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**STATEMENT OF BASIS
HANFORD SITE AIR OPERATING PERMIT
NO. 00-05-006
RENEWAL 2, REVISION A**

**ATTACHMENT 3
BENTON CLEAN AIR AGENCY PERMIT**

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3 **STATEMENT OF BASIS**
4 **HANFORD SITE AIR OPERATING PERMIT**
5 **NO. 00-05-006**
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9

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11
12 This attachment includes regulatory requirements at the Hanford Site for asbestos handling and
13 outdoor burning enforced by the Benton Clean Air Agency (BCAA). In 1994, the Washington
14 State Department of Ecology (Ecology) delegated asbestos handling and outdoor burning
15 regulatory responsibilities to BCAA. The text of the March 11, 1994 delegation letter from
16 Ecology to BCAA is shown in the next page (Enclosure 1).
17

18 Since the issuance of the delegation letter in 1994, a number of personnel and terminology
19 changes have taken place. Specific changes, although not affecting regulatory delegation, are
20 summarized below:
21

- 22 1. The Benton-Franklin Counties Clean Air Agency (BFCCAA) was renamed Benton Clean
23 Air Authority (BCAA) in January 1995 due to reorganization. The organization's name
24 was further revised on September 20th of 2007 from Benton Clean Air Authority (BCAA)
25 to Benton Clean Air Agency (BCAA).
26 2. BCAA is currently located at 526 South Clodfelter Road, Kennewick, WA, 99336.
27 3. "Open burning" was renamed "outdoor burning" in March 2000 by revising
28 WAC 173-425.
29

30 A copy of the most recent memorandum of agreement between DOE and the BCAA regarding
31 asbestos abatement management on the Hanford Site is also provided in this statement of basis
32 (Enclosure 2).
33

34 At the Hanford Site, BCAA enforces Washington Administrative Code 173-425 and BCAA
35 Regulation 1, Article 5, regarding Outdoor Burning. BCAA also enforces 40 Code of Federal
36 Regulations Part 61, Subpart M, on National Emission Standards for Asbestos and BCAA
37 Regulation 1, Article 8, on Asbestos. Attachment 3 of the AOP identifies the BCAA outdoor
38 burning and asbestos handling requirements and the methods of compliance utilized by the
39 Department of Energy at the Hanford Site.
40

- 1 Enclosure 1: The 1994 delegation letter from Ecology to BCAA for asbestos handling and
- 2 outdoor burning.
- 3

1 March 11, 1994
2

3 David A. Lauer, Director
4 Benton-Franklin Counties
5 Clean Air Authority
6 650 George Washington Way
7 Richland, WA 99352-4289
8

9 Dear Mr. Lauer:

10
11 Re: Delegation of Asbestos and Open Burning Regulatory Responsibility
12

13 After receiving your letter of December 15, 1993, regarding asbestos and open burning at the Hanford Site, I
14 realized your immediate concern about these two issues. I have asked Mr. Joe Stohr, Manager of the Technical
15 Assistance and Regulatory Coordination Section, to work on these issues.
16

17 In discussing this matter with Mr. Myron Saikewicz, Manager of the Engineering Section at Ecology's Air
18 Quality Program, we agreed that the Benton-Franklin Counties Clean Air Authority (BFCCAA) should continue
19 to handle asbestos and open burning issues at the Hanford Site. The Nuclear Waste Program is not planning to
20 actively exercise its preemptive authority under RCW 70.105.240 and regulate asbestos and open burning at the
21 Hanford Site. I feel that the Benton-Franklin Counties Clean Air Authority has the needed qualifications and
22 experience to accomplish these regulatory functions at Hanford.
23

24 Ecology exercises "preemptive" authority for all regulatory functions at certain hazardous waste management
25 facilities, including Hanford, based upon RCW 70.105.240. Since Hanford is a federal facility, Ecology
26 exercises this authority only in areas where the federal government has waived its sovereign immunity. Under
27 the Federal Clean Air Act, the federal government has waived sovereign immunity at Hanford. Ecology,
28 therefore, can preempt local government or other state agencies in regulating asbestos and open burning at
29 Hanford.
30

