford Site Air Operating Permit 00-05-006 Renewal 2, Revision A

Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change
5.	Attachment 1, Discharge Point 242-A (Table 1.5 Engine) and Discharge Point 222-SE (Table 1.5 Engine)	Compliance Requirement (1) states: "Compliance will be determined by operating and maintaining the engine in accordance with the manufacturer's recommendations or instructions." 40 CFR 63.6625(e) also allows the owner or operator to develop a maintenance plan consistent with good air pollution control practice for minimizing emissions.	Change the text to read as follows: "Compliance will be determined by operating and maintaining the engine in accordance with the manufacturer's recommendations or instructions, or a written maintenance plan in a manner consistent with good air pollution control practice for minimizing emissions.
6.	Attachment 1, page. 115, Discharge Point: TEDF Pump Station 2 (225E) (Table 1.5 Engine)	Condition (3) should be replaced with the following language: "Inspect spark plugs every 1000 hours of operation or annually, whichever comes first." This is not a diesel engine, it is a propane engine (spark ignition).	Replace Condition (3) with "Inspect spark plugs every 1000 hours of operation or annually, whichever comes first."
7.	Statement of Basis for Ecology permitting conditions, 2.7, SO ₂ Emissions Compliance	The statement "It will also apply to Table 1.5 after the 2013 compliance dates in 40 CFR 63 Subpart ZZZZ" was removed from the text but Table 1.5 was not added.	Revise text to read "This monitoring provision is for Tables 1.2, 1.3, 1.4, 1.5, 1.6, and 1.7."
8.	Statement of Basis for Ecology permitting conditions, 2.8, Visible Emission Enforceability	The statement "It will also apply to Table 1.5 after the 2013 compliance dates in 40 CFR 63 Subpart ZZZZ" was removed from the text but Table 1.5 was not added.	Revise text to read "This monitoring provision is for Tables 1.2, 1.3, 1.4, and 1.5."
9.	Statement of Basis for Ecology permitting conditions, 2.9, Sulfur Dioxide Enforceability	The statement "It will also apply to Table 1.5 after the 2013 compliance dates in 40 CFR 63 Subpart ZZZZ" was removed from the text but Table 1.5 was not added.	Revise text to read "This monitoring provision is for Tables 1.2, 1.3, 1.4, and 1.5 of Attachment 1."
10.	Statement of Basis for Ecology permitting conditions, Table B-3, page 29.	The parenthetical in the third bullet [(i.e., <= 500 brake horsepower)] should be deleted because this renewal is essentially reclassifying certain engines < 500 bhp to the significant emissions unit status. (Note this is the same language as is presently in Renewal 2).	Delete parenthetical in the third bullet [(i.e., <= 500 brake horsepower)]

U.S. Department of Energy (USDOE) Comments
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Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change
11.	Attachment 2, EU 163, P-242S-001 (296-S-18)	The pre filter is missing from the list of abatement technology and the description section requires clarification.	Modify the Abatement Technology Additional Description to read as follows: Pre Filter: 2 2 in parallel flow paths HEPA: 2 2 in parallel flow paths with 2 in series Fan: 1 1 fan abandoned in place
12.	Attachment 2, EU 174, P-296A020-001	The damper does not perform an abatement function, and is the reason it is not included in any of the other stack's abatement technology descriptions (with the exception of 296-A-43 with the same comment for removal).	Remove the Radial Damper from the Abatement Technology table for 296-A-20.
13.	Attachment 2, EU 216, P-296A043-001	The damper does not perform an abatement function, and is the reason it is not included in any of the other stack's abatement technology descriptions (with the exception of 296-A-20 with the same comment for removal).	Remove the Isolation Damper from the Abatement Technology table for 296-A-43.
14.	Attachment 2, EU 217, P-296A018-001	Corrections are needed to the Abatement Technology Additional Description Section. 296-A-18 ventilation system contains only 1 abatement train. The heater is non-operational. This stack exhaust system is identical to the 296-A-19 (EU218) system.	Abatement Technology, Additional Description: Remove "2 parallel flow paths" from the HEPA, Fan, and Heater descriptions.
15.	Attachment 2, EU 231, P-241C108-001	Additional Requirements section states: "Radial breather filters shall be replaced every 365 days." This filter is an open face filter and this requirement is not applicable.	Replace the additional requirement with the following: "Breather filters shall be aerosol tested every 365 days."

U.S. Department of Energy (USDOE) Comments
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Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change
16.	Attachment 2, EU 245, P-241C109-001	Additional Requirements section states: "Radial breather filters shall be replaced every 365 days." This filter is an open face filter and this requirement is not applicable.	Replace the additional requirement with the following: "Breather filters shall be aerosol tested every 365 days."
17.	Attachment 2, EU 735, P-296A044-001	Several radionuclides are listed in the "Radionuclides Requiring Measurement" Table that are not listed in the application. The applicable NOC application transmittal (04-ED-028, Attachment 1, Table 9 and Table 10) identify Cs-137, Sr-90, and Am-241 as isotopes contributing greater than 10% of the potential effective dose equivalent. WAC 246-247-035(1)(ii) and 40CFR61.93(4)(i) state: "All radionuclides which could contribute greater than 10% of the potential effective dose equivalent for a release point shall be measured."	Remove the following isotopes from the "Radionuclides Requiring Measurement" Table: Y-90, Cs-134, Pa-231, Pu-238, Pu-239, Pu-240, Pu-241.
18.	Attachment 2, EU 736, P-296A045-001	Several radionuclides are listed in the "Radionuclides Requiring Measurement" Table that are not listed in the application. The applicable NOC application transmittal (04-ED-028, Attachment 1, Table 9 and Table 10) identify Cs-137, Sr-90, and Am-241 as isotopes contributing greater than 10% of the potential effective dose equivalent. WAC 246-247-035(1)(ii) and 40CFR61.93(4)(i) state: "All radionuclides which could contribute greater than 10% of the potential effective dose equivalent for a release point shall be measured."	Remove the following isotopes from the "Radionuclides Requiring Measurement" Table: Y-90, Cs-134, Pa-231, Pu-238, Pu-239, Pu-240, Pu-241.
19.	Attachment 2, EU 855, P-296A046-001	Several radionuclides are listed in the "Radionuclides Requiring Measurement" Table that are not listed in the application. The applicable NOC application transmittal (04-ED-028, Attachment 1, Table 9 and Table 10) identify Cs-137, Sr-90, and Am-241 as isotopes contributing	Remove the following isotopes from the "Radionuclides Requiring Measurement" Table: Y-90, Cs-134, Pa-231, Pu-238, Pu-239, Pu-240, Pu-241.

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Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change
		greater than 10% of the potential effective dose equivalent. WAC 246-247-035(1)(ii) and 40CFR61.93(4)(i) state: "All radionuclides which could contribute greater than 10% of the potential effective dose equivalent for a release point shall be measured."	
20.	Attachment 2, EU 856, P-296A047-001	Several radionuclides are listed in the "Radionuclides Requiring Measurement" Table that are not listed in the application. The applicable NOC application transmittal (04-ED-028, Attachment 1, Table 9 and Table 10) identify Cs-137, Sr-90, and Am-241 as isotopes contributing greater than 10% of the potential effective dose equivalent. WAC 246-247-035(1)(ii) and 40CFR61.93(4)(i) state: "All radionuclides which could contribute greater than 10% of the potential effective dose equivalent for a release point shall be measured."	Remove the following isotopes from the "Radionuclides Requiring Measurement" Table: Y-90, Cs-134, Pa-231, Pu-238, Pu-239, Pu-240, Pu-241.
21.	Attachment 2, EU1294, P-242A-003	AIR 13-607, 6-20-13, approved the demolition and removal of the old 296-A-21 K-1 exhauster (EU486); closed the 296-A-21 stack (EU 141); and inadvertently obsoleted the new 296-A-21A K-1 Exhauster upgrade stack. Tanks Farms currently operates two stacks at the 242A Evaporator: 1) 296-A-21A Evaporator building vent (242A-003, EU1294), and 2) 296-A-22 Evaporator vessel vent (242A-002, EU142).	Re-instate EU 1294, P-242A-003 (296-A-21A) back into the FF-01 license.
22.	Attachment 2, SOB, Table of Changes from FF-01 2-23-12, Pages 24 & 25 of 25, AIR Letter # Authorizing Change:	This approval is only applicable to Emission Unit 93 (as correctly shown earlier in this table). It should not be associated with Emission Units 447, 455 and 476 as shown here. There must have been an editorial error in this table because the AIR 13-707 approval does not show up under these emission units in the body of Attachment	Remove these three emission unit entries from under AIR 13-707.

U.S. Department of Energy (USDOE) Comments
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Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change
	AIR 13-707	2 - FF-01 license.	
23.	Statement of Basis for Health permitting conditions, 5.0, Obsolete Emission Units	This list is exactly the same as the one in the version of the SOB issued with AOP renewal 2 in April 2013. There are additional EUs that have been obsoleted since this list was compiled.	Update the list to reflect additional EUs that are obsolete.
24.	Statement of Basis for Health permitting conditions, 6.0, Obsolete Applicable Requirements	This list is exactly the same as the one in the version of the SOB issued with AOP renewal 2 in April 2013. There are additional applicable requirements/NOCs/etc. that have been obsoleted since this list was compiled.	Update the list to reflect additional requirements that are obsolete.



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DEPARTMENT OF ECOLOGY

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April 28, 2014

14-NWP-078

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Confederated Tribes of the Umatilla
Indian Reservation
P.O. Box 638
Pendleton, Oregon 97801

Mr. Russell Jim
Environmental Restoration
Waste Management Program
Yakama Nation
P.O. Box 151
Toppenish, Washington 98948

Mr. Matthew S. McCormick, Manager
Richland Operations Office
United States Department of Energy
P.O. Box 550, MSIN: A7-50
Richland, Washington 99352

Mr. Kevin W. Smith, Manager
Office of River Protection
United States Department of Energy
P.O. Box 450, MSIN: H6-60
Richland, Washington 99352

Re: Issuance of Hanford Site Air Operating Permit (AOP) Renewal 2, Revision A

Dear Madame and Gentlemen:

Per Washington Administrative Code (WAC) 173-401-710, the Department of Ecology (Ecology) as the permitting authority, formally issues the Hanford Site AOP Renewal 2, Revision A, with the effective date of May 1, 2014. This AOP Revision is subject to the appeal procedures of WAC 173-401-735, described below.

Ecology received 61 comments on the Draft Hanford Site AOP during the public review process. Ecology responded to all comments in a Responsiveness Summary. Ecology submitted the Proposed AOP Renewal to the United States Environmental Protection Agency (USEPA) on February 13, 2014 to start the required 45-day USEPA review.



YOUR RIGHT TO APPEAL

The issuance of this permit renewal may be appealed by any person who commented upon the Draft Hanford Site AOP within the public review period. Appeal must be filed with the Pollution Control Hearings Board (PCHB), and served on Ecology, within 30 days of receipt of the permit. A notice of appeal of this permit must identify the appealed action as the Hanford Site Air Operating Permit 00-05-06, Renewal 2, Revision A. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal, you must do the following within 30 days of the date of receipt of this decision:

- File your appeal with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW, Suite 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

In addition, please send a copy of your appeal to:

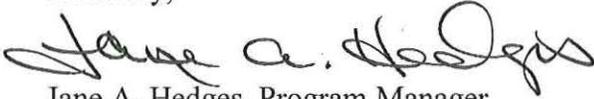
Jane Hedges, Manager
Department of Ecology
Nuclear Waste Program
3100 Port of Benton Boulevard
Richland, Washington 99354

Ms. Laurie Kral, et al.
April 28, 2014
Page 3

14-NWP-078

If you have questions, please contact Philip Gent at pgen461@ecy.wa.gov or (509) 372-7983.

Sincerely,



Jane A. Hedges, Program Manager
Nuclear Waste Program

cc w/enclosure (one DVD):

Davis Zhen, EPA
Dennis Bowser, USDOE-ORP
Dale E. Jackson USDOE-RL
Robin B. Priddy, BCAA
Earl R. McCormick, WDOH
John Martell, WDOH
Administrative Record
Environmental Portal
Correspondence Control, USDOE-RL
Correspondence Control, USDOE-ORP

Public Information Repositories:
Portland, OR; Richland, Seattle, Spokane

cc w/o enclosure:

Doug Hardesty, USEPA
L. A. Huffman, USDOE-ORP
Marla K. Marvin, USDOE-RL
Theresa L. Aldridge, USDOE-PNSO
Dru Butler, MSA
Reed Kaldor, MSA
Robert H. Anderson, MSA
Susan T. Hoglen, MSA
Robert Haggard, BNI
Holly M. Bowers, WRPS
Steve E. Killoy, WRPS
Richard Engelmann, CHPRC
Fen M. Simmons, CHPRC
Matthew Barnett, PNNL
Joan G. Woolard, WCH
Gabriel Bohnee, NPT
Ken Niles, ODOE
Steve Hudson, HAB

APPENDIX C: ECOLOGY LETTER DOCUMENTING FINAL PERMIT DECISION

REFERENCES

Exhibit A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 10

1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

OCT 11 2012

OFFICE OF THE
REGIONAL ADMINISTRATOR

Mr. Bill Green
424 Shoreline Ct.
Richland, Washington 99354

Dear Mr. Green:

Administrator Jackson has asked me to respond to your petition letter captioned as "Administrative Procedure Act Petition: Concerning Repeal of Portions of 40 CFR. 61.04(c)(10) and Portions of Appendix A of 40 CFR 70" dated July 1, 2011 (Petition), which you submitted to the U.S. Environmental Protection Agency. The Petition asks the EPA to exercise its rulemaking authority to repeal:

Portions of 40 CFR § 61.04(c)(10) delegating the Washington State Department of Health partial authority to implement and enforce the radionuclide National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subparts, B, H, I, K, Q, R, T, and W (Rad NESHAPs); and

Portions of Appendix A of 40 CFR Part 70 granting approval to the Washington Department of Ecology and Puget Sound Clean Air Agency¹ to issue Part 70 permits containing applicable requirements developed pursuant to the Rad NESHAPs (specifically, 40 CFR Part 70, App. A, Washington, para. (a) and (f)).

As explained in more detail below, the EPA does not agree that the issues raised in your Petition are grounds for repealing the delegation of authority and program approvals that the EPA has granted to WDOH, Ecology, and PSCAA under the Clean Air Act with respect to the Rad NESHAPs. The EPA is therefore denying your request to repeal the EPA's partial delegation of the Rad NESHAPs to WDOH and your request to repeal the EPA's grant of approval to Ecology and PSCAA to implement and enforce the Part 70 program with respect to sources subject to the Rad NESHAPs.

Rad NESHAPs Delegation

Section 112(l)(1) of the CAA states:

Each State may develop and submit to the Administrator for approval a program for the implementation and enforcement ... of emission standards and other requirements for air pollutants subject to this section.... A program submitted by a State under this subsection may provide for partial or complete delegation of the Administrator's authorities and responsibilities to implement and enforce emission standards...but shall not include authority to set standards less stringent than those promulgated by the Administrator under this chapter.

¹ Ecology and PSCAA are currently the only Part 70 permitting authorities in Washington that currently issue Part 70 permits to sources subject to the Rad NESHAPs. See Petition, Ex. 1, ii.

