DEPARTMENT OF
ECOLOGY
State of Washington

Response to Comments

Hanford Air Operating Permit, Revision B

March 22 – April 24, 2015, with extension to May 8, 2015

Summary of a public comment period and responses to comments

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March 22 – April 24, 2015, with an extension to May 8, 2015

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INTRODUCTION

The Washington State Department of Ecology's Nuclear Waste Program (NWP) regulates air pollution sources at the Hanford Site through permits. These permits ensure Hanford's air emissions stay within regulatory limits to protect people and the environment. The Hanford Air Operating Permit puts all of the various emission requirements into a single composite permit.

The purpose of this Response to Comments is to:

- 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, Revision B, March 22 – April 24, 2015, with an extension to May 8, 2015.
Permit:	*Hanford Air Operating Permit, Revision B*

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

This permit is a revision of the AOP and incorporates changes made during 2013 and 2014.

PUBLIC INVOLVEMENT ACTIONS

NWP encouraged public comment on the Hanford Air Operating Permit during a 30 day public comment period held March 22 through April 24, 2015. During this comment period, a request was submitted to Ecology to extend the comment period. Ecology extended the comment period two weeks. The extended comment period ended on May 8, 2015.

A public notice announcing the comment period was mailed to 1436 interested members of the public. Copies of the public notice were distributed to members of the public at Hanford Advisory Board meetings.

The original comment period was also identified using the Department of Ecology's March 10, 2015, Permit Register. The extension to the comment period was identified using the Permit Register on April 24, 2015.

A public announcement legal classified advertisement was placed in the Tri-City Herald on March 22, 2015, for the original comment period. A public announcement legal classified advertisement was placed in the Tri-City Herald on April 24, 2015, notifying the public of the extension of the original public comment period to May 8, 2015. A notice announcing the start of the comment period was sent to the Hanford-Info email list, which has 3330 recipients. The comment period was also posted as an event on Ecology's Hanford Education & Outreach Facebook page.

The Hanford information repositories located in Richland, Spokane, and Seattle, Washington, and Portland, Oregon, received the following documents for public review:

- Public notice
- Transmittal letter
- Statement of Basis for the proposed Hanford Air Operating Permit, Revision B
- Draft Hanford Air operating Permit, Revision B
- Supporting documents

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

1. Public notice (focus sheet)
2. Classified advertisement in the *Tri-City Herald*
3. Notice sent to the Hanford-Info email list
4. Event posted on Ecology Hanford Education & Outreach Facebook page

THE ENVIRONMENTAL PROTECTION AGENCY ORDER TO ECOLOGY

The Environmental Protection Agency (EPA) issued an Order on May 29, 2015, granting in part and denying in part two petitions for objection to permits 00-05-006, Renewal 2, and 00-05-006, Renewal 2, Revision A (the Hanford Air Operating Permit Renewal 2 and Revision A). The Order is attached as Exhibit F.

The EPA granted Claim 3B "… the Petitioner's request to object to the Hanford Title V Permit on the basis that Ecology's record is inadequate with respect to addressing Subpart A and H in the Hanford Title V Permit." The EPA also proposed a number of options that could be used to address this inadequacy. Additionally, the EPA clarified the scope of judicial review in a discussion under Claim 4.

Ecology and Health discussed the findings of the Order and selected to implement one of the suggestions in the Order. Ecology will "attach an addendum to the Hanford Title V Permit to correct any omissions or errors – if any – contained in the license with respect to Subpart A and H, since Ecology also has authority to enforce the NESHAP." The Addendum will also be used to correct errors (if any) in Attachment 2 not related to Subpart A or H enforcement (e.g. administrative changes, State-Only requirements, etc.) if Health requests Ecology to add the correction to the Addendum.

This addendum to the Hanford Title V Permit is located in the Attachment 2 Section of the permit. The addendum contains requirements that the Permittee has to abide by in addition to the requirements in Attachment 2. Health will use the addendum in Attachment 2 to correct the underlying radiological air emission license(s) (RAEL) in the next revision of the Hanford RAEL (FF-01).

In the following "Response to Comments" section, responses that indicate information will be added or placed in the addendum to Attachment 2 indicates that Ecology has, in accordance with the advice from EPA, placed corrections to the license with respect to Subpart H in the addendum.

In the EPA Order, fifteen specific responses to the Hanford AOP Renewal 2 and the Hanford AOP Renewal 2, Revision A were identified. These specific comments were not part of the comments received during the public comment period for the Hanford AOP Renewal 2, Revision B. They have been added as responses 110-124 to respond to the objection raised by the EPA. The responses provided here are not the original responses (the responses the EPA objected to), but are new responses prepared under consideration of the EPA Order.