31 Ecology remains reluctant to assume preemptive responsibility in areas where local government is clearly
32 qualified to accomplish such regulatory responsibilities and where it is more appropriate for Ecology to delegate
33 such responsibility. In the case of asbestos and open burning regulations, I believe it is appropriate to delegate
34 such authority to the BFCCAA. This delegation, therefore, extends to BFCCAA, the authority to ensure
35 compliance with 40 CFR 61, Asbestos, Handling, Notifications, and Reporting. WAC 173-425, and applicable
36 local regulations at the Hanford Site.
37

38 In order to further clarify the issues, I would like to respond to the questions addressed in your letter as follows:
39

40 1. The BFCCAA will continue to serve the role that your agency currently has as the recipient of
41 asbestos notifications required under 40 CFR 61.145(b).
42

43 2. Ecology does not grant BFCCAA the authority to collect permit fees. The BFCCAA must decide
44 for itself whether to collect such fees based on its regulatory authority.
45

46 3. Your agency will be responsible for permitting and inspecting fire training areas, and open
47 burning at the Hanford Site.
48

49 4. Your agency will be lead for enforcing the regulations regarding demolition by burning and for
50 gaining compliance with the state open burning regulations at the Hanford Site. Mr. Dave Nylander of our
51 Kennewick Office needs to be contacted by your office on these issues.
52

53 Please be advised that Ecology can withdraw this delegation at any time. However, we will not exercise this
54 option without providing prior notice to BFCCAA. In addition, we believe that RCW 70.105.240 does not give
55 Ecology the option of delegating its final decision-making authority over preempted matters, notwithstanding

1 any delegation to exercise day-to-day regulatory responsibility. Therefore, we request that your office inform
2 Mr. Dave Nylander of our Kennewick Office, prior to taking any final permitting or enforcement actions at
3 Hanford.
4

5 We look forward to a positive and cooperative working relationship with BFCCAA, as we work to assure the
6 health and safety of the citizens of the state. Questions regarding this matter should be addressed to Mr. Bob
7 King at (206) 407-7147. Thank you for bringing this matter to our attention.
8

9 Sincerely,

10
11 Original signed by Dru Butler

12
13 Dru Butler
14 Program Manager
15 Nuclear Waste Program

16
17 DB:BK:db

18
19 cc: James Bauer, DOE-RL
20
21
22

- 1 Enclosure 2: The 2003 memorandum of agreement between DOE and the BCAA regarding
- 2 asbestos abatement management on the Hanford Site.
- 3



**BENTON
CLEAN AIR AUTHORITY**

114 Columbia Point Drive, Suite C
Richland, WA 99352-4387
Phone: (509) 943-3396 -- FAX: (509) 943-2232
E-mail: email@bcaa.net Internet: <http://bcaa.net>

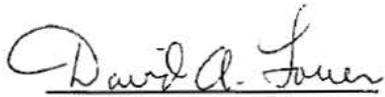
0301588
CC Recd: 04/14/2003

April 3, 2003

**Memorandum of Agreement (MOA) Regarding Asbestos Material/Demolition
Management on the Hanford Site**

The Benton Clean Air Authority (BCAA) Regulation 1, Article 10 "Fees and Charges" had adopted changes with relation to the fee structure for asbestos renovation and demolition projects. The BCAA also received NESHAPS delegation from EPA effective October 19, 2001. These changes, along with the U.S. Department of Energy's (DOE) request to submit a single streamlined annual notification of intent (NOI), prompted a revision to the previous agreement between the BCAA and the DOE, signed November 18, 1996.

This revised MOA continues in the spirit of the original agreement in that DOE and Hanford Contractors will comply with all provisions of the NESHAP (i.e., 40 Code of Federal Regulations 61, Subpart M), as well as Regulation 1, Articles 8 and 10, as clarified by the attached MOA relating to asbestos management under DOE control on the Hanford Site.