Pursuant to that authority, the EPA granted WDOH partial delegation to implement and enforce the Rad NESHAPs.² 71 Fed. Reg. 32276 (June 5, 2006) (final approval); 71 Fed. Reg. 9059 (Feb. 22, 2006) (proposed approval). In granting partial delegation of the Rad NESHAPs, the EPA determined that WDOH had incorporated the Rad NESHAPs by reference into its state regulations, met the criteria for straight delegation in 40 CFR 63.91(d)(3), and demonstrated that WDOH had adequate resources, including the technical expertise, to implement and enforce the Rad NESHAPs. See 71 Fed. Reg. 9061.

Ecology and the local air agencies in Washington, including PSCAA, implement the Title V operating permit program in Washington and are authorized under the CAA to issue Part 70 permits that assure compliance with all applicable requirements and meet the other requirements of Title V and the Part 70 implementing regulations. See 59 Federal Register 55813 (November 9, 1994) (final interim approval); 66 Federal Register 42439 (August 13, 2001) (final full approval).

Your Petition alleges that radionuclides are not subject to regulation under the CAA in Washington because the EPA has granted partial delegation of authority to enforce the Rad NESHAPs to WDOH, an agency that is not authorized to implement or enforce Title V or Part 70, or to issue Part 70 permits. According to the Petition, this partial delegation of authority makes WDOH “the only Washington State agency federally authorized to enforce the radionuclide NESHAPs” and “effectively bars all Washington State permitting authorities from enforcing Title V permit conditions controlling radioactive air emissions created pursuant to the radionuclide NESHAPs,” in violation of CAA §502(b)(5)(E) and 40 CFR § 70.11(a). Petition, Ex. 1, ii, 1-2, 1-6. Your Petition appears to base this contention on the fact that the EPA’s partial delegation of authority of the Rad NESHAPs to WDOH states that “WDOH is only delegated the Radionuclide NESHAPs. Other NESHAPs will be enforced by the Washington State Department of Ecology and the local air agencies, as applicable.” See 40 CFR § 61.04(c)(10), Table, fn. 15. Your Petition further asserts that “Failure to delegate enforcement of the radionuclide NESHAPs to a permitting authority ensures no Washington State permitting authority can enforce any radionuclides NESHAPS or Title V applicable requirements created pursuant to the radionuclide NESHAPS.” Petition, Exhibit 1, 1-2. In related arguments, your Petition asserts that the language in 40 CFR § 61.04(c)(10) does not allow any Washington State Part 70 permitting authority to:

independently issue Title V permits that both contain and assure compliance with all applicable requirements, including those created pursuant to the Rad NESHAPs, as required by CAA § 502(b)(5)(A). Petition, ex. 1, 1-4; and

provide an opportunity for public comment, the EPA and affected state review, and Part 70 permit issuance and revision procedures as required by CAA § 502(b)(6) and 40 CFR §§ 70.7 and 70.8 for those Part 70 applicable requirements created by WDOH pursuant to the Rad NESHAPs. Petition, Ex. 1, 1-5, 1-6, 1-8, 1-9.

Contrary to the assertions in your Petition, radionuclides are subject to regulation under the CAA in Washington. Indeed, the EPA, WDOH, Ecology, and PSCAA can all enforce the Rad NESHAPs under the CAA against sources in Washington. WDOH has adopted the Rad NESHAPs by reference into its state regulations. See Washington Administrative Code 246-247-035. By granting WDOH partial

² The reason for partial rather than full delegation is that, although WDOH has the authority required by 40 CFR §§ 70.11(a)(3)(ii) and 63.91(d)(3)(i) to recover criminal penalties for knowing violations of the Rad NESHAPs, WDOH did not have express authority to recover criminal fines for knowingly making a false material statement or knowingly rendering inadequate any required monitoring device or method, as required by 40 CFR §§ 70.11(a)(3)(iii) and 63.91(d)(3)(i). See 71 Fed. Reg. 32276.

delegation of the Rad NESHAPs, the EPA has identified WDOH as the lead agency in Washington for implementing and enforcing the Rad NESHAPs under the CAA.

Ecology has also adopted the Rad NESHAPs by reference into its state regulations. See WAC 173-400-075(1). These regulations apply statewide (WAC 173-400-020) and PSCAA has authority to enforce these regulations against sources within its jurisdiction. The EPA agrees that the Rad NESHAPs are “applicable requirements” under the Part 70 program and must be included in Part 70 permits issued to sources subject to the Rad NESHAPs. 40 CFR § 70.2 (definition of applicable requirement); 40 CFR § 70.6(a)(1) (standard permit requirements); WAC 173-401-200(4)(a)(iv) (definition of applicable requirement); WAC 173-401-605(1) (emission standards and limitations); see also Petition, Ex. 1, 1-1. Through the EPA authorization of Ecology and PSCAA as the Part 70 permit issuing authorities within their respective jurisdictions, Ecology and PSCAA have authority under the CAA to implement and enforce the Rad NESHAPs against sources within their respective jurisdictions when the Rad NESHAPs are included in the Part 70 permits they issue. This dual authority over radionuclide emissions in Washington is expressly acknowledged in state law. According to Revised Code of Washington 70.94.422(1), “the department of health shall have all the enforcement powers as provided in RCW, 70.94.332, 70.94.425, 70.94.430, 70.94.431(1) through (7), and 70.94.435 [Ecology’s enforcement authorities] with respect to emissions of radionuclides. This section does not preclude the department of ecology from exercising its authority under this chapter.”

Your Petition appears to interpret the language stating that “WDOH is only delegated the Radionuclide NESHAPs” (see 40 CFR § 61.04(c)(10), Table, fn. 15), to mean that only WDOH, and not Ecology or the local air agencies in Washington, have authority to implement the Rad NESHAPs under the CAA in Washington. The EPA does not agree that this is the intended or best interpretation of that language. That language simply explains that—of all the NESHAPs promulgated under Section 112 of the CAA—the EPA has only delegated the Rad NESHAPs to WDOH. All other NESHAPs identified in the Table have been delegated by EPA to Ecology and/or the local air agencies in Washington as identified in the table.

There is nothing in the language of Section 112, Title V, or their respective implementing regulations to require or suggest that the Title V permitting authority and an agency that receives delegation of Section 112 standards must be one and the same agency. Indeed, the idea that two state agencies might be responsible in a state for implementing the Rad NESHAPs with respect to Part 70 sources has been expressly acknowledged by the EPA. In guidance issued soon after the promulgation of Part 70, the EPA specifically acknowledged that not all radionuclide program activities would necessarily be carried out by the state air program. See Memorandum from John Seitz, the EPA Office of Air Quality Planning and Standards, and Margo Oge, Director, the EPA Office of Radiation and Indoor Air, to the EPA Regional Division Directors, re: “The Radionuclide National Emissions Standard for Hazardous Air Pollutants (NESHAP) and the Title V Operating Permits Program,” dated September 20, 1994, (Rad NESHAPs/Title V Guidance). In that memo, the EPA stated: “States would be free to use whatever combination of their personnel they feel is appropriate for performing these duties [implementing Part 70 permits at sources subject to the Rad NESHAPs]. Such joint efforts would have to be sufficiently described so that the EPA and the public can understand how the job will be done.” The EPA memorandum includes an example of an interagency agreement that could be entered into among state agencies to outline their respective obligations for carrying out their respective responsibilities under the CAA.

That is precisely the situation here. WDOH, Ecology, and PSCAA have entered into memoranda of understandings (MOUs) that clarify their respective roles for implementing and enforcing the Rad NESHAPs through Part 70 permits. *See* Memorandum of Understanding between the Washington State Department of Ecology and the Washington State Department of Health Related to the Respective Roles and Responsibilities of the Two Agencies in Coordinating Activities Concerning Hanford Site Radioactive Air Emissions, dated May 15/18, 2007 (superseding the previous MOU dated December 23/29, 1993); Intergovernmental Agreement Between Puget Sound Air Pollution Control Agency and the Washington State Department of Health, effective date July 1, 1995. Under these MOUs, WDOH has the primary responsibility for regulating radioactive air emissions from facilities, whereas Ecology and PSCAA regulate all non-radioactive air emissions from subject sources and are responsible for issuing Part 70 permits to all subject sources. Radionuclide regulatory requirements are established by WDOH in a license that is then incorporated by Ecology or PSCAA (as applicable) into Part 70 permits as applicable requirements as provided in the MOUs. *See* WAC 246-247-060 and -460(1)(d). The MOUs acknowledge that all of these agencies have authority to enforce requirements for radionuclide air emissions.

The statement in your Petition that “Once the EPA’s partial approval action was complete, all impacted permits issued in Washington State need only address requirements created pursuant to WAC 246-247 [WDOH’s regulations for radionuclide air emissions] in lieu of addressing requirements contained in the radionuclides NESHAPs” (Petition, Ex. 1, 1-8) is simply incorrect. The language quoted in the Petition is from a paragraph in the Rad NESHAPs/Title V Guidance discussing situations in which a state is seeking to implement and enforce some provisions of its own air toxic program “in lieu of rules resulting from the Federal program under section 112”—which is referred to in the EPA’s rules and guidance as “rule substitution.” Rad NESHAPs/Title V Guidance at 2. The EPA’s partial delegation of authority to implement and enforce the Rad NESHAPs to WDOH makes clear that the delegation was a “straight delegation,” not “rule substitution.” 71 Fed. Reg. 9060. The partial delegation is based on the fact that WDOH adopted the Rad NESHAPs by reference without change into its own regulations. *Id.* The EPA specifically noted that, although WDOH does, as a matter of state law, have additional regulations and requirements that sources of radionuclide air emissions must meet, those additional authorities and requirements are not part of the delegation. *Id.*

In summary, the EPA does not agree that the partial delegation to WDOH of authority to implement and enforce the Rad NESHAPs or any language in 40 CFR § 61.04(c)(10) prohibits Washington State permitting authorities from enforcing Title V applicable requirements implementing the Rad NESHAPs. The EPA also does not agree that the partial delegation to WDOH of authority to implement and enforce the Rad NESHAPs or any language in 40 CFR § 61.04(c)(10) deprives Ecology or PSCAA of authority they are required to have under Title V or Part 70 to implement their Part 70 programs.³ The EPA therefore denies your Petition to the extent it asks the EPA to repeal the partial delegation to WDOH of authority to implement and enforce the Rad NESHAPs.

Title V Authorities with respect to the Rad NESHAPs

The Petition also requests the EPA to repeal the EPA’s approval of Washington’s Part 70 program with respect to Ecology and PSCAA and the issuance of permits containing applicable requirements based on the Rad NESHAPs. Your Petition asserts that:

³ The argument in your Petition that the license developed by WDOH that contains the requirements of the Rad NESHAPs and is included in the Part 70 permit as an applicable requirement is not properly subject to the permit issuance, review, and revision procedures of Title V and Part 70 is also discussed in Section II below.

Under the Washington State program radionuclides are regulated solely by WDOH through requirements created pursuant to the *Nuclear Energy and Radiation Act* (NERA). Because Title V permit requirements regulating radionuclides are developed pursuant to NERA rather than pursuant to the CAA, none of the CAA-defined administrative, public review, and judicial review process apply to these conditions. Petition, Exhibit 1, ii.

More specifically, your Petition asserts that Part 70 applicable requirements regulating radioactive air emissions are not subject to the “administrative processes” contained in Title V and Part 70, including the procedures for permit issuance and renewal, public comment, affected state review, the EPA notice, permit revisions, judicial review, appeals, permit/license content, and fees. Petition, Ex. 1, 2-3 to 2-10, 2-12, 2-13. To support this argument, your Petition cites to language in NERA stating that:

The department of health [WDOH] is designated as the state radiation control agency...and shall be the state agency having sole responsibility for administration of the regulatory, licensing, and radiation control provisions of this chapter. RCW 70.98.050(1) (emphasis added). Petition, Ex. 1, 2-2. Your Petition appears to interpret this language as requiring that all provisions implementing the Rad NESHAPs be implemented and enforced solely by WDOH and solely under the authority of NERA.

The EPA does not agree with this interpretation. RCW 70.98.050(1) states only that WDOH is the state agency that is solely responsible for carrying out the requirements of NERA. As discussed above, Ecology has incorporated the Rad NESHAPs by reference into its state regulations and Ecology and PSCAA therefore have their own authority to implement and enforce the Rad NESHAPs and include such provisions in Part 70 permits where applicable. In legislation adopted after the language in NERA cited by your Petition, the Washington Legislature specifically required that each air operating permit contain requirements based on “RCW 70.98 [NERA] and rules adopted thereunder” when applicable. RCW 70.94.161(10)(d). RCW 70.94.422(1) makes clear that WDOH’s authority “does not preclude the department of ecology from exercising its authority under this chapter [RCW Ch. 70.94],” which includes Washington’s Part 70 program. In Ecology’s submission of its Part 70 program to the EPA for approval, the Washington Attorney General opined that based on the applicable statutory language, “Ecology and local air authorities are also charged with regulatory authority over these same [radioactive air emissions] sources pursuant to Ch. 70.94 RCW.” Attorney General’s Opinion for the Washington State Department of Ecology, October 27, 1993. The MOUs discussed above clarify the roles of Ecology and PSCAA, as the Part 70 permitting authorities, and WDOH, as the lead agency for regulating radioactive air emissions in the State of Washington. As the Part 70 permitting authorities, Ecology and PSCAA issue Part 70 permits within their respective jurisdictions that contain all applicable requirements. Licenses issued by WDOH for radionuclide emissions, which incorporate the Rad NESHAPs, are incorporated into the Part 70 permits, where applicable, as applicable requirements in air operating permits. If WDOH fails to enforce the requirements of the Rad NESHAPs, Ecology and PSCAA retain their authority to regulate such sources. RCW 70.94.422(1). Ecology and WDOH recently confirmed this joint authority to enforce radionuclide provisions in Part 70 permits in a letter dated July 16, 2010. See Letter from Stuart A. Clark, Air Quality Program Manager, Ecology, and Gary Robertson, Director, Office of Radiation Protection, WDOH, to Bill Green dated July 16, 2010.

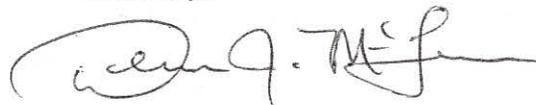
Your Petition also contends that Ecology’s and PSCAA’s Part 70 programs do not meet CAA requirements because there is no opportunity for public comment, judicial review, or other Part 70 administrative process for the issuance or revision of the WDOH license containing the Rad NESHAP requirements, which is later incorporated into a Part 70 permit. The EPA has previously provided you a response on these issues in a letter to you dated September 29, 2009. The promulgation and revision of

applicable requirements are not subject to the public notice, judicial review, and other administrative processes of the Part 70 program. The establishment of or changes to such underlying applicable requirements must be made pursuant to the rules that govern the establishment of such applicable requirements, in this case, the RAD NESHAPs promulgated by the EPA and the license requirements promulgated by Ecology. With a few exceptions not applicable here, Part 70 cannot be used to revise or change applicable requirements. Similarly, any challenges to such underlying applicable requirements are governed by the laws that apply to establishment of such license requirements. The requirements of Title V and Part 70, including the judicial review requirement of 40 CFR § 70.4(b)(3)(k) and the issuance, renewal, reopening, and revision provisions for Part 70 permits in 40 C.F.R. § 70.7(h), do not apply as a matter of federal law to WDOH when issuing a license pursuant to WAC 246-247.⁴

In summary, nothing in your Petition calls into question our previous conclusion that Ecology and PSCAA meet the requirements of Title V and Part 70 when they issue Part 70 permits that contain applicable requirements consisting of a license issued by WDOH regulating radionuclide emissions and containing the requirements of the Rad NESHAPs.⁵

For the reasons discussed above, the EPA does not agree that the issues you raise in your Petition are grounds for repealing the delegation of authority and program approvals that the EPA has granted to WDOH, Ecology, and PSCAA under the CAA with respect to the Rad NESHAPs and Part 70. The EPA is therefore denying your Petition. Should you have any questions regarding this response, please contact Julie Vergeront (for Title V) at 206-553-1497 or Davis Zhen (for Rad NESHAP) at 206-553-7660.