The previous response to comments are included as Exhibit G and Exhibit H

LIST OF COMMENTERS

Commenter Identification:

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
Johns, William	Citizen	1	5
Green, Bill	Citizen	2	5
Conlan, Mike	Citizen	3	6
Kaldor, Reed	Contractor to permittee	4	6
Green, Bill	Citizen	5 - 38	7-26
Poirier, Jeanne	Citizen	39	26
Vanni, Jean	Citizen	40	27
Integrated comments from USDOE	USDOE-RL and USDOE-ORP	41 - 71	27-35
Sanders, Beth	Citizen	72	35
Thorton, Dale	Citizen	73	36
Carpenter, Tom	Hanford Challenge	74 - 109	36-55
Various	Response to EPA Objection	110-124	56-63

RESPONSE TO COMMENTS

The NWP accepted comments on the draft AOP from March 22 through April 24, 2015, with an extension to May 8, 2015. 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).

Revision B. of the AOP was considered by Ecology to be significant enough from a structural formatting basis that the entire AOP was opened for comment by the public. Requirements for many emission/discharge points did not change between Revision A and B, but the change in format and grouping would make it difficult to specify what did and what did not change. It was decided to open the entire AOP, Revision B, to comments to minimize any potential confusion on the part of commenters. Responses 1 through 109 are on comments received for the complete Revision B of the Hanford AOP and comments 110 through 124 are from the Renewal 2 and Revision A of the Hanford AOP.

Each comment is addressed separately. Please refer to the References section of this document for Exhibits A through H. The NWP's responses directly follow each comment in italic font. Verbatim copies of all written comments are attached in Appendix B.

Ecology has attached an addendum to the Hanford Title V Permit to correct an errors contained in the license with respect to Subpart A and H, since Ecology also has authority to enforce the NESHAP.

Comment # 1 from Bill Johns, dated March 23, 2015
"If we were building with paper everything would be done. Enough is enough. Diesels temp or permanent. You guys are making it impossible to complete anything with a reasonable cost and timeframe. Stop it!"

Ecology Response:
The Hanford Air Operating Permit (AOP) was created under rules and regulations to implement both the Federal Clean Air Act and the Washington Clean Air Act. Both Acts have numerous parts specific to certain industrial activities (e.g. coal fired power plant, cement kiln, etc…) or specific to types of emission units (e.g. stationary diesel engines). Both Acts also require the creation of a single Permit (the AOP) to contain all of the various and distinct permits a permittee is required to follow. This allows for the permittee, the regulatory agency, and the public to go to one Permit and determine requirements for the site.

Comment # 2 from Bill Green, emails dated March 25 to March 26, 2015

1. "I downloaded the documents supporting Revision B to the Hanford Site AOP and noticed the Attachment 2 file appeared unchanged from the version in Revision A. Ecology's public announcement stated the scope of Revision B included a new radioactive air emissions license. Would it be possible to get an electronic copy of Health's new license?

2. Two of the reasons I am suspicious the included file for Attachment 2 was incorrect are: 1. the date of the signature is August 30, 2013; and 2. the definitions from WAC 246-247 on page 9/843 do not reflect Health's most current rulemaking where the definition of "license" was changed.
3. Ecology's announcement (Publication # 15-05-003) specifically states: "the Washington State Department of Health has issued a new radioactive air emissions license." The announcement strongly implies incorporating this new license is a major reason for the revision. Is Ecology's announcement correct?

Ecology Response:

1. Attachment 2 is indeed the new FF-01 license issued by the Department of Health.
2. The signature was not changed because the Department of Health only updates the signature page when they change general conditions. The Department of Health will examine their license process and evaluate the potential to update the license in some manner to reflect the effective or issue date of the license
3. Ecology's announcement is correct. The license in AOP Revision B is a revision (e.g. new) from the license in Revision A.

Comment # 3 from Mike Conlan, dated April 1, 2015

"It makes sense to have all the info for air emissions in one database - that really should have been done years ago - government does move at a snail's pace esp. w/pollution issues (lobbyists).
Hanford:
1) completely clean the Hanford site -
2) don't allow anymore radioactive waste on Hanford -
3) get the radiation out of the ground water seeping into the Columbia"

Ecology Response:

1. The Hanford Air Operating Permit covers active emissions to the atmosphere. It is not a Permitting mechanism in and of itself to clean-up the Hanford Site. Other Programs on the Hanford Site (e.g. the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)) are used to clean-up the Hanford Site
2. The Hanford Air operating Permit has no authority over the allowance of radioactive waste on Hanford. It covers any emissions from sources (toxic or radiological) on the Hanford Site.
3. The Hanford Air Operating Permit covers 'air' emissions. Groundwater contamination is covered under other programs (e.g. CERCLA).

No changes to the Permit are required.

Comment # 4 from Reed Kaldor, representing USDOE, dated March 18, 2015

Thank you for the letter. One thing I noticed is that in the current version of the FF-01 license, EU 1419 in Table 2-1 is identified as J-969W1, I think it should have been J-696W1. This would keep the nomenclature similar to the stack nomenclature when it was EU 62 and make it easier to track

the change in the future if needed. Probably not a big deal but I thought I would bring it to your attention

Ecology Response:
The commenter is correct. This correction will be placed in the Addendum to Attachment 2.