Dr. David A. Lauer, Director
Benton Clean Air Authority

**MEMORANDUM OF AGREEMENT (MOA) RELATING TO
REMOVAL OF ASBESTOS MATERIALS AND DEMOLITIONS
ON THE HANFORD SITE**

The U.S. Department of Energy (DOE) and the Benton Clean Air Authority (BCAA) agree that the Richland Operations Office (RL) will take the lead within the DOE, pursuant to this memorandum of agreement (MOA) and the applicable requirements identified under attachment three to the Hanford Site Air Operating Permit. Specifically, this MOA pertains to implementation of requirements identified under Regulation 1, Article 8, "Asbestos," which incorporates by reference the National Emission Standards for Hazardous Air Pollutants (NESHAP) 40 CFR 61, Subpart M, - "National Emission Standard for Asbestos."

A. FREQUENTLY USED DEFINITIONS:

Demolition -- means the wrecking or taking out of any load-supporting structural member of a facility together with any regulated handling operations or the intentional burning of any facility.

Emergency renovation operation -- means a renovation operation that was not planned but results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by nonroutine failures of equipment.

Nonscheduled renovation operation -- means a renovation operation necessitated by the routine failure of equipment, which is expected to occur within a given period based on past operating experience, but for which an exact date cannot be predicted.

Planned renovation operation -- means a renovation operation, or a number of such operations, in which some regulated asbestos-containing material (RACM) will be removed or stripped within a given period of time and than can be predicted. Individual nonscheduled operations are included if a number of such operations can be predicted to occur during a given period of time based on operating experience.

April 3, 2003

A. FREQUENTLY USED DEFINITIONS CONTINUED:

Renovation -- means altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are **demolitions**.

Note: Asbestos removal activities NOT requiring submittal of an NOI include:

- o *Asbestos material NOT meeting the definition of RACM.*
- o *Manual removal of vinyl asbestos tile and/or mastics removed with a solvent.*
- o *Manual removal of tar-based roofing materials in good condition*
- o *Other asbestos removal methods, as defined under 40 CFR 61, Subpart M, Appendix A.*

B. ASBESTOS MANAGEMENT

1. Requests for technical assistance regarding applicability of a project or operation can be directed to the BCAA or the Hanford contractor given responsibility for managing the Hanford Site Asbestos Program. *(Refer to Section E for frequently used definitions regarding compliance with the asbestos Clean Air Act requirements.)*
2. The Hanford contractor managing the Hanford Site Asbestos Program will provide a current asbestos point-of-contact (POC) list to the BCAA, and will provide updates to this list as POCs for the various Hanford contractors change.
3. Emergency Safeguards – RL shall take reasonable precautions (such as those described in Regulation 1, Section 8.4 A and B) to protect the public in the case of asbestos spills or scattering.

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C. NOTIFICATIONS:

Notifications of intent to remove asbestos-containing material or to demolish (hereafter referred to as an **NOI**) shall be submitted to the BCAA in accordance with 40 CFR 61.145(b) and BCAA Regulation 1, Article 8. As specified under these regulatory citations, all projects involving the removal of regulated asbestos-containing material (RACM) in amounts that exceed the BCAA thresholds **AND ALL** projects meeting the definition of a demolition (whether asbestos is present or not) require submittal/coverage under an NOI with the BCAA. Streamlined methods for an applicable facility/project to submit an NOI are outlined below. For CERCLA activities, a courtesy summary will be provided to the BCAA in lieu of an NOI, as identified in C.4, below.

1. An NOI for asbestos **renovation** operations meeting applicability under BCAA Regulation 1, Article 8, will be submitted for new individual projects not already covered under C.2, below. For these projects, the NOI shall be submitted to the BCAA at least 10 working days prior to the start of asbestos removal activities. An **exception** to the 10-day advance NOI submittal requirement is offered for activities meeting the definition of **emergency renovation operations**. Asbestos renovation activities under this scope shall complete the Emergency Waiver Request Form (available from the BCAA) **and** an NOI form and submit both forms to the BCAA in accordance with the instructions provided on the forms and this MOA.
2. Projects with planned or nonscheduled asbestos renovation operations can satisfy the NOI submittal requirements with coverage under a combined annual