Sincerely,



Dennis J. McLerran
Regional Administrator

⁴ We also note that many of the provisions in radionuclide licenses issued by WDOH and included in Part 70 permits for subject sources are established as a matter of state law and specifically identified in the license as “state-only.” Terms and conditions so designated are not subject to the requirements of Part 70 in any event. See 40 CFR § 70.6(b)(2). To the extent the conditions in the WDOH radionuclide licenses are federally enforceable, Part 70 can still not be used to revise or change the underlying federally enforceable applicable requirements.

⁵ Having concluded that 40 CFR § 61.04(c)(10) does not purport to or in fact change the meaning or requirements of CAA § 502(b), there is no need to consider your request that the EPA impose mandatory sanctions, as you requested in your March 10, 2012 letter to Arthur A. Elkins, Jr., the EPA Inspector General, or your March 13, 2012 letter to Patricia Embrey, Acting Associate General Counsel, for the Office of General Counsel, Air and Radiation Law Office.



July 16, 2010

Mr. Bill Green
424 Shoreline Ct
Richland, Washington 99354

Ref: Letter, Mr. Bill Green to Attorney General Rob McKenna, *Request to modify Washington State's Air Operating Permit Program to comply with Title V of the federal Clean Air Act with respect to regulation of radioactive air emissions*, February 22, 2010

Dear Mr. Green:

The Department of Ecology (Ecology) and the Department of Health (Health) were provided copies of your correspondence with the Attorney General's office. In your letter you concluded that "Washington's AOP program is non-compliant with respect to regulation of radioactive air emissions." After reviewing the issues raised in your letter and the attached memorandum, we have concluded that Washington's Air Operating Permit (AOP) program – with regard to radionuclides – complies with the requirements of the federal Clean Air Act. The bases for our determination follow.

Your memorandum identifies three issues with Washington's EPA-approved AOP program.

1. You assert that the Washington AOP program is not in compliance with Section 502(b)(5)(E) of the Federal Clean Air Act [42 U.S.C. § 7661a(b)(5)(E)], as you believe that permitting authorities lack the authority to enforce requirements regarding radioactive air emissions.
2. You assert that the Washington AOP program is not in compliance with Section 502(b)(6) of the Federal Clean Air Act [42 U.S.C. § 7661a(b)(6)], as you believe that permitting authorities lack authority to take action on public comments regarding requirements associated with radioactive air emissions.

Mr. Bill Green
July 16, 2010
Page 2 of 5

3. You assert that the Washington State AOP program is not in compliance with Section 502(b)(6) of the Federal Clean Air Act [42 U.S.C. § 7661a(b)(6)], as you believe that there is no opportunity for judicial review in state court of final permit actions.

In order to address these issues, it is necessary to first take a general look at the nature of an air operating permit. Congress enacted the Title V air operating permit program to collect in one document all the requirements applicable to a major source of air pollution. The single document makes it clear for sources, regulatory agencies, and the public to identify the requirements with which a facility must comply. The air operating permit is not a vehicle for adding new substantive requirements with which a facility must comply.

The requirements listed in an air operating permit include the federal and state statutes applicable to the facility, federal, and state regulations applicable to the facility, any federal or state orders issued to the facility, and federal or state permits or licenses issued to the facility. All the requirements included in an air operating permit are requirements that were developed prior to their inclusion in the air operating permit, using whatever processes were appropriate to their development. For example, the federal regulations in an air operating permit were developed by the Environmental Protection Agency (EPA) using the processes of the Federal Administrative Procedure Act.

The three issues you raise cite to statutory provisions from Title V of the Federal Clean Air Act. These provisions apply to the Title V permitting process – not to the processes for developing the various underlying requirements that are included in a Title V air operating permit. For example, the requirement in section 502(b)(6) (42 U.S.C. § 7661a(b)(6)) that the air operating permit go through a meaningful public comment process means that the public must have an opportunity to comment on the air operating permit itself. The air operating permit public comment process does not provide the public with a forum for challenging the underlying applicable requirements, such as the state and federal regulations that form the backbone of an air operating permit. During an air operating permit public comment period, the public can require the permitting agency to consider a comment, for example, that the air operating permit does not include all the requirements applicable to the permitted facility. The public cannot, however, require the agency to consider, for example, a comment that a federal regulation included in the air operating permit needs to be changed.

Issue No. 1 Ecology's authority to enforce radiological emission requirements in air operating permits

Section 502(b)(5)(E) of the federal Clean Air Act (42 U.S.C. § 7661a(b)(5)(E)) requires a permitting authority to have adequate authority to enforce air operating permits. In Washington, air quality permitting authorities include Ecology and the local air authorities. You are correct that Health is not a permitting authority under Title V of the Clean Air Act. You are concerned that the permitting authority; i.e., Ecology or a local clean air authority, does not have adequate authority to enforce the radionuclide requirements in a license issued by Health that are part of an air operating permit.

Ecology and the local air authorities have the authority to enforce all of the provisions of the State Clean Air Act, as well as all regulations developed to implement it (RCW 70.94.430 and RCW 70.94.431). The State Clean Air Act also authorizes Health to use the enforcement tools of the State Clean Air Act with respect to emissions of radionuclides (RCW 70.94.422(1)). That authorization preserves the ability for Ecology and the local air authorities to also enforce the State Clean Air Act and its accompanying regulations concerning radionuclides. *Id.* Indeed, Ecology is the source of regulations setting the limits on emission of radionuclides into the air (Chapter 173-480 WAC). Ecology's radionuclide regulations confirm that "[Ecology] or any activated local air pollution control authority may enforce the radionuclide regulations with the provisions of WAC 173-400-230, Regulatory actions; and 173-400-240, Criminal penalties" (WAC 173-480-080). In addition, this regulation acknowledges that violations of radionuclide requirements may also subject the violator to penalties as cited by Health (WAC 173-480-080).

Health and Ecology have entered into a memorandum of understanding (MOU) that outlines how the agencies will manage this joint enforcement authority for radioactive air emissions requirements at Hanford. In this MOU, Health is assigned the primary enforcement responsibility for radioactive air emissions requirements. However, the MOU provides that in extenuating circumstances, Ecology may also take enforcement action.

Issue No. 2 Ecology's authority to take action on public comments regarding radioactive air emissions

Section 502(b)(6) of the Federal Clean Air Act requires a state air operating permit program to include public notice and the opportunity for meaningful public comment on the air operating permit. You are concerned that Ecology cannot take any meaningful action in response to comments concerning radionuclide licenses issued by Health and included in an air operating permit.

As noted above, the Title V public participation provision requires that the public have an opportunity to comment on the air operating permit itself – how the air operating permit is constructed, whether all applicable requirements are included, and whether there is sufficient monitoring required in the permit to ensure compliance.¹ The Title V public participation provision does not open for comment the underlying permits, licenses, orders, or regulations included in the air operating permit. A Health license in an air operating permit is an underlying applicable requirement. Title V of the Federal Clean Air Act does not require Ecology to have the authority to take meaningful action on comments regarding the Health license any more than it requires Ecology to have the authority to take meaningful action on comments regarding the federal regulations included in the air operating permit.

In reality, although not required to by law, Ecology can, and does, relay public comments concerning Health licenses to the Department of Health. Health is then able to take actions as appropriate on those comments. Health routinely considers public comments the agency receives, including any complaints regarding whether a licensee is complying with its license conditions.

Issue No. 3 Judicial review of radioactive air emissions requirements in air operating permits

Section 502(b)(6) of the Federal Clean Air Act requires a state air operating permit program to include an opportunity for judicial review of the air operating permit. Washington law provides that review of an air operating permit must begin with an appeal to the Pollution Control Hearings Board (PCHB) (RCW 70.94.161(8) and WAC 173-401-735(1)). A person dissatisfied with a PCHB ruling may then appeal that ruling to superior court, thus obtaining judicial review.

You correctly state that the PCHB does not have jurisdiction to hear issues related to Health. Thus, the PCHB does not have jurisdiction to rule on the provisions in a license issued by Health. However, the requirement for judicial review of an air operating permit in section 502(b)(6) of the Federal Clean Air Act does not require judicial review of the underlying permits, licenses, orders, or regulations that constitute the applicable requirements included in an air operating permit. Judicial review of an air operating permit is limited to review of the AOP and whether or not it includes all the applicable requirements and otherwise meets the requirements of Title V. Indeed, just as the PCHB does not have jurisdiction over the adequacy of the provisions of a radionuclide license issued by Health, the PCHB does not have jurisdiction

¹ Washington implements those requirements through RCW 70.94.161(7) and WAC 173-401 §§ 800-820.

Mr. Bill Green
July 16, 2010
Page 5 of 5

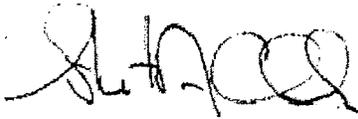
over the adequacy of EPA regulations included in an air operating permit, or over the adequacy of any Ecology regulations included in an air operating permit.

When Health issues a radioactive air emissions license, its actions related to that license are potentially subject to judicial review should a third party seek timely review under the Administrative Procedure Act, RCW 34.05, and meet the statutory requirements for standing to seek review.

In closing, after analyzing your concerns and our program obligations under the Federal Clean Air Act, Ecology and Health affirm that Washington's air operating permit program meets federal requirements with regard to radioactive air emission licenses issued by Health.

Sincerely,

Sincerely,



Stuart A. Clark
Air Quality Program Manager
Washington Department of Ecology



Gary Robertson
Director, Office of Radiation Protection
Washington Department of Health

cc: Kay Shirey (AGO)
Mark Calkins (AGO)
John Martell (DOH)

Exhibit C



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

REGIONAL ADMINISTRATOR

September 29, 2009

Mr. Bill Green
424 Shoreline Court
Richland, Washington 99354-1938

Dear Mr. Green:

I am writing in response to your letter addressed to Lisa Jackson, Administrator of the U.S. Environmental Protection Agency (EPA), dated July 29, 2009. The Administrator has delegated responding to your inquiry to me, as the Acting Regional Administrator for Region 10, which includes the State of Washington and the Hanford Site.

Your letter requests EPA's opinion regarding the adequacy of Washington Department of Ecology's (Ecology) regulation of radioactive air emissions under the state's Clean Air Act Title V operating permit program. Specifically, you asked whether Ecology's program has provisions for judicial review of final permit actions and for public comment, affected states review, and EPA review that meet the requirements of Title V of the Clean Air Act and 40 C.F.R. Part 70.

Your letter contends that Ecology's air operating permit program does not meet the requirements for judicial review because Ecology does not provide an opportunity for judicial review of the establishment of certain underlying applicable requirements that are later incorporated into a Title V permit. As you note, 40 C.F.R. § 70.4(b)(3)(k) requires that the Attorney General certify as part of a state Title V program submittal that state law provides "an opportunity for judicial review in State court of the final permit action by...any person who participated in the public participation process." The final permit, as used in this provision, refers to the Title V permit. Nothing in your letter calls into question our previous conclusion, in approving Ecology's Title V program, that Ecology meets this requirement. 59 Federal Register 55813 (November 9, 1994) (final interim approval); 66 Federal Register 42439 (August 13, 2001) (final full approval).

Your letter acknowledges that the provisions that you seek to challenge -- provisions in a license issued by the Washington Department of Health (Health) establishing air pollution control requirements for radioactive emissions, which are later incorporated into a Title V permit issued by Ecology -- are created under other provisions of State law, and not under the authority of Ecology's Title V program. To the extent these license requirements are "applicable requirements" as defined in 40 C.F.R. § 70.2, Ecology must include them in the Title V permit for a subject source. Any change to such underlying applicable requirements, however, would need to be made pursuant to the rules that govern the establishment of such license requirements,

i.e., by Health. Similarly, any challenge to such underlying applicable requirements would be governed by the laws that apply to establishment of such license requirements. The requirements of Title V, including the judicial review requirement of 40 C.F.R. § 70.4(b)(3)(k), do *not* apply to the establishment of, or challenge to, applicable requirements authorized under separate statutory or regulatory authority. We therefore agree with the portion of the opinion quoted in your letter that, to the extent you seek to challenge prior requirements established in issuing the license, such challenges are outside of the scope of the Title V operating permits program.

You also questioned whether Ecology's Title V program complies with the public notice and review procedures when requirements for radioactive air emissions established in a license issued by Health are included in a Title V permit. The provisions that govern issuance, renewal, reopening, and revision of Title V permits in 40 C.F.R. § 70.7(h) only establish requirements for Title V permits and do *not* apply as a matter of federal law to Health when issuing licenses pursuant to WAC 246-247. EPA agrees that when Ecology issues a Title V permit that contains applicable requirements established by Health, Ecology is required to provide public notice, affected states review, and EPA review as required by 40 C.F.R. § 70.7(h). Again, nothing in your letter calls into question our previous conclusion that, in approving Ecology's Title V program, Ecology meets these requirements when it issues Title V permits that contain applicable requirements consisting of radioactive air emissions from a license issued by Health.

If you have any other questions regarding the Title V process or permits, please contact Doug Hardesty in our Boise, Idaho office at (208) 378-5759.

Sincerely,



Michelle L. Pirzadeh
Acting Regional Administrator

Exhibit D

August 1, 2013

RECEIVED

AUG 01 2013

DEPARTMENT OF ECOLOGY
NWP - RICHLAND

Mr. Philip Gent
Washington State Department of Ecology
Nuclear Waste Program
3100 Port of Benton Blvd.
Richland, WA 99354

Re: Public comments on draft Hanford Site Air Operating Permit renewal

Dear Mr. Gent:

I am pleased the Washington State Department of Ecology (Ecology) again offered the draft Hanford Site Air Operating Permit (AOP) renewal for public comment. Enclosed are my comments.

I hope you find my comments useful in implementing a public involvement process consistent with Ecology regulation and with 40 C.F.R. 70. I also hope you find the comments useful in crafting a proposed AOP that complies with both the federal *Clean Air Act* and the *Washington Clean Air Act*.

Of particular concern is the choice of statute under which Ecology regulates Hanford's radionuclide air emissions in the draft AOP. By choosing to regulate Hanford's radionuclide air emissions in accordance with RCW 70.98, *The Nuclear Energy and Radiation Act* (NERA), Ecology overlooks all requirements of the federal *Clean Air Act* (CAA) and RCW 70.94, *The Washington Clean Air Act* (WCAA). One defect of particular concern resulting from the regulation of radionuclide air emissions under NERA, is that NERA does not allow for public involvement. RCW 70.98.080 (2) Thus, some 780 pages of terms and conditions regulating all of Hanford's radionuclide air emissions are removed from public involvement. The fact that the WCAA, Title V of the CAA, and 40 C.F.R. 70 all mandate public involvement, informs that Ecology's use of NERA is a fatal flaw. Ecology is encouraged to offer the public a draft AOP that complies with binding authority.