Comment # 5 from Bill Green, dated April 23, 2015 (Mr. Green comment #1)
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 of this draft AOP is 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), because this structure does not provide Ecology, the sole permitting authority, with the legal ability to enforce all standards or other requirements controlling emissions of radionuclides, a hazardous air pollutant under CAA § 112 [42 U.S.C. 7412].

Ecology Response:
The commenter claims that 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 (EPA) 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.

This issue was also raised and responded to by the EPA in their order granting in part and denying in part two petitions for objection to permits (attached as Exhibit F).

Please see Exhibit A at p. 1-4; Exhibit B at p. 3, Issue 1, Exhibit F at p. 12 - 13 Claim 1

No change in the AOP is required

Comment # 6 from Bill Green, dated April 23, 2015 (Mr. Green comment #2)
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 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, contrary to Clean Air Act (CAA) section 502 (b)(5)(A)[1] [42 U.S.C. 7661a (b)(5)(A)], 40 C.F.R. 70[2], and WAC 173-401[3].

Ecology Response:
Please see the response to comment # 5.

No change in the AOP is required.

Comment # 7 from Bill Green, dated April 23, 2015 (Mr. Green comment #3)

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 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, 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 173-401-800[4]. 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; Exhibit C,. p.2; and Exhibit F, p. 23

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

The FF-01 license is completed by the Department of Health and sent as a unit to the Department of Ecology for inclusion into the Hanford Air Operating Permit (AOP) as an applicable requirement. The mechanism to change the FF-01 license is not part of the AOP process under Washington Administrative Code 173-401. However, if a correction needs to be represented in the AOP to correct any errors or emissions contained in the license with respect to Subpart A or H, an addendum will be added to Attachment 2 of the AOP, as Ecology also has authority to enforce the NESHAP. The addendum will contain requirements that the Permittee will have to abide by in addition to the requirements of Attachment 2.

No change in the AOP is required.

Comment # 8 from Bill Green, dated April 23, 2015 (Mr. Green comment #4)
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)[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.

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, Exhibit C, p. 1, and Exhibit F, p. 23

The requirements of Health license issued under state law is appealable within the timeframe provided after the license is issued, but only the applicant or licensee can appeal under RCW 70.98.080, 70.98.130(3) and RCW 43.70.115. But, per the EPA Order (Exhibit F), bottom of page 24 – 25 and footnote 18, any conditions in the Health license that are used to address federal requirements are appealable to the PCHB at the time the AOP is issued/finalized.

No change in the AOP is required.

Comment # 9 from Bill Green, dated April 23, 2015 (Mr. Green comment #5)
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 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, contrary to RCW 70.94.161 (2)(a)[1] and WAC 173-400-700 (1)(b).

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. 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 incorporated all of the applicable requirements, was prepared by and engineer, 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 # 10 from Bill Green, dated April 23, 2015 (Mr. Green comment #6)
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, regulate radionuclide air emissions in accordance with WAC 173-400 rather than in accordance with WAC 246-247. Radionuclides regulated as an applicable requirement under WAC 173-401, require pre-issuance review by the public, affected states, and EPA; are subject to judicial review by the Pollution Control Hearings Board; and can be enforced by Ecology; all of which satisfy requirements of the Clean Air Act. Radionuclides regulated pursuant to WAC 246-247 cannot satisfy these CAA requirements.

Ecology Response:
Please see the response to Comment # 7, Comment # 8, Exhibit A, Exhibit B, Exhibit C, and Exhibit F.

No change in the AOP is required.

Comment # 11 from Bill Green, dated April 23, 2015 (Mr. Green comment #7)
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, is not authorized by EPA to implement Part 70, and cannot be enforced by Ecology, the issuing permitting authority

Ecology Response:
Please refer to Exhibit A and Exhibit F.

No change in the AOP is required.

Comment # 12 from Bill Green, dated April 23, 2015 (Mr. Green comment #8)
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.

Provide an accurate inventory of regulated air pollutants expected from Tank Farm point sources and fugitive sources that is consistent with the findings of the Hanford Vapor Report1.

Ecology Response:
Ecology does not question the data presented in the Hanford Tank Vapor Assessment Report (TVAR), but the applicability or relevancy of the data to the Federal Clean Air Act and the Washington Clean Air Act is not clear as the data is lacking important meta-data (e.g. where was the sample collected, how was the sample collected, what protocols were used for sample collection, etc.).

Ecology doesn't have access to the actual data presented in the TVAR and can only depend on the information as presented in the report. This raises a question on how relevant the data are for use in determining ambient air concentration data to be compared to acceptable source impact level (ASIL) values of Washington Administrative Code 173-460. WAC 173-460 is a State-Only requirement.