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NOI estimate for DOE Contractors. The annual NOI will be received by the BCAA at least 10 working days before the end of the calendar year preceding the year for which notice is being given. DOE Contractors shall maintain documentation on all jobs included under the annual estimate and make this information available upon inspection. The annual NOI may only include:

- **planned renovation operations** involving individual **nonscheduled renovation operations** if the amount of RACM is less than 10 linear feet or 48 square feet, and
- **planned renovation operations** that are scheduled to be conducted during the calendar year, that involve less than 260 linear feet or 160 square feet.

3. **Demolition** projects meeting the applicability of a demolition, pursuant to 40 CFR 61, Subpart M, shall file an NOI under one of the following methods:

- a. Projects involving asbestos renovation that exceed the BCAA limits **AND** involve a demolition can satisfy the requirement for submittal of an NOI with a combined NOI (i.e., the asbestos POC would check both the appropriate asbestos renovation **and** demolition boxes on a single form) for submittal to the BCAA at least 10 working days before the project begins. Fees will be assessed for both actions, pursuant to the fee structure outlined in Regulation 1, Article 10.
- b. All demolition projects meeting the definition under 40 CFR 61 (**even if there is no asbestos present**) and not already covered under a combined NOI submittal, C.3.a., above, will require submittal of an NOI at

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least 10 working days before the demolition activity begins. The fees shall be in accordance with BCAA Regulation 1, Article 10.

4. Hanford Site asbestos renovation or demolition activities regulated/performed under CERCLA will provide a courtesy summary to the BCAA in lieu of the NOI administrative process. The summary will accompany the annual NOI submittal to the BCAA (see C.3 above) and will include the following information:
 - a. Project location,
 - b. Planned OR Ongoing during the respective calendar year,
 - c. Lead agency identification, and
 - d. Identification of whether the activity is an asbestos renovation and/or demolition.

5. NOIs provided to the BCAA, as described under C.1 through C.3, above, will be via U.S. Postal Service, commercial delivery service, hand delivery service, or other equivalent method approved by the BCAA.

D. INSPECTIONS:

BCAA personnel performing inspections of asbestos management activities in controlled areas of the Hanford Site will adhere to RL's standardized access requirements. These requirements include two standard levels of controlled area access to ensure appropriate training and/or orientations have occurred prior to entrance of a controlled area. The Regulatory Compliance and Analysis Division of

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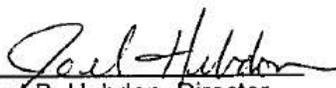
DOE-RL is the point of contact organization regarding access requirements for regulators.

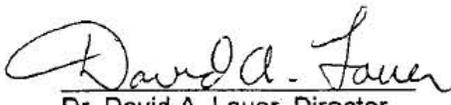
E. PAYMENT:

Payment shall be made in accordance with Regulations 1, Article 10, and this MOA, as more specifically set forth below:

1. BCAA will bill the Regulatory Compliance and Analysis Division of DOE-RL with a copy to the Hanford contractor managing the Hanford Site Asbestos Program, or such other contractor as RL may direct by written notification. Invoices will be sent through U.S. mail by the last day of each month following the end of each calendar quarter for all notifications under C.1 through C.3, above, that were processed during the preceding quarter.
2. The Hanford contractor or the Department of Energy will make prompt payment on all valid invoices from BCAA, by payment methods approved by the BCAA. If payment is not received as per the invoice, BCAA may require payment prior to accepting each additional new NOI until said payment is received.
3. Only names identified on the POC list, see B.2 above, will be authorized to utilize the invoice billing/payment system for fees incurred. All other subcontractors processing NOIs will pay the required fee upon submittal of the NOI to the BCAA.

DATED THIS 8th DAY OF APRIL, 2003


 Joe B. Hebdon, Director
 Regulatory Compliance & Analysis Division
 U.S. Department of Energy,
 Richland Operations Office


 Dr. David A. Lauer, Director
 Benton Clean Air Authority

April 3, 2003