I also couldn't help but notice Ecology edited my last three (3) sets of comments before they were sent to EPA to support review required by WAC 173-401-810 and 40 C.F.R. 70.8; removing footnotes, removing some footnote call-numbers, and changing the citation format used in those comments. The footnotes supported and strengthened points made in my comments. Furthermore, the first page of each set of comments clearly specified the comments included any associated footnote(s). The formatting style I used when citing regulatory and other legal references is after that prescribed by the Bluebook¹ as modified by the *Washington State Court Rules*. Because Ecology cites such references differently, does not provide Ecology with license to edit my citations. Please refrain from altering any of the enclosed comments.

¹ *The Bluebook: A Uniform System of Citation*, (Columbia Law Review Ass'n et al. eds., 18th ed. 2005)

Mr. Philip Gent
August 1, 2013
Page 2 of 2

Thank you again for providing another opportunity to comment on the draft Hanford Site AOP renewal.

Regards,

A handwritten signature in black ink, appearing to be 'Bill Green', with a long horizontal flourish extending to the right.

Bill Green
424 Shoreline Ct.
Richland, WA 99354-1938

Enclosure
cc: w/encl. via email
P. Gent, Ecology
J. Martell, Health
T. Beam, MSA Hanford

As used below, the term(s):

– **permitting authority** is as defined in CAA § 501 (4) [42 U.S.C. 7661 (4)] and 40 C.F.R. 70.2.

“The term “permitting authority” means the Administrator or the air pollution control agency authorized by the Administrator to carry out a permit program under this subchapter.”

CAA § 501 (4) [42 U.S.C. 7661 (4)];

“*Permitting authority* means either of the following: (1) The Administrator, in the case of EPA-implemented programs; or (2) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under this part.” 40 C.F.R. 70.2

- **AOP, Part 70 Permit, and Title V permit** are synonymous, meaning any permit that is required by 40 C.F.R. 70, and Title V of the CAA.
- **CAA or Act** is the *Clean Air Act*, 42 U.S.C. 7401, *et seq.*
- **Health, DOH, or WDOH** is the Washington State Department of Health

Comments include any associated footnote(s).

Comment 1: (general AOP structure): **Contrary to *Clean Air Act (CAA)* section 502 (b)(5)(E)¹ [42 U.S.C. 7661a (b)(5)(E)] and 40 C.F.R. 70.11 (a), the regulatory structure used in this draft AOP does not allow Ecology, the sole permitting authority, to enforce all standards or other requirements controlling emissions of radionuclides, a hazardous air pollutant under CAA § 112.**

Because radionuclides are listed in CAA § 112 (b) as a *hazardous air pollutant*, conditions regulating radionuclide air emissions are CAA Title V (AOP) applicable requirements, subject to inclusion in AOPs pursuant to CAA § 502 (a) [42 U.S.C. 7661a (a)], 40 C.F.R. 70.2 *Applicable requirement* (4), RCW 70.94.161 (10)(d), and WAC 173-401-200 (4)(a)(iv).

In this draft Hanford Site AOP radionuclides are regulated solely in *Attachment 2* (License FF-01) in accordance with RCW 70.98, the *Nuclear Energy and Radiation Act* (NERA). NERA implements neither Title V of the CAA nor 40 C.F.R. 70, nor is NERA obligated by either the CAA or 40 C.F.R. 70. Only the Washington State Department of Health (Health) has Legislative authorization to enforce NERA through regulations adopted thereunder. (*See* RCW 70.98.050 (1))

Absent Legislative authorization Ecology cannot act, in any way, on *Attachment 2* (License FF-01) or on any of the terms and conditions contained therein². Furthermore, according to *Appendix A* of 40 C.F.R. 70, Health is not a permitting authority under the CAA and therefore does not have an EPA-approved program implementing CAA Title V and 40 C.F.R. 70. Thus, neither NERA nor Health-adopted regulations promulgated under authority of NERA, have been approved to implement requirements of CAA Title V and 40 C.F.R. 70.

Ecology, the issuing permitting authority, is required by the CAA to have all authority necessary to enforce permits, including the authority to recover civil penalties and provide for criminal penalties. In plain language, the CAA requires:

“. . .the minimum elements of a permit program to be administered by any air pollution control agency. . . shall include each of the following: . . (5) A requirement that the permitting authority

have adequate authority to: . . . (E) enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties . . . , and provide appropriate criminal penalties;" [CAA § 502 (b); 42 U.S.C. 7661a (b)]

EPA addresses this obligation in 40 C.F.R. 70.11 (a), which requires, in part, that:

"[a]ny agency administering a program shall have the following enforcement authority to address violations of program requirements by part 70 sources: (1) To restrain or enjoin immediately and effectively any person by order or by suit in court from engaging in any activity in violation of a permit that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment. (2) To seek injunctive relief in court to enjoin any violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit. (3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, . . ." 40 C.F.R. 70.11 (a)

Ecology does not have authority to sue to recover civil penalties or to provide appropriate criminal penalties for any activity in violation of any term or condition in *Attachment 2*, nor can Ecology seek injunctive relief in court to enjoin any violation of *Attachment 2* (License FF-01). Under the codified structure used in this draft AOP, Ecology, the sole permitting authority, has no authority to enforce any term or condition in *Attachment 2* (License FF-01), including those terms and conditions implementing federally enforceable requirements in 40 C.F.R. 61, subpart H. Only Health, a "permitting agency", can enforce these permit terms and conditions. Therefore, Ecology lacks the minimum authority specified in CAA § 502 (b) [42 U.S.C. 7661a (b)] and 40 C.F.R. 70.11 (a), with regard to *Attachment 2* (License FF-01).

Contrary to CAA § 502 (b)(5)(E) [42 U.S.C. 7661a (b)(5)(E)] and 40 C.F.R. 70.11 (a), the regulatory structure used in this draft AOP does not allow Ecology, the sole permitting authority, to enforce all standards or other requirements controlling emissions of radionuclides, a *hazardous air pollutant* under CAA § 112.

¹ "[T]he minimum elements of a permit program to be administered by any air pollution control agency. . . **shall** include each of the following: . . . (5) A requirement that the permitting authority have adequate authority to: . . . (E) enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties . . . , and provide appropriate criminal penalties;" (emphasis added) CAA § 502 (b); 42 U.S.C. 7661a (b)

² The Washington State Supreme Court addressed the issue of limits on an administrative agency's authority, stating: "[There is] a fundamental rule of administrative law - an agency may only do that which it is authorized to do by the Legislature (citations omitted). . . [Additionally an] administrative agency cannot modify or amend a statute through its own regulation." *Rettkowski v. Department of Ecology*, 122 Wn.2d 219, 226-27, 858 P.2d 232 (1993)

Comment 2: (general AOP structure): **Contrary to *Clean Air Act (CAA) section 502 (b)(5)(A)*¹ [42 U.S.C. 7661a (b)(5)(A)], 40 C.F.R. 70², and WAC 173-401³, the regulatory structure used in this draft AOP does not allow Ecology, the sole permitting authority, to issue a Title V permit containing all standards or other requirements controlling emissions of radionuclides, a *hazardous air pollutant* under CAA § 112.**

The regulatory structure of this Permit denies Ecology, the sole permitting authority, the legal ability to enforce terms and conditions in *Attachment 2*. Terms and conditions in *Attachment 2* (License FF-01) include all those implementing requirements

of 40 C.F.R. 61 subpart H. *Attachment 2* (License FF-01) was created in accordance with RCW 70.98, the *Nuclear Energy Radiation Act* (NERA) rather than in accordance with Title V of the CAA and 40 C.F.R. 70. Health, the sole agency with authority to enforce NERA and *Attachment 2*, is not a permitting authority, according to *Appendix A* of 40 C.F.R. 70, and therefore does not have a program authorized to implement CAA Title V and 40 C.F.R. 70.

Ecology does not have Legislative authorization to enforce NERA⁴. Absent Legislative authorization, Ecology lacks jurisdiction over *Attachment 2* (License FF-01). This jurisdictional limitation does not allow Ecology to take any action regarding *Attachment 2* (License FF-01) including the act of issuing License FF-01⁵. Without the legal ability to issue and enforce a permit containing terms and conditions implementing requirements of 40 C.F.R. 61 subpart H, Ecology cannot issue permits that “assure compliance . . . with each applicable standard, regulation or requirement under this chapter” CAA § 502 (b)(5)(A); 42 U.S.C. 7661a (b)(5)(A)

Contrary to CAA § 502 (b)(5)(A)¹ [42 U.S.C. 7661a (b)(5)(A)], 40 C.F.R. 70², and WAC 173-401³, the regulatory structure used in this draft AOP does not allow Ecology, the sole permitting authority, to issue a Title V permit containing all standards or other requirements controlling emissions of radionuclides, a hazardous air pollutant under CAA § 112.

¹ “[T]he minimum elements of a permit program to be administered by any air pollution control agency. . . **shall** include each of the following: . . . (5) A requirement that the permitting authority have adequate authority to: . . . (A) issue permits and assure compliance . . . with each applicable standard, regulation or requirement under this chapter;” (emphasis added) CAA § 502 (b); 42 U.S.C. 7661a (b)

² 40 C.F.R. 70.1 (b), -70.3 (c), -70.6 (a), and -70.7 (a)

³ WAC 173-401-100 (2), -600, -605, -700 (1)

⁴ “The department of health is designated as the state radiation control agency,. . . and shall be the state agency having sole responsibility for administration of the regulatory, licensing, and radiation control provisions of this chapter.” (emphasis added) RCW 70.98.050 (1).

⁵ Absent legal ability to act on requirements developed pursuant to RCW 70.98 (NERA) and the regulations adopted thereunder Ecology cannot subject *Attachment 2* to any requirement of 40 C.F.R. 70. “[there is] a fundamental rule of administrative law- an agency may only do that which it is authorized to do by the Legislature. *In re Puget Sound Pilots Ass'n*, 63 Wash.2d 142, 146 n. 3, 385 P.2d 711 (1963); *Neah Bay Chamber of Commerce v. Department of Fisheries*, 119 Wash.2d 464, 469, 832 P.2d 1310 (1992).” *Rettkowski v. Department of Ecology*, 122 Wn.2d 219, 226, 858 P.2d 232 (1993).]

Comment 3: (general AOP structure): **Contrary to *Clean Air Act* (CAA) section 502 (b)(6)¹ [42 U.S.C. 7661a (b)(6)], 40.C.F.R. 70.7 (h)², RCW 70.94.161 (2)(a) & (7)³, and WAC 173-401-800⁴, the regulatory structure used in this draft AOP does not allow Ecology, the sole permitting authority, to offer for public review AOP terms and conditions controlling Hanford’s radionuclide air emissions. Nor can Ecology provide for a public hearing on AOP terms and conditions controlling Hanford’s radionuclide air emissions. Radionuclides are a *hazardous air pollutant* under CAA § 112.**

Attachment 2 (License FF-01) is not a “rule” as defined by the *Administrative procedure Act*⁵ (RCW 34.05), and therefore modifications of this license are not subject to the rulemaking process. Modifications of *Attachment 2* (License FF-01) are also not

subject to the CAA, 40 C.F.R. 70, the *Washington Clean Air Act* (RCW 70.94), and WAC 173-401; this because *Attachment 2* was created and is enforced under authority of RCW 70.98, the *Nuclear Energy Radiation Act* (NERA), a statute that does not accommodate either public review or a public hearing. RCW 70.98.080 (2)

Clean Air Act (CAA) § 502 (b)(6) [42 U.S.C. 7661a (b)(6)], 40 C.F.R. 70.7 (h), RCW 70.94.161 (2)(a) & (7), and WAC 173-401-800 all require the public be provided with the opportunity to comment on draft AOPs and the opportunity for a public hearing⁶. However, RCW 70.98, the statute under which License FF-01 is issued, does not allow for public comments or public hearings. RCW 70.98.080 Revised Code of Washington (RCW) 70.98.080 (2) specifically exempts licenses pertaining to Hanford from any pre-issuance notification or review requirements⁷. Whereas 40 C.F.R. 70 and WAC 173-401 require the general public be provided with the opportunity for a review of thirty (30) or more days on any draft AOP. 40 C.F.R. 70.7 (h), WAC 173-401-800

The Washington State Supreme Court addressed the issue of limits on an administrative agency's authority, stating:

“[There is] a fundamental rule of administrative law-an agency may only do that which it is authorized to do by the Legislature (citations omitted). . . [Additionally an] administrative agency cannot modify or amend a statute through its own regulation.”

Rettkowski v. Department of Ecology, 122 Wn.2d 219, 226-27, 858 P.2d 232 (1993)

According to *Rettkowski*, absent statutory authorization, Ecology can neither enforce NERA or the regulations adopted thereunder, nor can Ecology modify NERA or the regulations adopted thereunder to provide for public review or public hearings required by CAA § 502 (b)(6) [42 U.S.C. 7661a (b)(6)], 40 C.F.R. 70.7 (h), RCW 70.94.161 (2)(a) & (7), and WAC 173-401-800.

Only Health has been authorized by statute to enforce NERA and the regulations adopted thereunder. [See RCW 70.98.050 (1)] However, under *Rettkowski*, even Health cannot modify NERA to allow for public comments or public hearings required by the CAA, 40 C.F.R. 70, RCW 70.94, and WAC 173-401.

Contrary to CAA § 502 (b)(6) [42 U.S.C. 7661a (b)(6)], 40.C.F.R. 70.7 (h), RCW 70.94.161 (2)(a) & (7), and WAC 173-401-800, the regulatory structure used in this draft AOP does not allow Ecology, the sole permitting authority, to offer for public review AOP terms and conditions controlling Hanford's radionuclide air emissions. Nor can Ecology provide for a public hearing on AOP terms and conditions controlling Hanford's radionuclide air emissions.

¹ “[T]he minimum elements of a permit program to be administered by any air pollution control agency. . . shall include each of the following: . . . (6) Adequate, streamlined, and reasonable procedures . . . including **offering an opportunity for public comment and a hearing**. . .” (emphasis added) CAA § 502 (b) [42 U.S.C. 7661a (b)]

² state operating permit programs “. . .shall provide adequate procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit.” 40 C.F.R. 70.7 (h). Additionally “[t]he permitting authority shall provide at least 30 days for public comment and shall give notice of any public hearing . . .” 40 C.F.R. 70.7 (h)(4)

³ “(2)(a) Rules establishing the elements for a statewide operating permit program and the process for permit application and renewal consistent with federal requirements shall be established . . . (7) All draft permits shall be subject to public notice and comment.” RCW 70.94.161

⁴ “(3) . . . [T]he permitting authority shall provide a minimum of thirty days for public comment . . . (4). . . [t]he applicant, any interested governmental entity, any group or any person may request a public hearing within the comment period required under subsection (3) of this section.” WAC 173-401-800

⁵ “Rule” means any agency order, directive, or regulation of general applicability . . . RCW 34.05.010 (16) License FF-01 applies to only Hanford and therefore is not “of general applicability”.