The objective of the Hanford Tank Vapor Assessment Team is stated on page 12 of 153 of the TVAR as "WRPS asked the Savannah River National Laboratory (SRNL) to assemble and lead the Hanford Tank Vapors Assessment Team (TVAT) 2014 to determine the adequacy of the established WRPS program and prevalent site practices to protect **workers** *from adverse health effects of exposure to the chemical vapors on the Hanford tank farms." [emphasis added]*

Approval Orders incorporated into the AOP as applicable requirements were issued under the Clean Air Act (CAA) and its amendments regulating ambient air. Ambient air is defined in 40 CFR Part 50.1 (e) as "… that portion of the atmosphere, external to buildings, to which the general public has access." [emphasis added] In addition, WAC 173-460-070 requires compliance with the state TAPs requirements to be demonstrated "in any area to which the applicant does not restrict or control access." The Hanford site is land owned or controlled by the source and to which general public access is precluded by a fence or other physical barriers. The air at the Hanford Site doesn't qualify as ambient air. Therefore, the State TAP requirements need not be met within the boundaries of the Hanford Site. However, on-site personnel are covered by other laws, rules, and regulations in regards to their safety.

The Tank Farm emissions for double shell tanks (DSTs) in the original application for DSTs were based on a number of conservative assumptions designed to overestimate emissions:
1) The highest emission rate from any given tank for each toxic air pollutant (TAP) was assumed to be the emission rate for that pollutant for all tanks in the Double Shell Tank (DST) tank farm. This results in a 'worse case tank' in regards to TAPs emitted.
2) When a TAP had values below the laboratory detection limit, the laboratory detection limit was assumed to be the TAP's value.
3) Based upon mixer pump tests in DST 241-AZ-101, it was assumed the headspace concentrations increased by a factor of 10 during waste mixing activities.
4) The maximum per tank emission rate was multiplied by a factor of 10 for each assumed mixing tank and 1 for each quiescent tank.
5) The AY/AZ tank system has four tanks, so the multiplication factor was 22 (2 mixed tanks for 20 and 2 quiescent tanks for 2 more, yielding 22). However, the AP tank farm contains 8 tanks (2 mixed tanks and 6 quiescent tanks) for a multiplication factor of 26. As 26 is the more conservative value, 26 was used as the multiplication factor for all emissions from both the AY/AZ tank farm, the SY tank farm and the AP tank farm.

The concentrations of all of the TAPs were standardized to mg/m^3 at 25°C to allow for uniformity and then multiplied by the flow rate from the tank (provided by the exhauster) and converted to a flux per tank in grams per second (g/s). The flux was multiplied by the dispersion factor determined from the approved modeling program to yield the maximum offsite concentration in µg/m^3. This value was directly compared to the Acceptable Source Impact Levels (ASIL) from Washington Administrative Code 173-460-150.

The results indicated that dimethyl mercury was the only compound that had a calculated value in excess of the ASIL value (3.23E-08 µg/m^3 and 1.00E-99 µg/m^3 respectively). It was for this exceedance the permittee applied for a Tier 2 analysis.

The next two TAPs closest to exceeding an ASIL limit were n-Nitrosodimethylamine (2.17E-4 µg/m^3 ASIL and 6.82E-5 µg/m^3 calculated) at ~ 31.4% of the ASIL and Chromium Hexavalent (6.40E-5 µg/m^3 ASIL and 2.63E-5 µg/m^3 calculated) at ~38.8% of the ASIL.

Dimethyl mercury is the only compound exceeding the ASIL values in WAC 173-460. No certified instrumentation currently exists to provide real time monitoring of dimethyl mercury emissions. Instrumentation does exist for mercury emissions, but this instrumentation measures all of the mercury being emitted (as elemental mercury) and is not specific to dimethyl mercury. Therefore, using a mercury monitor would not be indicative of dimethyl mercury release values. In addition, elemental mercury has a distinct and different ASIL value from dimethyl mercury, and, while a mercury monitor would provide information relevant to the elemental mercury ASIL, it would not provide information relevant to the dimethyl mercury ASIL. Because real-time monitoring of dimethyl mercury is not possible, analysis of dimethyl mercury in the emissions would require collecting a sample, submitting the sample to a laboratory, waiting for analysis and notification of results, and then comparing the results to emission limits, a process that typically takes weeks or months. As this process isn't timely, it was deemed prudent to select a more readily measured compound to use as a surrogate for dimethyl mercury.

The permit was based upon the highest measured value for each pollutant emitted from all quiescent tank sampling events. Ecology used these values to establish the ratio between the emissions of all tank emission compounds. This ratio was the basis for estimating compound-by-compound emissions values from dispersion modeling. Using this ratio, it is possible to estimate the emissions of any emitted compound if the emissions of just one compound has been measured. Consistent with this analysis, NOC approval order DE11NWP-001 Rev 3 uses measured emissions of ammonia to estimate emissions of dimethyl mercury. Thus Ecology is not considering all toxic air pollutants expected from the tank to be ammonia, but is using ammonia and the modeled ratio between ammonia and all other toxic air pollutants.