⁶ “[T]he minimum elements of a permit program to be administered by any air pollution control agency. . . shall include each of the following: . . . (6) Adequate, streamlined, and reasonable procedures . . . including offering an opportunity for public comment and a hearing. . . .” (emphasis added) CAA § 502 (b) [42 U.S.C. 7661a (b)]; state operating permit programs “. . . shall provide adequate procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit.” 40 C.F.R. 70.7 (h). Additionally “[t]he permitting authority shall provide at least 30 days for public comment and shall give notice of any public hearing . . .” 40 C.F.R. 70.7 (h)(4); “(2)(a) Rules establishing the elements for a statewide operating permit program and the process for permit application and renewal consistent with federal requirements shall be established . . . (7) All draft permits shall be subject to public notice and comment.” RCW 70.94.161; “(3) . . . [T]he permitting authority shall provide a minimum of thirty days for public comment . . . (4). . . [t]he applicant, any interested governmental entity, any group or any person may request a public hearing within the comment period required under subsection (3) of this section.” WAC 173-401-800

⁷ “This subsection [concerning the 20-day license review afforded to a single government executive] shall not apply to activities conducted within the boundaries of the Hanford reservation.” RCW 70.98.080 (2)

Comment 4: (general AOP structure): **Contrary to *Clean Air Act (CAA)* section 502 (b)(6)¹ [42 U.S.C. 7661a (b)(6)], 40 C.F.R. 70.4(b)(3)(x) and (xii)², and WAC 173-401-735 (2)³, the regulatory structure used in this draft AOP to control Hanford’s radionuclide air emissions does not recognize the right of a public commenter to judicial review in State court of the final permit action.**

Attachment 2 (License FF-01) of this draft AOP contains all terms and conditions regulating Hanford’s radioactive air emissions. License FF-01 was produced pursuant to RCW 70.98, the *Nuclear Energy and Radiation Act (NERA)*, rather than in accordance with Title V of the CAA and 40 C.F.R. 70. NERA does not provide an opportunity for judicial review by any person who participated in the public comment process. RCW 70.98.080 Furthermore, Ecology, the single permitting authority for the draft Hanford Site AOP, has no authority to require Health provide for such judicial review.

Washington State law requires all appeals of AOP terms and conditions be filed only with the Pollution Control Hearings Board (PCHB) in accordance with RCW 43.21B. [See RCW 70.94.161 (8) and WAC 173-401-620(2)(i)] However, PCHB jurisdictional limitations (RCW 43.32B.110) prevent the PCHB from acting on AOP conditions developed and enforced by Health.

Contrary to CAA § 502 (b)(6) [42 U.S.C. 7661a (b)(6)], 40 C.F.R. 70.4(b)(3)(x) and (xii), and WAC 173-401-735 (2), the regulatory structure used in this draft AOP to control Hanford’s radionuclide air emissions does not recognize the right of a public commenter to judicial review in State court of the final permit action.

¹ “[T]he minimum elements of a permit program to be administered by any air pollution control agency. . . shall include . . . (6) . . . an opportunity for judicial review in State court of the final permit action by [] any person who participated in the public comment process . . .” (emphasis added) CAA § 502 (b) [42 U.S.C. 7661a (b)]

² 40 C.F.R. 70.4(b)(3)(xii) provides “that the opportunity for judicial review described in paragraph (b)(3)(x) of this section shall be the exclusive means for obtaining judicial review of the terms and conditions of permits . . .”

³ “Parties that may file the appeal . . . include any person who participated in the public participation process” WAC 173-401-735 (2)

Comment 5: (general AOP structure): Contrary to RCW 70.94.161 (2)(a)¹ and WAC 173-400-700 (1)(b), the regulatory structure used in this draft AOP does not require pre-issuance review by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority for any term or condition controlling Hanford’s radionuclide air emissions.

All terms and conditions regulating Hanford’s radionuclide air emissions were developed and are enforced under authority provided by RCW 70.98, the *Nuclear Energy and Radiation Act* (NERA), rather than in accordance with the RCW 70.94, *Washington Clean Air Act* (WCAA). NERA does not require “that every proposed permit must be reviewed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority” as is required by RCW 70.94.131 (2)(a). Neither NERA nor the rules adopted under NERA recognize either a “proposed permit” or a “permitting authority”.

Ecology is the permitting authority for the Hanford AOP. However, because Ecology lacks Legislative authorization to enforce NERA, Ecology is prohibited from acting, in any way, on a regulatory product developed pursuant to NERA; including requiring a review by a professional engineer or affecting any changes to *Attachment 2* resulting from such a review.

Contrary to RCW 70.94.161 (2)(a) and WAC 173-401-700 (1)(b), the regulatory structure used in this draft AOP does not require pre-issuance review by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority for any term or condition controlling Hanford’s radionuclide air emissions.

¹ “. . . The rules shall provide that every proposed permit must be reviewed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority. . . .” RCW 70.94.131 (2)(a)

Comment 6: (general AOP structure, Attachment 2, License FF-01): In this draft Hanford Site AOP regulation of radionuclides is inappropriately decoupled from 40 C.F.R. 70 (Part 70). Regulation of radionuclides occurs pursuant to a regulation that does not implement Part 70, and cannot be enforced by Ecology, the issuing permitting authority.

Because radionuclides are listed in CAA § 112 (b) as a *hazardous air pollutant*, conditions regulating radionuclide air emissions are CAA Title V (AOP) applicable requirements, subject to inclusion in AOPs pursuant to CAA § 502 (a) [42 U.S.C. 7661a

(a)], 40 C.F.R. 70.2 *Applicable requirement* (4), RCW 70.94.161 (10)(d), and WAC 173-401-200 (4)(a)(iv).

In this draft Hanford Site AOP radionuclides are regulated only in *Attachment 2* (License FF-01) in accordance with RCW 70.98, the *Nuclear Energy and Radiation Act* (NERA) rather than in accordance with Title V of the CAA and 40 C.F.R. 70. Only the Washington State Department of Health (Health) has Legislative authorization to enforce NERA through regulations adopted under rulemaking authority provided by NERA. (See RCW 70.98.050 (1)) According to *Appendix A* of 40 C.F.R. 70, Health is not a permitting authority under the CAA and therefore does not have an EPA-approved program implementing CAA Title V and 40 C.F.R. 70. Furthermore, neither NERA nor Health-adopted regulations promulgated thereunder, implement requirements of CAA Title V and 40 C.F.R. 70.

Contrary to CAA Title V and 40 C.F.R. 70, regulation of radionuclide air emissions in this draft Hanford Site AOP occurs pursuant to a regulation that does not implement requirements of CAA Title V and 40 C.F.R. 70, and is not enforceable by Ecology, the issuing permitting authority.

Comment 7: (general AOP structure, *Attachment 2*, License FF-01): *Contrary to Clean Air Act CAA § 505 [42 U.S.C. 7661d], 40 C.F.R. 70.8, RCW 70.94.161 (7), and WAC 173-401-810 and -820, the regulatory structure of the draft Hanford Site AOP does not allow for pre-issuance review by EPA, all affected states, and recognized Tribal Nations for terms and conditions regulating Hanford's radionuclide air emissions. Radionuclides are a hazardous air pollutant under CAA § 112.*

Attachment 2 (License FF-01) of the draft Hanford Site AOP contains all terms and conditions regulating Hanford's radionuclide air emissions. License FF-01 was produced pursuant to RCW 70.98, the *Nuclear Energy and Radiation Act* (NERA), rather than in accordance with Title V of the CAA, 40 C.F.R. 70, the *Washington Clean Air Act*, and WAC 173-401. NERA does not provide an opportunity for review by EPA, and affected states, including recognized Tribal Nations. NERA does not address action regarding any comments resulting from such reviews, and NERA does not grant EPA veto power over a license, such as FF-01, for any reason. Furthermore, Ecology, the sole permitting authority, has no statutory power to require that Health provide License FF-01 for review by EPA, review by all affected states, and review by recognized Tribal Nations, nor does Ecology have the statutory authority to address comments pertaining to License FF-01, or any terms and conditions contained therein, should any comments be received.

Because the issuance process required by NERA for License FF-01 does not provide for EPA review, review by affected state, and review by recognized Tribal Nations, *Attachment 2* cannot be issued in compliance with CAA § 505 [42 U.S.C. 7661d], 40 C.F.R. 70.8, RCW 70.94.161 (7), and WAC 173-401-810 and 820.

Comment 8: (general AOP structure; Section 9, Appendix B, *Statement of Basis for Standard Terms and General Conditions*, pgs. 30-50): *The regulatory structure under which radionuclide terms and conditions are addresses in Attachment 2 (License FF-*

01) of the draft Hanford Site AOP (Permit) will not allow for compliance with the AOP revision requirements of Appendix B of the Permit, 40 C.F.R. 70.7, and WAC 173-401-720 through 725.

Attachment 2 (License FF-01) of the draft Hanford Site AOP contains all terms and conditions regulating Hanford's radioactive air emissions. License FF-01 was produced pursuant to RCW 70.98, the *Nuclear Energy and Radiation Act* (NERA), rather than in accordance with Title V of the CAA, 40 C.F.R. 70, the *Washington Clean Air Act*, and WAC 173-401. As a result, the AOP revision processes required by Permit *Appendix B*, 40 C.F.R. 70.7, and WAC 173-401-720 through 725 cannot be met.

Permit *Appendix B* addresses AOP revisions through a form-driven process based on potential-to-emit regulated air pollutants. However, all revisions, including those correcting an address or a typographical error [40 C.F.R. 70.7 (d) and WAC 173-401-720] require a notification be sent to EPA. There is no such EPA notification requirement in NERA or in the regulations adopted under the authority of NERA. Furthermore, Ecology lacks legislative authorization to act in any regard on NERA, or to require Health follow AOP revision processes specified in WAC 173-401 and 40 C.F.R. 70.

Under Permit *Appendix B*, 40 C.F.R. 70.7, and WAC 173-401-725 all AOP revisions that have a potential to increased air emissions require the opportunity for public participation, review by any affected state(s), and review by EPA [40 C.F.R. 70.7 (e)(2)-(e)(4); WAC 173-401-725 (2)(c) – (e), -725 (3)(c) – (e), and -725 (4)(b)]. NERA and the regulations adopted thereunder do not accommodate public participation [RCW 70.98.080 (2)] and do not address review by any affected state(s) or review by EPA. Additionally, neither NERA nor the regulations adopted thereunder provide an opportunity for review by any permitting authority.

While EPA does allow some flexibility in meeting the permit revision requirements, EPA is adamant that any approved state program include public participation, affected state's review, EPA review, and review by the permitting authority¹. However, the regulatory structure under which radionuclides are addressed in the draft Hanford Site AOP does not support amendment and modification of License FF-01 consistent with requirements of Permit *Appendix B*, 40 C.F.R. 70.7, and WAC 173-401-720 through 725.

¹“The State may also develop different procedures for different types of modifications depending on the significance and complexity of the requested modification, but EPA will not approve a part 70 program that has modification procedures that provide for less permitting authority, EPA, or affected State review or public participation than is provided for in this part.” 40 C.F.R. 70.7 (e)(1) (emphasis added)

Comment 9: (general AOP structure): **The regulatory structure used by Ecology in this draft Hanford Site AOP inappropriately cedes regulation of Hanford's radionuclide air emissions to the *Nuclear Energy and Radiation Act* (NERA) and enforcement of these requirements to Health. NERA does not implement the CAA, 40 C.F.R. 70, the *Washington Clean Air Act*, or WAC 173-401, and Health has not been approved to enforce CAA Title V and 40 C.F.R. 70. Radionuclides are a *hazardous air pollutant* under CAA § 112.**

Without Legislative authorization and approval by EPA, Ecology cannot use an AOP to delegate enforcement of radionuclide air emissions to Health. Ecology also cannot choose to remove regulation of radionuclides, a *hazardous air pollutant* under CAA § 112, from requirements of the CAA, 40 C.F.R. 70, the *Washington Clean Air Act* (WCAA), and WAC 173-401. Rather Ecology should have regulated Hanford's radionuclide air emissions through orders issued pursuant to WAC 173-400. In WAC 173-400-075 (1) Ecology incorporates all NESHAPs by reference, including the radionuclide NESHAPs¹. These NESHAPs are enforceable state-wide². Thus, Ecology has all necessary authority to appropriately regulate Hanford's radionuclide air emissions in accordance with the CAA Title V, 40 C.F.R. 70, the WCAA, and WAC 173-401. However, in the draft Hanford Site AOP Ecology ceded regulation of Hanford's radionuclide air emissions to NERA and enforcement of these requirements to Health; actions that are contrary to CAA Title V, 40 C.F.R. 70, and the WCAA.

¹ "National emission standards for hazardous air pollutants (NESHAPs). 40 C.F.R. Part 61 and Appendices in effect on July 1, 2010, are adopted by reference. The term "administrator" in 40 C.F.R. Part 61 includes the permitting authority." WAC 173-400-075 (1)

² The NESHAPs are enforceable statewide. WAC 173-400-020

Comment 10: (general AOP structure): **Contrary to *Clean Air Act* (CAA) § 116¹ [42 U.S.C. 7416] and WAC 173-401-600 (4)², the draft Hanford Site AOP does not provide both federal and state requirements for those requirements regulating Hanford's radionuclide air emissions. Radionuclides are a *hazardous air pollutant* under CAA § 112. EPA does not recognize either a regulatory *de minimis* or a health-effects *de minimis* for radionuclide air emissions above background³.**

In this draft Hanford Site AOP Ecology does not have the option to overlook either requirements of the CAA or requirements in Ecology's regulation.

¹ "However, if both a State or local regulation and a Federal regulation apply to the same source, both must be complied with, regardless of whether the one is more stringent than the other, pursuant to the requirements of section 116 of the Clean Air Act." *Partial Approval of the Clean Air Act, Section 112(l), Delegation of Authority to the Washington State Department of Health*, 71 Fed. Reg. 32276, 32278 (June 5, 2006)

² "Where an applicable requirement based on the FCAA and rules implementing that act (including the approved state implementation plan) is less stringent than an applicable requirement promulgated under state or local legal authority, both provisions shall be incorporated into the permit in accordance with WAC 173-401-625." WAC 173-401-600 (4)

³ "There is no firm basis for setting a "safe" level of exposure [to radiation] above background. . .'
http://www.epa.gov/rpdweb00/understand/health_effects.html#anyamount

Comment 11: (Standard Terms and General Conditions, Section 4.12, pg. 13 & 14 of 57): **Specify the appeal process in state court applicable to requirements in *Attachment 2* that are created and enforced by Health pursuant to RCW 70.98 and the regulations adopted thereunder.**

The appeal process specified in *Section 4.12* does not apply to *Attachment 2* because the Pollution Control Hearings Board (PCHB) does not have jurisdiction over actions by Health¹. Health is not a permitting authority nor does Health have the legal

ability to issue an AOP in accordance with RCW 70.94, Title V of the CAA, and 40 C.F.R. 70.

Identify the appeal process in state court applicable to *Attachment 2*.

¹“The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department [Ecology], the director, local conservation districts, and the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, or local health departments [regarding issuance and enforcement of solid waste permits and permits to use or dispose of biosolids]. . .” RCW 43.21B.110 (1).

Comment 12: (Standard Terms and General Conditions, Section 5.11.4, pg. 24 of 57):
Section 5.11.4 should be revised to require submittal of the annual reports to only EPA and Ecology, both of which are permitting authorities under the CAA.