Ammonia was selected as a surrogate for dimethyl mercury as it:
1) Can be directly measured using monitoring equipment.
2) Is emitted from the tanks in concentrations facilitating measurement with a variety of instruments.
3) Has EPA established sampling and analysis protocols

Ecology used the ratio representation approach outlined above to use ammonia emission concentrations to determine the dimethyl mercury emission concentrations. The dimethyl mercury emission concentration from the dispersion modeling has a corresponding emission concentration for ammonia. It is this ammonia value that Ecology is using as a surrogate measurement.

As discussed above, the assumptions used in preparing the modeling for the applicable requirement was a conservative estimate and covers the emission levels presented in the TVAR. Therefore, no change is required to the Permit.

Comment # 13 from Bill Green, dated April 23, 2015 (Mr. Green comment #9)
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.

Reopen Hanford's AOP in accordance with 40 C.F.R. 70.7 (f)(1)(iii) & (iv) and revise Tank Farm emission limits, monitoring, and sampling to be consistent with the regulated air pollutants expected pursuant to the Hanford Vapor Report (W.R. Wilmarth et al., Hanford Tank Vapor Assessment Report, SRNL-RP-2014-00791, Oct. 30, 2014)[1]. The Hanford Vapor Report establishes that all previous estimates of emissions by the permittee understated both the number of regulated air pollutants and the concentration of these regulated air pollutants in Tank Farm emissions from both point sources and from fugitive sources. Absent an accurate assessment of emissions, Ecology cannot establish appropriate emission controls, emissions limits, and monitoring, reporting, and recordkeeping conditions that assure continuous compliance with requirements of the federal Clean Air Act (CAA).

Based on the findings in this report, the Washington State Attorney General served the U.S. Department of Energy and the responsible Hanford contractor with a Notice of Endangerment and Intent to File Suit (NOI) under the Resource Conservation and Recovery Act (RCRA). (NOI enclosed as Enclosure 3.) A second NOI regarding these same worker exposures was filed by Hanford Challenge, the Washington Physicians for Social Responsibility, and the United

Association of Plumbers and Steamfitters, Local Union 598, the local union which represents the exposed workers

Ecology Response:
Please see response to comment # 12.

Additionally, as the commenter states, the Notice of Endangerment and Intent to File Suit (NOI) was issued under the Resource Conservation and Recovery Act (RCRA) for worker endangerment. It was not issued under the Clean Air Act because the CAA regulates ambient air and the workers are not in ambient air as explained in response to comment # 12.

No change to the permit is needed.

Comment # 14 from Bill Green, dated April 23, 2015 (Mr. Green comment #10)
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.

Supply a *schedule of compliance*[1] as required by 40 C.F.R. 70.6(c)(3) and WAC 173-401-630 (3) for establishment of monitoring and for identification and control of emissions of previously unaccounted for *hazardous air pollutants* (HAPs) and *toxic air pollutants* (TAPs), including those associated with transient peaks in release rates from Tank Farm emissions units. Also, in accordance with 40 C.F.R. 70.7 (h) and WAC 173-401-800, provide the public with the opportunity to review the schedule of compliance, and any resulting applicable requirements Ecology incorporates into the Hanford Site AOP.

Ecology Response:
Please see responses to comments # 12 and # 13.

Additionally, the underlying Notice of Construction Approval Orders incorporated into this AOP as applicable requirements considered the emissions for the discharge points covered by those NOCs. The impact to ambient air was evaluated at that time using modeled impacts to the ambient air from the best available sample data and application of conservative assumptions. From these evaluations Approval Orders were issued to the Permittee to operate the emissions points.

A schedule of compliance is not required because hazardous air pollutants (HAPs) and toxic air pollutants (TAPs) have not reached ambient air in concentrations requiring action or have already been assigned permit conditions in the underlying applicable requirement (e.g. NOC permit). WAC 173-460-150 is used with TAPs to determine when modeling is required. The processes in WAC 173-460 have been followed for NOC Approval Orders that have become incorporated into this AOP. HAPs are regulated via the NESHAPs, which are also incorporated into the AOP. As such, the requirements for HAPs and TAPs have been incorporated into the AOP, and the permittee is required to follow those requirements, so there is no need for a schedule of compliance.

No change to the permit is needed.

Comment # 15 from Bill Green, dated April 23, 2015 (Mr. Green comment #11)
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.

Provide emission limits, and associated monitoring, reporting, and recordkeeping requirements sufficient to assure continuous compliance with any requirements for control of all regulated air pollutants anticipated by the Hanford Vapor Report[1] and expected from Tank Farm emissions units[2].

The word "person" is defined in the CAA without any association to any property boundary.

Additionally, criminal enforcement under 42 U.S.C. 7413 [CAA § 113] applies to harm suffered by a "person", without reference to the location of that "person" when harmed.

Ecology Response:
Please see responses to comments #12, #13, and # 14.

Additionally, the requirements for monitoring, reporting, and recordkeeping is specific to each emission unit and related to the type of emission being monitored. Each emission unit has the appropriate monitor requirements in the issued approval order for that unit. These requirements become part of the AOP monitoring, reporting, and record keeping requirements. As such, each emission unit is subject to appropriate monitoring, reporting, and recordkeeping emission data. It is agreed that certain emission units have different points of compliance (e.g. opacity at the stack, HAPS and TAPS in ambient air, etc…), but these are addressed in the NOC approval orders and the AOP.

The commenter points out that the federal Clean Air Act defines "person" without reference to the site boundary, and makes it a criminal offense to place a "person" in imminent danger, without reference to the location of that "person" when harmed, citing 42 USC 4713 [CAA § 113]. The commenter neglects to note that the provision cited, 42 USC 7413(c)(4) makes it unlawful for any person to "negligently release into the ***ambient air*** *any hazardous air pollutant…" [emphasis added]. Ambient air has been defined previously (see comment # 13) and ambient air is a location. Thus, the CAA protects people located in ambient air.*

Ecology agrees with the commenter that permits must "… be adequate to determine whether any hazardous air pollutant or extremely hazardous air pollutant released into the environment could harm any "person"." But this requirement is applicable to ambient air and the current monitoring, reporting, and recordkeeping for the underlying requirement are adequate to meet this requirement.

No change in the permit is required.

Comment # 16 from Bill Green, dated April 23, 2015 (Mr. Green comment #12)
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.

This draft Hanford Site AOP omits regulation of radon, the only radionuclide identified by name as a *hazardous air pollutant* in section 112 of the *Clean Air Act* (CAA).

Ecology Response:
Radon has not been overlooked. WAC 246-247-020 (4) and 40CFR61.91(a) (both referenced in the General Conditions of Attachment 2) allow the exclusion of naturally occurring radon and its respective decay products unless the concentrations or rates of emissions have been enhanced by industrial processes. This is the case at most of the Hanford site. However, where this is not the case, radon has been addressed. For example at the 325 building, which has a radon generator as part of its licensed process (see EU ID 361), radon emissions are tracked and reported.
Also see Exhibit F page 26 – 29

No change in the AOP is required.

Comment # 17 from Bill Green, dated April 23, 2015 (Mr. Green comment #13)
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.

This draft Hanford Site AOP overlooks the Columbia River as a source of Hanford's diffuse and fugitive emissions of radionuclides.

Ecology Response:
EPA has evaluated the claim that the Columbia River is a source of emissions of radionuclides and has stated from Exhibit F, p. 28:

> *With regard to the Petitioner's claim that the Columbia River should be regulated as a source of radionuclides in the Hanford Title V Permit, the Petitioner has not demonstrated that the permit unlawfully "overlooks the Columbia River as a source of diffuse and fugitive emissions of radionuclides" that must be regulated under the Hanford Title V Permit. By its terms, Subpart H applies to operations at DOE "facilities," which is defined as "all buildings, structures and operations on one contiguous site." 40 C.F.R. § 61.91(b). The Columbia River is not a building, structure or operation and thus not part of the DOE facilities subject to Subpart H. Moreover, the Hanford Site is regulated as a "major source" under the title V program. "Major source" is defined in the Part 70 regulations in part as "any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control (or persons under common control))…." 40 C.F.R. § 70.2; see also W.A.C. 173-401-200(34). "Stationary source," in turn, is defined as building, structure, facility or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act." 40 C.F.R. § 70.2; see also W.A.C. 173-401-200(19). The Petitioner has not demonstrated that the Columbia River is a stationary source under common control with DOE and we see no reason to conclude that it is part of the title V major source subject to the title V permit for the Hanford Site.*

Ecology agrees with this evaluation.

No change in the AOP is required.

Comment # 18 from Bill Green, dated April 23, 2015 (Mr. Green comment #14)
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.

Clarify *Section 4.6. Enforceability*. Federally-enforceable requirements include any requirement of the CAA, or any of its applicable requirements, including CAA § 116 [42 U.S.C. 7416] and any requirements in 40 C.F.R. 70.

Ecology Response:
Please see exhibit F, pp. 15 and 16 for CAA § 116. Ecology agrees with the EPA on this issue.

Attachment 2, did not overlook the requirement where both a federal requirement and a state (or local) requirement apply to the same source, both must be included in the AOP.

Attachment 2 contains a section titled "DOE Federal Facilities 40CFR61 Subparts A, H, and WAC 246-247 Standard Conditions and Limitations" at the start of the Attachment. The conditions in this section apply to all of the individual licenses on an emission unit basis and indicate the Federal and State only requirements.

Additionally, each emission unit will call out additional citations (Federal or State), as required, that apply to that particular emission unit.

As the citations are already listed as federally enforceable or "State only", no change in the permit is required.

Comment # 19 from Bill Green, dated April 23, 2015 (Mr. Green comment #15)
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 applicable to AOP terms and conditions in *Attachment 2* that are created and enforced by Health pursuant to RCW 70.98 and the regulations adopted thereunder.