Health and the regulations it enforces have no legal basis to even appear in an AOP issued in accordance with Title V of the CAA, 40 C.F.R. 70, RCW 70.94.161, or WAC 173-401. Health cannot issue an AOP. Health is not authorized to enforce 40 C.F.R. 70, nor do the regulations Health can enforce implement Title V of the CAA, 40 C.F.R. 70, RCW 70.94.161, or WAC 173-401. Furthermore, Ecology does not have Legislative authorization to obligate Health through requirements in an AOP.

While EPA did grant Health partial authority to enforce the radionuclide NESHAPs¹, that delegation did not impact the EPA determinations regarding agencies in Washington State authorized to enforce CAA Title V and 40 C.F.R. 70². Specifically, EPA did not authorize Health to enforce CAA Title V and 40 C.F.R. 70. Thus, EPA’s partial delegation is outside the framework of CAA Title V and 40 C.F.R. 70³.

Ecology adopted all NESHAPs by reference in WAC 173-400-075 (1)⁴, including the radionuclide NESHAPs. Therefore, under WAC 173-400 Ecology has all necessary authority to regulate radionuclide air emissions addressed by 40 C.F.R. 61 subpart H, including authority to enforce the reporting requirements of 40 C.F.R. 61.94 (b)(9).

Consistent with CAA Title V, 40 C.F.R. 70, and WAC 173-400, change *Section 5.11.4* to require submittal of reports called for in 40 C.F.R. 61.94 (b)(9) to only EPA, a permitting authority under the CAA, and Ecology, the issuing permitting authority. Health remains free to enforce its regulations outside of and independent of a permit issued in accordance with Title V of the CAA, 40 C.F.R. 70, RCW 70.94.161, and WAC 173-401.

¹ See 40 C.F.R. 61.04 (c)(10)

² See Appendix A to 40 C.F.R. 70

³ “Although WDOH works with the Washington Department of Ecology (Ecology) in issuing Title V permits to radionuclide sources, Ecology, not WDOH is the EPA-approved Title V permitting program for such sources.” 71 Fed. Reg. 9059, 9061 (Feb. 22, 2006)

⁴ “National emission standards for hazardous air pollutants (NESHAPs). 40 C.F.R. Part 61 and Appendices in effect on July 1, 2010, are adopted by reference. The term "administrator" in 40 C.F.R. Part 61 includes the permitting authority.” WAC 173-400-075 (1); The NESHAPs are enforceable statewide. WAC 173-400-020

Comment 13: (Standard Terms and General Conditions, Table 5-1, pg. 45 of 57):

Overlooked in both Table 5-1 and in this draft AOP is fact that radon, a radionuclide gas, remains a *hazardous air pollutant* under CAA § 112 (b) whether or not EPA has developed regulation for Hanford. While a literal reading of 40 C.F.R. 61 Subpart Q, “National Emission Standards for Radon Emissions from Department of Energy Facilities” overlooks Hanford, CAA § 112 (j) informs that a Title V permit may not disregard any *hazardous air pollutant* unaddressed by regulation.

Radon is a byproduct of radioactive decay from some radioactive isotopes and is of considerable concern on the Hanford Site. Several of these isotopes exit the Hanford Site via the Columbia River, wind erosion, and as airborne emissions. Furthermore, those members of the public touring Hanford Site facilities, such as the historic B Reactor, were formerly, and perhaps still are, screened for radon contamination on exit.

Radon is a radioactive gas that EPA has determined is the second-leading cause of lung cancer after smoking, and is a serious public health problem.

<http://iaq.supportportal.com/link/portal/23002/23007/Article/14270/Are-we-sure-that-radon-is-a-health-risk> The CAA considers all radionuclide air emissions as a *hazardous air pollutant* (see CAA § 112). Even though 40 C.F.R. 61 subpart H does not regulate radon, and even though a strict interpretation of 40 C.F.R. subpart Q overlooks Hanford, radon remains a regulated air pollutant under CAA § 112 (j) and 40 C.F.R. 70.2¹. Ecology cannot ignore any pollutant subject to regulation under CAA § 112, including § 112 (j), in a permit required by Title V of the CAA and 40 C.F.R. 70. Conditions controlling any pollutant subject to CAA § 112, including § 112 (j), must be included in any permit required by Title V of the CAA and 40 C.F.R. 70.

Include terms and conditions regulating radon in the Hanford Site AOP.

¹“*Regulated air pollutant* means the following: . . . [(5)] (i) Any pollutant subject to requirements under section 112(j) of the Act. . . .” 40 C.F.R. 70.2; ““*Regulated air pollutant*” means the following: . . . (e) pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the FCAA, including sections 112 (g), (j), and (r), . . .” WAC 173-401-200 (26)

Comment 14: (Overlooked emission unit): **Overlooked in this draft Hanford Site AOP is the Columbia River as a source of radionuclide air emissions, including radon.**

The Columbia River is the only credible conduit for radionuclides of Hanford Site origin found in the sediments behind McNary Dam and possibly beyond. This AOP should address the Columbia River as a radionuclide air emissions source, given:

- 1) the recent discovery of significant radionuclide-contamination in the 300 Area groundwater entering the Columbia River; plus
- 2) radionuclide-contaminated groundwater entering the Columbia River from other Hanford Site sources, some, like the 618-11 burial trench, with huge curie inventories;
- 3) the fact that radionuclide decay results in production of airborne radionuclide isotopes such as radon, the second-leading cause of lung cancer and a serious public health problem¹; and
- 4) neither Health nor EPA recognize either a regulatory *de minimis* or a health-effects *de minimis* for radionuclide air emissions above background².

Airborne radionuclides resulting from Hanford's radionuclide contamination of the Columbia River should be subject to monitoring, reporting, and recordkeeping in accordance with the CAA.

¹ Radon is a radioactive gas that EPA has determined is the second-leading cause of lung cancer and is a serious public health problem.

<http://iaq.supportportal.com/link/portal/23002/23007/Article/14270/Are-we-sure-that-radon-is-a-health-risk>

² '[t]here is no firm basis for setting a "safe" level of exposure [to radiation] above background . . . EPA makes the conservative (cautious) assumption that any increase in radiation exposure is accompanied by an increased risk of stochastic effects.'

http://www.epa.gov/rpdweb00/understand/health_effects.html#anyamount (last visited May 3, 2013)

Comment 15: (Statements of Basis, general enforcement authority): **Contrary to 40 C.F.R. 70.7 (a)(5) and WAC 173-401-700 (8), the permitting authority failed to address the legal and factual basis for regulating radionuclide air emissions in the draft Hanford Site AOP pursuant to RCW 70.98, *The Nuclear Energy and Radiation Act* (NERA) rather than in accordance with Title V of the *Clean Air Act* (CAA).**

An AOP is the regulatory product required by Title V of the CAA. The purpose of an AOP is to capture all of a source's obligations with respect to each of the air pollutants it is required to control. Among the pollutants the Hanford Site is required to control are *hazardous air pollutants*, such as radionuclides. However, in the draft Hanford Site AOP radionuclide applicable requirements, and the terms and conditions developed thereunder, are enforced pursuant to NERA rather than in accordance with Title V of the CAA.

The incompatibilities between the CAA and NERA are near total. Some of these incompatibilities are as follows:

- The CAA is a legislative product of the U.S. Congress while NERA (RCW 70.98) was created by the Washington State Legislature.
- State and federal governmental agencies and departments authorized to enforce the CAA cannot enforce NERA.
- The Hanford Site Title V permit is required by the CAA and not required by NERA.
- The CAA requires public involvement to include a minimum public comment period of thirty (30) days. NERA provides for no public involvement. The CAA requires the opportunity for review by EPA and affected states; NERA does not.
- The CAA calls for an opportunity for judicial review in State court of the final permit action by any person who participated in the public participation process. NERA does not provide an opportunity for such judicial review by a qualified public commenter.
- The CAA defines specific processes for permit issuance, modification, and renewal, all of which include EPA notification and public review. NERA does not provide for such modification processes and associated notification and public review.

In short, the CAA and NERA are not compatible in almost every regard.

What then is the legal and factual basis for using NERA rather than the CAA to regulate a CAA *hazardous air pollutant* in a CAA-required permit?

Comment 16: (Statements of Basis): **Overlooked in the Statements of Basis is the legal and factual basis for omitting the Columbia River as a source of radionuclide air emissions.**

The Columbia River is the only credible conduit for radionuclides of Hanford Site origin found in the sediments behind McNary Dam and possibly beyond. This AOP should address the Columbia River as a radionuclide air emissions source, given:

- 1) the recent discovery of significant radionuclide-contamination in the 300 Area groundwater entering the Columbia River; plus
- 2) radionuclide-contaminated groundwater entering the Columbia River from other Hanford Site sources, some with huge curie inventories like the 618-11 burial trench;
- 3) the fact that radionuclide decay results in production of airborne radionuclide isotopes; and
- 4) neither Health nor EPA recognize either a regulatory *de minimis* or a health-effects *de minimis* for radionuclide air emissions above background.

Comment 17: (Attachment 1, page ATT 1-38, condition 8.1): **If the required dust control plan(s) have been prepared, then Ecology must provide the plan(s) to the public for review in accordance with WAC 173-401-800 and 40 C.F.R. 70.7 (h)(2)¹. Ecology should then mark this condition as completed.**

If the plans(s) have not been completed, then Ecology has no option but to require a compliance plan and schedule, both of which are also subject to public review.

Ecology did use the referenced dust control plan(s) in the permitting process but failed to provide them to the public for review.

¹ “EPA has determined that the phrase ‘materials available to the permitting authority that are relevant to the permit decision,’ 40 C.F.R. § 70.7(h)(2), means the information that the permitting authority has deemed to be relevant by using it in the permitting process. . . .” (emphasis added) *Sierra Club v. Johnson*, 436 F.3d 1269, 1284, (11th Cir. 2006)

The following comments are offered on permit *Attachment 2* (License FF-01) even though this license is not required by Title V of the CAA, does not implement Title V of the CAA, cannot be enforced under Title V of the CAA, and cannot be acted upon by any state agency with the authority to enforce Title V of the CAA:

Comment 18: (*Attachment 2*, 1st page) **Edit the first sentence on the first page of *Attachment 2* to correctly reflect that RCW 70.94, the *Washington Clean Air Act*, does not provide Health with the authority to issue licenses. The *Washington Clean Air Act* also does not provide Health with rulemaking authority. *Attachment 2*, Section 3.10, *Enforcement Actions*, correctly captures Health’s authority under the *Washington Clean Air Act*.**

The first sentence should read:

“Under the Nuclear Energy and Radiation Control Act, RCW 70.98 ~~the State Clean Air Act, RCW 70.94 and the Radioactive Air Emissions Regulations~~ Radiation Protection regulation, Chapters

246-247 WAC, and in reliance on statements and representations made by the Licensee designated below before the effective date of this license, the Licensee is authorized to vent radionuclides from the various emission units identified in this license.”

Health cannot claim RCW 70.94 authorizes it to issue any license including a license that allows “the Licensee . . . to vent radionuclides from the various emission units identified in this license.” Furthermore, Health does not have rulemaking authority under RCW 70.94, nor can Health enforce RCW 70.94. RCW 70.94 does grant Health certain enforcement authority for licenses issued in accordance with RCW 70.98 and the rules adopted thereunder¹. *Attachment 2*, Section 3.10, correctly captures Health’s authority under RCW 70.94.

¹ “The department of health shall have all the enforcement powers as provided in RCW 70.94.332, 70.94.425, 70.94.430, 70.94.431 (1) through (7), and 70.94.435 with respect to emissions of radionuclides. This section does not preclude the department of ecology from exercising its authority under this chapter.” (emphasis added) RCW 70.94.422 (1)

Comment 19: (*Attachment 2*, general): **Address federally enforceable requirements as required by EPA’s partial delegation of authority to enforce the radionuclide NESHAPs. 71 Fed. Reg. 32276 (June 5, 2006)**

EPA obligated Health to follow CAA § 116 as a condition of receiving partial delegation of authority to enforce the radionuclide NESHAPs. Health agreed to this condition when it accepted the partial delegation¹. EPA determined CAA § 116 requires Health to include both the “state-only” enforceable requirement plus the federally enforceable analog, regardless of which is the more stringent.

“However, if both a State or local regulation and a Federal regulation apply to the same source, both must be complied with, regardless of whether the one is more stringent than the other, pursuant to the requirements of section 116 of the Clean Air Act.” *Partial Approval of the Clean Air Act, Section 112(l), Delegation of Authority to the Washington State Department of Health*, 71 Fed. Reg. 32276, 32278 (June 5, 2006)

License FF-01 confuses “state-only” enforceable regulation (i.e. not federally enforceable under the CAA) with “state-only” enforceable requirement. While WAC 246-247 is a “state-only” enforceable regulation, requirements developed pursuant to WAC 246-247 implementing federal requirements remain federally enforceable (i.e., enforceable by the Administrator of EPA and the public in accordance with the CAA). Such requirements include:

- those terms and conditions that are required by the CAA or any of its applicable requirements (40 C.F.R. 70.6 (b)) (*see* WAC 173-401-620 (2) for some examples) [WAC 173-401 is “state-only” enforceable yet requirements in WAC 173-401-620 (2) are federally enforceable];
- those requirements clarified by the 1994-95 *Memorandum of Understanding Between the U.S. Environmental Protection Agency and the U.S. Department of Energy*²;
- those requirements that impact emissions (40 C.F.R. 70.6 (a)(1));
- those requirements that set emission limits (*id.*);

- those requirements that address monitoring (40 C.F.R. 70.6 (a)(3)(C)(i)), reporting (40 C.F.R. 70.6 (a)(3)(C)(ii)), or recordkeeping (40 C.F.R. 70.6 (a)(3)(C)(iii)); and
- those requirements enforceable pursuant to 40 CFR 70.11(a)(3)(iii)³.

Health cannot seek to avoid federal enforceability by incorporating federal requirements by reference (*see* WAC 246-247-035⁴) then creating License conditions pursuant to WAC 246-247, overlooking the federal analogs. For example, included with the requirements for emission units in *Enclosure 1* of License FF-01, is the following text:

“state only enforceable: WAC 246-247-010(4), 040(5), 060(5)”.

However, all three WAC citations have federal NESHAP analogs pertaining to control technology (WAC 246-247-010(4)⁵), limitations on emissions (WAC 246-247-040(5)⁶), and the need to follow WAC 246-247 requirements, including federal regulations incorporated by reference (WAC 246-247-060(5)⁷; *see* WAC 246-247-035). The designation “state-only” enforceable applies to only those requirements that cannot also be enforced pursuant to a federal regulation. The radionuclide NESHAPs are federal regulations that exist independent of and in addition to WAC 246-247. Health simply cannot remove radionuclides from the CAA by incorporating the radionuclide NESHAPs into WAC 246-247.

Minimally, all License FF-01 conditions that are required by the CAA or any CAA applicable requirement, any conditions that impact emissions, or set emission limits, or address monitoring, reporting, or recordkeeping, and any requirements enforceable pursuant to 40 CFR 70.11(a)(3)(iii) are federally enforceable.

Even if Health assumes that every requirement created pursuant to WAC 246-247 is “state-only” enforceable, Health is still required by CAA § 116 to include in License FF-01 both the “state-only” enforceable requirement and the federally enforceable analog.

Radionuclides remain federally enforceable pursuant to the CAA regardless of how Health regulates radionuclides under WAC 246-247. A federal CAA requirement implemented by a state regulation is still a federal requirement.

Include all federally enforceable requirements in accordance with CAA §116, as required by EPA.