Ecology Response:
The appeal process for the AOP is presented in section 4.12 of the Standard Terms and General Conditions and Attachment 2 is part of the AOP.

As discussed in the response to comment no. 8, any conditions in the Health license that are used to address federal requirements are appealable to the PCHB at the time the AOP is issued/finalized

No change in the AOP is required.

Comment # 20 from Bill Green, dated April 23, 2015 (Mr. Green comment #16)
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.

State that changes allowed by sections 5.19 and 5.20 only apply to *Attachment 1* and *Attachment 3*. The statute and the regulation under which *Attachment 2* was created do not recognize either "Off-permit Changes" or "Changes Not Requiring Permit Revisions"

Ecology Response:
Ecology agrees. The language will be changed to:

5.19.1 The source shall be allowed to make changes to Attachment 1 not specifically addressed or prohibited by the permit terms and conditions without requiring a permit …"

"5.20.1 Permittee is authorized to make the changes described in this section to Attachment 1 without a permit revision, providing the following conditions are met"

Comment # 21 from Bill Green, dated April 23, 2015 (Mr. Green comment #17)
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.

After line 39 on page 28 add the phrase "or other such address as provided by Ecology". After the EPA address on page 29 add the phrase "or other such address as provided by EPA". These additions will avoid a technical violation should either Ecology or EPA change addresses during the term of the AOP

Ecology Response:
Ecology agrees. The language will be changed to:

On page 28, lines 33 and 34 "Notification shall be submitted to Ecology to the address below or as provided by Ecology:"

On page 28, line 41 "and EPA Region 10 to the address below or as provided by Ecology or EPA:"

Comment # 22 from Bill Green, dated April 23, 2015 (Mr. Green comment #18)
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.

After Ecology's address, add the phrase "or other such address as provided by Ecology". After the EPA address, add the phrase "or other such address as provided by EPA". These additions will avoid a technical violation should either Ecology or EPA change addresses during the term of the AOP.

Ecology Response:
Ecology agrees. The language will be changed to:

On page 29, lines 30 and 31 "Notification shall be submitted to Ecology to the address below or as provided by Ecology:"

On page 29, line 38 "and EPA Region 10 to the address below or as provided by Ecology or EPA:"

Comment # 23 from Bill Green, dated April 23, 2015 (Mr. Green comment #19)
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.

Missing from Table 1.4 are conditions from BCAA Administrative Order (AO) of Correction, No. 20030006, for control of fugitive dust from the Marshalling Yard. Requirements from this AO survive for at least as long as the Marshalling Yard exists. According to EPA, requirements in an AO are to be treated as "applicable requirements" under Title V that must be included in a source's AOP.

Ecology Response:
The Administrative Order (AO) is not in effect and is not an applicable requirement for the Hanford AOP. The was closed and disposed of, but the dust control requirements are found in the terms of the underlying requirement in Approval Order DE02NWP-002, Amendment 4. DE02NWP-002, Amendment 4 states a dust control plan shall be "developed and implemented". Additionally, the dust control plan "shall be made "available to Ecology upon request."

This issue has also been heard and resolved by the Pollution Control Hearings Board. See Bill Green v. Ecology and Department of Energy, PCHB NO. 07-012, Summary Judgment Order (Aug. 22, 2007), pp. 15 and 16. The Board noted, "We conclude that the plain language of WAC 173-401-200(4)(b), which includes statutes, rules, and orders as "applicable requirements," does not extend to the specific content of the [dust control] Plan developed in response to the Order of Correction issued by BCAA. The Order itself required Energy to submit and implement a plan to control dust. These requirements are included in the AOP."

No change in the AOP is required.

Comment # 24 from Bill Green, dated April 23, 2015 (Mr. Green comment #20)
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.

Missing from the public review file is Dust Control Plan 24590-WTP-GPP-SENV-015, Revision 1, *Fugitive Dust Control*. Pursuant to 40 C.F.R. 70.7 (h)(2), all information Ecology deemed to be relevant by using it in the permitting process must be made available to support public review

Ecology thus acknowledges it utilized "24590-WTP-GPP-SENV-015, Revision 1, Fugitive Dust Control" in the permitting process. This plan should, therefore, have been included in the information provided to the public pursuant to 40 C.F.R. 70.7(h)(2) and *Sierra Club v. Johnson*, 436 F.3d 1269 (11the Cir. 2006)

Ecology Response:
Please see response to comment # 23.

In Sierra Club v. Johnson, the court determined that all information used by the permitting authority to develop the ***air operating permit*** *must be made available to the public for public comment. The court did not require the permitting agency to make available to the public all*

information used to develop the underlying applicable requirements that are included in an air operating permit.

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.

Additionally, with the dust control plan requirements found in the terms of the underlying requirement to the Air Operating Permit (AOP) in Approval Order DE02NWP-002, Amendment 4, the information used and deemed relevant and used in the permitting process was included in the original public comment period.