¹ “Per our discussions over the last few months, we are in agreement to the acceptance of the partial delegation of the requested parts of 40 CFR 61.” email from John Schmidt, WDOH, to Davis Zhen and Julie Vergeront, USEPA Region 10, Dec. 20, 2005 (copy obtained through *foia*)

² *Memorandum of Understanding Between the U.S. Environmental Protection Agency and the U.S. Department of Energy Concerning The Clean Air Act Emission Standards for Radionuclides 40 CFR 61 Including Subparts H, I, O & T*, signed 9/29/94 by Mary D. Nichols, EPA Assistant Administrator for Air and Radiation, and on 4/5/95 by Tara J. O’Toole, DOE Assistant Secretary for Environment, Safety and Health.

³ “The reason for EPA’s decision to grant partial rather than full approval was that WDOH does not currently have express authority to recover criminal fines for knowingly making a false material statement, representation, or certificate in any form, notice or report, or knowingly rendering inadequate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii)” *Partial Approval of the Clean Air Act, Section 112(l), Delegation of Authority to the Washington State Department of Health*, 71 Fed. Reg. 32276 (June 5, 2006); While Health (WDOH) did amend WAC 246-247 to address the cited shortcoming, EPA has not yet announced rulemaking needed to grant Health delegation of authority to enforce 40 CFR 70.11(a)(3)(iii).

⁴ “(1) The following federal standards . . . are adopted by reference . . .

(a) For federal facilities: . . .(i) 40 CFR Part 61, Subpart A . . .(ii) 40 CFR Part 61, Subpart H . . .(iv) 40 CFR Part 61, Subpart Q . . .” WAC 246-247-035

⁵ “The control technology standards and requirements of this chapter apply to the abatement technology and indication devices of facilities and emission units subject to this chapter. Control technology requirements apply from entry of radionuclides into the ventilated vapor space to the point of release to the environment.” WAC 246-247-010(4)

⁶ “In order to implement these standards, the department may set limits on emission rates for specific radionuclides from specific emission units and/or set requirements and limitations on the operation of the emission unit(s) as specified in a license.” WAC 246-247-040(5)

⁷ “The license shall specify the requirements and limitations of operation to assure compliance with this chapter. The facility shall comply with the requirements and limitations of the license.” WAC 246-247-060(5)

Comment 20: (*Attachment 2*, general): **In *Attachment 2*, provide the specific monitoring, reporting, and recordkeeping requirements needed to demonstrate continuous compliance with each term or condition contained in the License FF-01 enclosures.**

Absent specific monitoring, reporting, and recordkeeping requirements, neither Health nor the licensee can determine what constitutes continuous compliance and how continuous compliance can be demonstrated. Also, absent such requirements, the public cannot be assured the licensee is properly controlling Hanford’s radionuclide air emissions. Radionuclide air emissions are so hazardous there is no regulatory *de minimis* nor is there a health-effects *de minimis* for exposure to radiation above background.

Comment 21: (Overlooked emission unit): **Overlooked in *Attachment 2* (License FF-01) is the Columbia River as a source of radionuclide air emissions.**

The Columbia River is the only credible conduit for radionuclides of Hanford Site origin found in the sediments behind McNary Dam and possibly beyond. Health’s license (FF-01) should address the Columbia River as a source for Hanford’s off-site radionuclide air emissions, given:

- 1) the recent discovery of significant radionuclide-contamination in the 300 Area groundwater entering the Columbia River; plus
- 2) radionuclide-contaminated groundwater entering the Columbia River from other Hanford Site sources, some, like the 618-11 burial trench, with huge curie inventories;
- 3) the fact that radionuclide decay results in production of airborne radionuclide isotopes; and
- 4) neither Health nor EPA recognize either a regulatory *de minimis* or a health-effects *de minimis* for radionuclide air emissions above background.

Airborne radionuclides resulting from Hanford’s radionuclide contamination of the Columbia River should be subject to monitoring, reporting, and recordkeeping in accordance with WAC 246-247.

Exhibit E

December 19, 2013

RECEIVED

DEC 19 2013

Mr. Philip Gent
Washington State Department of Ecology
Nuclear Waste Program
3100 Port of Benton Blvd.
Richland, WA 99354

DEPARTMENT OF ECOLOGY
NWP - RICHLAND

Re: Public comments on draft Hanford Site Air Operating Permit Renewal 2, Rev. A

Dear Mr. Gent:

Thank you for providing the opportunity to comment on Revision A of the draft Hanford Site Air Operating Permit (AOP) Renewal. Enclosed are my comments.

I hope you find my comments useful in implementing a public involvement process consistent with the federal *Clean Air Act* (CAA) and with 40 C.F.R. 70. I also hope you find the comments useful in crafting a proposed AOP that complies with both the CAA and the *Washington Clean Air Act*.

Please feel free to contact me at the address below should you have any questions regarding my comments.

Regards,



Bill Green
424 Shoreline Ct.
Richland, WA 99354-1938

Enclosure

cc: w/encl. via email
P. Gent, Ecology
J. Martell, Health
T. Beam, MSA Hanford

The following definitions apply when the associated terms are used in the comments below.

– **permitting authority** is as defined in CAA § 501 (4) [42 U.S.C. 7661 (4)] and 40 C.F.R. 70.2.

“The term ‘‘permitting authority’’ means the Administrator or the air pollution control agency authorized by the Administrator to carry out a permit program under this subchapter.”

CAA § 501 (4) [42 U.S.C. 7661 (4)];

“*Permitting authority* means either of the following: (1) The Administrator, in the case of EPA-implemented programs; or (2) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under this part.” 40 C.F.R. 70.2

- **AOP, Part 70 Permit, and Title V permit** are synonymous, meaning any permit that is required by 40 C.F.R. 70, and Title V of the CAA.

- **CAA or Act** is the *Clean Air Act*, 42 U.S.C. 7401, *et seq.*

- **Health, DOH, or WDOH** is the Washington State Department of Health

Comments include any associated endnote(s) or footnote(s).

Comment 22: All comments submitted to Ecology during the June 30, 2013, through August 2, 2013, public comment period are incorporated by reference.

This commenter submitted 21 comments in accordance with timeframes specified for the earlier public comment period. Ecology has not yet released its response to public comments submitted during the June 30 through August 2, 2013, comment period. Ecology also has not prepared a *proposed permit* and submitted the *proposed permit* and the response to public comments document to EPA for EPA’s 45-day review. Therefore, all comments submitted during the June 30, 2013, through August 2, 2013, comment period continue to apply and are incorporated by reference. Comments include any associated endnote(s) or footnote(s).

Comment 23: (general, AOP) Ecology failed to regulate radionuclide air emissions as required by Title V of the federal Clean Air Act (CAA) and 40 C.F.R. 70 in this draft AOP renewal.

Ecology is the issuing permitting authority and is required by the CAA § 502 (b)(5)(E) and 40 C.F.R. 70.11 (a) to have all necessary authority to enforce permits including authority to recover civil penalties and provide appropriate criminal penalties. However, the regulation used in this draft AOP renewal to control all radionuclide air emissions cannot be enforced by Ecology.

Title V of the CAA and 40 C.F.R. 70 require the public be provided with the opportunity to comment on all draft AOPs. The portion of this draft AOP containing all terms and conditions regulating radionuclide air emissions (*Attachment 2*), including those implementing 40 C.F.R. 61 subpart H, was issued as final without public review, contrary to CAA § 502 (b)(6) [42 U.S.C. 7661a (b)(6)] and 40 C.F.R. 70.7 (h).

Federal law requires a qualified member of the public have the right of judicial review in state court of terms and conditions in the final permit, and that this judicial

review be the exclusive means of obtaining such review in state court. [40 C.F.R. 70.4 (b)(3)(x) & -(xii)] Washington State law requires any appeal of AOP terms and conditions occur before the Pollution Control Hearings Board (PCHB) in accordance with RCW 43.21B. [RCW 70.94.161 (8) and WAC 173-401-620(2)(i)] However, the PCHB does not have jurisdiction over any terms and conditions in this draft AOP renewal that regulate radionuclide air emissions, because these terms and conditions are regulated solely in accordance with RCW 70.98, *The Nuclear Energy and Radiation Act*. RCW 43.21B.110 Thus, in this draft AOP renewal, judicial review in state court of terms and conditions regulating radionuclide air emissions is contrary to 40 C.F.R. 70.4 (b)(3)(xii) and WAC 173-401-620(2)(i).

Comment 24: (general, AOP revision process) Ecology incorrectly assumes terms and conditions in an order issued only to Hanford pursuant to WAC 173-400 cannot be changed by actions taken in accordance with WAC 173-401.

Ecology theorizes that because orders issued to Hanford pursuant to WAC 173-400 (Orders) are defined as an “applicable requirement” under WAC 173-401, conditions in these orders are not subject to change to meet requirements of the operating permit regulation. This theory overlooks that: 1) Orders issued to Hanford pursuant to WAC 173-400 are neither rules¹ nor the product of rulemaking. Thus, changing terms and conditions in these Orders does not require use of the rulemaking process; and 2) Orders issued under WAC 173-400 to Hanford cannot change requirements of WAC 173-401, a rule that is the product of rulemaking. When terms and conditions in an Ecology Order are inconsistent with requirements of WAC 173-401, public comments on an AOP can illuminate these inconsistencies, which Ecology is obligated to correct. Ecology’s theory results in an Order, which is not the product of rulemaking, improperly changing a regulation, which is the product of rulemaking.

What an AOP and the AOP issuance process cannot do is change an applicable requirement that is the product of rulemaking. For example, chapter 70.94 RCW and the rules adopted thereunder are products of rulemaking, and therefore, are not subject to change by terms and conditions in an AOP.

Some of the comments below address Ecology’s failure to include monitoring, reporting, and recordkeeping requirements called for by WAC 173-401 in orders Ecology issued to Hanford under WAC 173-400. WAC 173-401 requires monitoring, reporting, and recordkeeping be sufficient to assure continuous compliance throughout the term of the AOP. [WAC 173-401-615 and -630 (1)] Apparently, conditions in an order issued pursuant to WAC 173-400 are held to a lesser standard. An additional oversight is that WAC 173-400-113 (1) demands Ecology address all applicable pollutants subject to a NESHAPs. However, no order incorporated into this draft AOP addresses radionuclides for those emission units where radionuclide air emissions are implicated. Radionuclides are a *hazardous air pollutant* under CAA § 112 and are subject to requirements in several NESHAPs, including 40 C.F.R. 61 subpart H.

¹ “Rule” means any agency order, directive, or regulation of general applicability. . .” (emphasis added)
RCW 34.05.010 (16)

Comment 25: (Draft Attachment 1, NOC 94-07, Amendment A, pg. 37 of 128, ln. 10)
For Order NOC 94-07, Amendment A, require continuous monitoring and recording of ammonia concentration readings and stack flow rates. Require prompt reporting if the ammonia concentration limit is exceeded. Specify all approved calculation models and “other approved methods”, and provide these “other approved methods” to the public for review unless the approved method is EPA-approved, in which case supply the EPA method number(s).

This condition increases ammonia emissions from 0.34 lbs/hr in the earlier permit offered for review to 2.4 lbs/hr. The operating permit regulation, WAC 173-401, requires monitoring, reporting, and recordkeeping be sufficient to demonstrate continuous compliance with the permit terms and conditions throughout the duration of the AOP. Monitoring, reporting, and recordkeeping for this condition are insufficient to so demonstrate. The referenced condition requires that “[e]missions of ammonia shall not exceed 2.5 lbs/hr from the primary tank ventilation exhaust system”, yet verifying calculations based on ammonia concentration readings and flow rates are only required semi-annually. Continuous compliance demanded by this condition (“shall not exceed 2.5 lbs/hr”) cannot be verified with only semi-annual monitoring using field instruments. Also, Ecology needs to specify all “other approved methods” for this federally-enforceable¹ requirement. (line 19, pg. 37)

¹ All terms and conditions in an AOP are federally-enforceable if not designated as “state-only” enforceable. On line 18 of page 37, Ecology reports this condition as **not** being State-Only enforceable, therefore federally enforceable. See WAC 173-401-625 & 40 C.F.R. 70.6 (b).

Comment 26: (NOC 94-07 (8/29/1994), Rev 1 (12/22/1997), 3 Rev 2 (10/25/1999), Rev 3 (5/7/2008), and Amd A (3/26/2013), Draft Attachment 1, pgs. 36 & 37 of 128)
Missing from order NOC 94-07, the revisions, and the amendment, are applicable requirements needed to assure compliance with radionuclide air emissions. Radionuclides are regulated, without a *de minimis* above background, in 40 C.F.R. 61 subpart H (*National Emission Standards for Emissions of Radionuclides Other Than Radon from Department of Energy Facilities*).

Under WAC 173-400, Ecology is barred from acting on an application that does not contain all applicable standards for *hazardous air pollutants* (WAC 173-400-113)¹, including the NESHAP codified in 40 C.F.R. 61 subpart H. Once subject to Title V of the federal *Clean Air Act* and 40 C.F.R. 70, Ecology is required to both issue a permit containing all applicable requirements and be capable of enforcing all applicable requirements.

¹ “The permitting authority . . . shall issue an order of approval if it determines that the proposed project satisfies each of the following requirements: (1) The proposed new source or modification will comply with all applicable new source performance standards, **national emission standards for hazardous air pollutants**, . . .” (emphasis added) WAC 173-400-113

Comment 27: (3/26/2013, DE05NWP-001 Amd. A, Draft Attachment 1, pg. 59 of 128, ln. 1) **Include the specific language Ecology intends to enforce from sections 3.1 and 3.2 of NOC approval order DE05NWP-001 (2/18/2005) in this draft AOP and re-start public review. Rewrite monitoring, reporting, test methods, test frequency, and bi-annual assessments conditions to include specific requirements that can meet the continuous compliance and compliance verification mandates of WAC 173-401-615 and -630 (1).**

The condition from DE05NWP-001 Amendment A starting on line 1 of page 59 increases ammonia emissions from 0.22 lbs/hr in the earlier draft AOP to 2.9 lbs/hr. The operating permit regulation, WAC 173-401, requires monitoring, reporting, and recordkeeping be sufficient to demonstrate continuous compliance with the permit terms and conditions throughout the duration of the AOP. In this draft AOP Ecology basis monitoring, test methods, test frequency, and bi-annual assessments on particular sections in the original NOC approval order. Ecology is thus obligated to provide these sections of the NOC approval order to support public review. The public was offered this order for review in accordance with WAC 173-400. However, the public has never been offered the opportunity to review the referenced sections of this order as they apply to the more robust continuous compliance and verification requirements of WAC 173-401.

Incorporating NOC order conditions by reference into an AOP does save Ecology permit writers' some energy. However, this practice is at odds with the purpose of CAA Title V¹. Ecology's energy-saving approach fails to provide the permittee, the permitting authority, and the public with specific compliance requirements and the means to easily determine what the permittee must do to demonstrate continuous compliance with these requirements.

¹ "The air permit program will ensure that all of a source's obligations with respect to each of the air pollutants it is required to control will be contained in one permit document. . . . This system will enable the State, EPA, and the public to better determine the requirements to which the source is subject, and whether the source is meeting those requirements." S. Rep. 101-228, 3730 (12-20-89); "Title V permits...consolidate all applicable requirements in a single document." *New York Public Research Interest Group v. Whitman*, 321 F.3d 316, 320 (2d Cir. 2003)

Comment 28: (3/26/2013, DE05NWP-001, Amd A, Draft Attachment 1, pg. 59 of 128, ln. 1) **Missing from amended order DE05NWP-001 are applicable requirements needed to assure compliance with radionuclide air emissions. Radionuclides are regulated, without a *de minimis* above background, in in 40 C.F.R. 61 subpart H (*National Emission Standards for Emissions of Radionuclides Other Than Radon from Department of Energy Facilities*).**

Under WAC 173-400, Ecology is barred from issuing an order that does not comply with all applicable standards for *hazardous air pollutants* (WAC 173-400-113)¹, including NESHAPs codified in 40 C.F.R. 61 subpart H. Once subject to Title V of the federal *Clean Air Act* and 40 C.F.R. 70, Ecology is required to issue a permit containing all applicable requirements and be capable of enforcing all applicable requirements.

¹ “The permitting authority . . . shall issue an order of approval if it determines that the proposed project satisfies each of the following requirements: (1) The proposed . . . modification will comply with all applicable . . . national emission standards for hazardous air pollutants, . . .” (emphasis added) WAC 173-400-113

Comment 29: (NOC Approval Order DE12NWP-001, 3 Rev. (7/24/2013), pg. 90 of 128, ln. 1) **Include the specific language Ecology intends to enforce from sections 3.0 and 3.2 of NOC Approval Order DE12NWP-001, 3 Rev. (7/24/2013), incorporate these sections into the public review file, and restart public review.**

An AOP is to contain all of a source’s obligations with respect to each pollutant the source is required to control. Incorporating sections of the NOC approval order by reference does not satisfy this purpose. Absent language Ecology intends to enforce in the AOP, Ecology, the permittee, and the public have no means of determining, from the AOP, if the more robust continuous compliance and verification requirements of WAC 173-401 can be met.

Provide the permittee, the permitting authority, and the public with specific compliance requirements and the means to easily determine what the permittee must do to demonstrate continuous compliance with these requirements.

Comment 30: (Draft Statement of Basis for Attachment 1, pg. 21 of 36) **Remove line 9 on page 21 of 36 “Radiological contamination abatement” from the list of insignificant fugitive emission abatement activities. Delete the following sentence on page 21 of 36, lines 15 & 16: “The activities listed above may be conducted in radiological and/or chemically contaminated areas and may be conducted in portable containment structures i.e., exhausted greenhouses.”**

Page 21 of 36 includes “Radiological contamination abatement” as an insignificant fugitive source emission abatement activity. On page 19 of 36 Ecology explains that the activities listed as insignificant, and thus exempt from further AOP program requirements, may involve operation of one or more associated point sources. Ecology further explains that categories listed as insignificant will be evaluated on a case-by-case basis to determine applicable requirements.

Ecology overlooks that, by definition, any pollutants entering the environment through a point source cannot be considered fugitive emissions¹. Ecology also overlooks that radionuclide air emissions from Hanford are regulated, without a *de minimis* above background, by 40 C.F.R. 61 subpart H^{2, 3}, a *National Emission Standard for Hazardous Air Pollutants* (NESHAPs). No activity subject to a federal requirement can be considered as insignificant⁴.

Ecology overreaches when it fails to regulate radionuclides, a *hazardous air pollutant* subject to a NESHAPs, as it is required to do pursuant to both WAC 173-400 and Title V of the federal *Clean Air Act*. Ecology further overreaches when it determines “radiological contamination abatement” is an insignificant activity and thus exempt from permit program requirements under WAC 173-401 and 40 C.F.R. 70. Ecology cannot use a 401-permit to rewrite a portion of its own regulation nor can Ecology use an AOP to void a federal regulation.

¹ “**Fugitive emissions**” means emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.’ WAC 173-400-030 (39)

² . See also, *Memorandum of Understanding Between the U.S. Environmental Protection Agency and the U.S. Department of Energy Concerning The Clean Air Act Emission Standards for Radionuclides 40 CFR 61 Including Subparts H, I, O & T*, signed 9/29/94 by Mary D. Nichols, EPA Assistant Administrator for Air and Radiation, and on 4/5/95 by Tara J. O’Toole, DOE Assistant Secretary for Environment, Safety and Health. Available at: http://www.epa.gov/radiation/docs/neshaps/epa_doe_caa_mou.pdf

³ Additionally, EPA does not recognize a *de minimis* for exposure to radionuclides above background, with regard to adverse effects on human health. “There is no firm basis for setting a “safe” level of exposure [to radiation] above background. . . EPA makes the conservative (cautious) assumption that any increase in radiation exposure is accompanied by an increased risk of stochastic effects.’

http://www.epa.gov/rpdweb00/understand/health_effects.html#anyamount (last visited December 5, 2013)

⁴ “[N]o emissions unit or activity subject to a federally enforceable applicable requirement . . . shall qualify as an insignificant emissions unit or activity.” WAC 173-401-530 (2)(a)

Comment 31: (general, statements of basis) As required by WAC 173-401-700 (8) and 40 C.F.R. 70.7 (a)(5), provide the legal and factual basis for regulating radionuclide air emissions in accordance with WAC 246-247 rather than pursuant to WAC 173-400, 40 C.F.R. 70, and Title V of the *Clean Air Act*.

Comment 32: (general, Attachment 2, signature pg.) Provide the public with the opportunity to comment on both federally-enforceable terms and conditions implementing requirements of 40 C.F.R. 61 subpart H and on state-only enforceable requirements created pursuant to WAC 246-247.

Permit *Attachment 2* contains more than 700 pages of terms and conditions regulating all radionuclide air emissions from the Hanford Site, including those terms and conditions implementing requirements of 40 C.F.R. 61 subpart H, (*National Emission Standards for Emissions of Radionuclides other than Radon from Department of Energy Facilities*). Title V of the federal *Clean Air Act*, 40 C.F.R. 70, RCW 70.94.161, and WAC 173-401 all require the public be provided with the opportunity to comment before the permit can be issued as final. According to the signature page, the version of *Attachment 2* presented to the public for the current review was issued as final on February 23, 2012, became effective on February 23, 2012, and was approved on August 30, 2013, 18 months after it was issued and became effective. Even the August 30, 2013, approval date precedes this public comment period, and precedes Ecology’s public release of a response to public comments, Ecology’s preparation of a *proposed permit*, and submittal of both the *proposed permit* and response to public comments to EPA for its 45 day review.

WAC 173-401 does define RCW 70.98 and the rules adopted thereunder as an “applicable requirement”. WAC 173-401-200 (4)(b) While License FF-01 (*Attachment 2*) does implement requirements of RCW 70.98 and the rules adopted thereunder, FF-01 is not a rule¹ and has never been subjected to the rulemaking process². Once License FF-01 is included in the Hanford Title V permit, terms and conditions in this License implementing federally-enforceable requirements are subject to requirements for public participation specified in 40 C.F.R. 70.7 (h). Under WAC 173-401-625 (2), even state-only enforceable requirements are subject to public involvement specified in WAC 173-401-800.

¹ “Rule” means any agency order, directive, or regulation of general applicability. . .” (emphasis added)
RCW 34.05.010 (16) License FF-01 is specific to Hanford, and thus not of general applicability.

² No records were returned from a *Public Records Act* (RCW 42.56) request seeking a copy of forms required for rulemaking under the *Administrative Procedure Act* (RCW 34.05) specific to License FF-01. See Letter to Ms. Phyllis Barney, Public Disclosure Coordinator, Washington State Department of Health, from Bill Green, Re: *Public Records Act* (RCW 42.56) Request, sent certified mail (# 7012 0470 0000 5721 8006), April 26, 2013.

Comment 33: (general, *Attachment 2*) **As required by 40 C.F.R. 70.7 (h)(2), provide the public with all information used in the permitting process to justify:**

- **adding one (1) new emission unit,**
- **modifying 23 existing notice of construction (NOC) approvals, and**
- **deleting nine (9) emission units**

from the previous final version of *Attachment 2*¹, and restart public review.

In interpreting language in 40 C.F.R. 70.7 (h)(2) EPA determined information that must be provided to support public review consists of all information deemed relevant by being used in the permitting process. EPA’s view is captured as a finding in case law. In *Sierra Club v. Johnson*, the phrase “materials available to the permitting authority that are relevant to the permit decision” means “information that the permitting authority has deemed to be relevant by using it in the permitting process”.

“EPA has determined that the phrase ‘materials available to the permitting authority that are relevant to the permit decision,’ 40 C.F.R. § 70.7(h)(2), means the information that the permitting authority has deemed to be relevant by using it in the permitting process. . .” (emphasis added)
Sierra Club v. Johnson, 436 F.3d 1269, 1284, (11th Cir. 2006)

This version of *Attachment 2* contains one (1) new emission unit (200W W-SXPWET-001) and 23 new NOC approvals replacing older versions. In addition there are nine (9) emission units that were either closed or transferred to regulation under CERCLA. All these changes occurred since the final version of *Attachment 2* in existence on August 30, 2013. These changes were affected without providing the public with any information. No NOC applications containing information required by WAC 246-247-110 *Appendix A* were provided; no modification requests or applications for modifications were provided; no closure requests and supporting information were provided. In accordance with 40 C.F.R. 70.7 (h)(2), provide all information used to justify these changes and restart public review.

¹ Draft Statement of Basis for Attachment 2, Table of Changes from FF-01 2-23-12, pgs. 20-25 of 25

Comment 34: (*Attachment 2*, signature page, 1st sentence) **Make the following changes to the first (1st) sentence on the signature page of AOP *Attachment 2*, License FF-01.**

The first (1st) sentence on the signature page of Permit *Attachment 2* reads:

“Under the Nuclear Energy and Radiation Control , RCW 70.98 the Washington Clean Air Act, RCW 70.94 and the Radioactive Protection- Air Emissions, Chapters 246-247 WAC, and in reliance on statements and representations made by the Licensee designated below before the

effective date of this license, the Licensee is authorized to vent radionuclides from the various emission units identified in this license.”

Make the following changes to this sentence:

1. Replace the word “Control” with “Act” so it reads “Nuclear Energy and Radiation Act”. The *Nuclear Energy and Radiation Act* is the correct title of RCW 70.98¹.
2. Remove the “s” from the end of the word ‘Chapters’ to reflect that WAC 246-247 is only one (1) chapter in the Washington Administrative Code (WAC).
3. Remove “the Washington Clean Air Act, RCW 70.94”. While the Washington Clean Air Act (WCAA) does provide Health with the ability to enforce a License issued pursuant to RCW 70.98 in accordance with several paragraphs of the WCAA², the WCAA does not provide Health with the authority to issue a License authorizing “the Licensee [] to vent radionuclides from the various emission units identified in this license”. Only the *Nuclear Energy and Radiation Act* (NERA), RCW 70.98 provides Health with the authority to issue Licenses. Furthermore, Health does not have rulemaking authority under the WCAA.

Quoting from *Attachment 2*, Section 3.10, *Enforcement actions*:

In accordance with RCW 70.94.422, the department may take any of the following actions to **enforce compliance** with the provisions of this chapter:

- (a) Notice of violation and compliance order (RCW 70.94.332).
- (b) Restraining order or temporary or permanent injunction (RCW 70.94.425; also RCW 70.98.140).
- (c) Penalty: Fine and/or imprisonment (RCW 70.94.430).
- (d) Civil penalty: Up to ten thousand dollars for each day of continued noncompliance (RCW 70.94.431 (1) through (7)).
- (e) Assurance of discontinuance (RCW 70.94.435).
(emphasis added) *Attachment 2*, Section 3.10

Thus, in Section 3.10 of *Attachment 2* Health correctly acknowledges its authority under the WCAA is confined to various enforcement actions.

¹ See <http://apps.leg.wa.gov/RCW/default.aspx?cite=70.98&full=true>

² “The department of health shall have all the enforcement powers as provided in RCW 70.94.332, 70.94.425, 70.94.430, 70.94.431 (1) through (7), and 70.94.435 with respect to emissions of radionuclides.” RCW 70.94.422 (1)

Comment 35: (*Attachment 2*, overlooked federally enforceable requirements) *See Comment 19, incorporated here by reference. Neither Health nor Ecology can ignore federal-enforceability of emission limits imposed pursuant to WAC 246-247-040 (5). Limits on radionuclide air emission are required under 40 C.F.R. 61 subpart H, a Title V applicable requirement, and under 40 C.F.R. 70.6 (a)(1)¹. In accordance with WAC 173-401-625 (2)² and 40 C.F.R. 70.6 (b)(2)³ these emission limits must be federally enforceable. Additionally, 40 C.F.R. 61 subpart H does not recognize a regulatory *de minimis* above background for radionuclide air emissions.*

Condition 1 in the notice of construction (NOC) approval orders in AOP *Attachment 2*, Enclosure 1, seems to generally specify an emission limit for the licensed

activity. Health incorrectly credits only WAC 246-247-040 (5) as providing the authority to set these limits. In doing so, Health overlooks 40 C.F.R. 61 subpart H⁴. Forty (40) C.F.R. 61 subpart H requires emission limits for radionuclide air emissions from any point source or fugitive source on the Hanford Site. Health and Ecology also overlook WAC 173-401-625 (2)² and 40 C.F.R. 70.6 (b)(2)³ that prohibit a “state-only” enforceable designation for any requirement subject to either a federal requirement under the CAA (such as 40 C.F.R. 61 subpart H), or subject to any CAA applicable requirement. Forty (40) C.F.R. 70.6 (a)(1)¹ is an applicable requirement under the CAA and 40 C.F.R. 70.6 (a)(1) does require emission limits.

¹“(a) *Standard permit requirements.* Each permit issued under this part shall include the following elements: (1) Emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance. . . .” 40 C.F.R. 70.6

² “[T]he permitting authority shall specifically designate as not being federally enforceable under the FCAA any terms and conditions included in the permit **that are not required under the FCAA or under any of its applicable requirements.**” (emphasis added) WAC 173-401-625 (2)

³ “[T]he permitting authority shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit **that are not required under the Act or under any of its applicable requirements.**” (emphasis added) 40 C.F.R. 70.6 (b)(2) Radionuclides are listed in CAA § 112 and therefore, their control is required in accordance with CAA § 502 (a). 40 C.F.R. 61 subpart H is an applicable requirement mandated by CAA § 112.

⁴ See also: *Memorandum of Understanding Between the U.S. Environmental Protection Agency and the U.S. Department of Energy Concerning The Clean Air Act Emission Standards for Radionuclides 40 CFR 61 Including Subparts H, I, O & T*, signed 9/29/94 by Mary D. Nichols, EPA Assistant Administrator for Air and Radiation, and on 4/5/95 by Tara J. O’Toole, DOE Assistant Secretary for Environment, Safety and Health. Available at: http://www.epa.gov/radiation/docs/neshaps/epa_doe_caa_mou.pdf

Comment 36: (editorial, Statement of Basis, Standard Terms and General Conditions, Renewal 2, Revision A, pg. iv, lines 1 & 2) **Lines 1 and 2 on page iv of the Statement of Basis for Standard Terms and General Conditions contain the following statement: “Health regulates radioactive air emissions under the authority of RCW 70.92, . . .”. Citing RCW 70.92 is likely an error. The title of RCW 70.92 is “PROVISIONS IN BUILDINGS FOR AGED AND HANDICAPPED PERSONS”. Health probably doesn’t regulate radioactive air emissions using authority derived from RCW 70.92.**