No change in the AOP is required.

Comment # 25 from Bill Green, dated April 23, 2015 (Mr. Green comment #21)
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.

Correct "emission units" to read "emissions unit". It is "Emissions unit" that is defined in WAC 173-401-200 (12).

Ecology Response:
Ecology offers the following explanation.

Ecology agrees the defined term in Washington Administrative Code (WAC) 173-401-200 (12) is "emissions unit". The statement was intended to convey to all of the multiple units on the site. Ecology will change the language from "emission units" to "emissions units"

Comment # 26 from Bill Green, dated April 23, 2015 (Mr. Green comment #22)
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.

Delete the sentence beginning on line 9: "~~All emission units not identified in Section 1.4 Discharge Points that are subject to 40 CFR 61, Subpart H in Attachment 2, Health License, have been determined to represent insignificant sources of non-radioactive regulated air pollutants~~". Ecology can not use a permit to revise a regulation[1], specifically WAC 173-401-530 (2)(a).

Ecology Response:
The sentence was intended to convey that discharge points not listed in Section 1.4 do not need compliance certification for non-radiological emissions. As it appears the current language might cause some confusion, the second sentence of the paragraph will be changed to, "[f]or these emission units no additional monitoring, reporting, or recordkeeping is necessary beyond the requirements in Attachment 2."

For radiological emissions units, this sentence will guide the reader to Attachment 2 as the rest of the paragraph states.

Comment # 27 from Bill Green, dated April 23, 2015 (Mr. Green comment #23)
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.

Re-evaluate Tank Farm emissions units[1] currently designated as insignificant emissions units (IEUs) based on requirements of WAC 173-401-530 (2)(a) and on findings in the Hanford Vapor Report[2].

In addition, all Tank Farm emissions units were permitted using characterization information that greatly underestimated both the number of chemicals in the expected emissions and the respective concentrations of these chemicals.

Ecology Response:
The Tank Farm emissions have not been categorically designated as insignificant emission units. Section 1.4.25 and 1.4.26 are both permits for Tank Farm emissions units. Tank farm emissions have been and are evaluated against WAC 173-400, General Standards for Air Pollution Sources, to determine if they need to have a Notice of Construction Approval Order (permit) issued for their emissions. For Tank Farm emissions requiring a permit or license, a permit or license is issued following the regulations of WAC 173-400 or WAC 246-247, respectively. Upon issuance, the permit or license becomes an applicable requirement and is added to the AOP.

No requirement exists on where in the AOP the underlying requirements must be located or addressed. Federally enforceable 40 CFR 61, Subpart A and H requirements are located in Attachment 2 of the AOP. As the requirements are in Attachment 2 of the AOP, they don't need to be in Attachment 1.

No permit change is required.

Comment # 28 from Bill Green, dated April 23, 2015 (Mr. Green comment #24)
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.

Revise the emission limits, and requirements for monitoring, reporting, and recordkeeping for these discharge points (collectively "exhausters") to reflect findings in the Hanford Vapor Report[1]. (*See* Enclosure 2)

Ecology Response:
Please see the responses to comments #12, # 13, # 14, and # 15.

Ecology is not disputing the Hanford Tank Vapor Assessment Report, but its results are not directly applicable to Clean Air Act regulations and permits because, there is no evidence the emissions identified in the Tank Vapor Assessment Report reach the ambient air above regulatory limits. The units in question have been issued a permit conforming to the requirements of WAC 173-400. The permittee submitted a permit application for those units that gave the basis for the

emission data, the conditions the units would operate under, and the concentration of toxic and hazardous air pollutants in ambient air. Where the concentration of toxic air pollutants exceeded the Acceptable Source Impact Level, the permittee installed abatement control device(s) or requested a second tier evaluation of the emissions (see WAC 173-460). Federally listed hazardous air pollutants are not present in sufficient quantity to classify the Hanford Site as a major source of HAPs or trigger an NESHAP related Subparts. From this data and analysis, the permit conditions were developed. If evidence shows that these conditions are being violated, or that concentrations of HAPs or TAPS in the ambient air exceed those in the permit application, Ecology will take the appropriate actions.

The summation of all HAPs do not exceed major source limits and do not trigger any NESHAPs related to HAPs. As no additional requirements for HAPs, the underlying requirements already part of AOP are sufficient. As long as the Permittee complies with the Permit and the application conditions used to provide operating conditions, no need exists to revise the emission limits, or the requirements for monitoring, reporting, or recordkeeping.

No permit change is required.

Comment # 29 from Bill Green, dated April 23, 2015 (Mr. Green comment #25)
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 specified in WAC 173-401-625, 40 C.F.R. 70.6 (b), and CAA § 116.

Ecology Response:
Please see the response for comment 18.

The Washington State Department of Health has not sought to avoid federal enforceability by incorporating federal requirements by reference, they have listed Federal and State-only requirements that apply to all licenses at the start of Attachment 2. Each individual emission unit will also list additional Federal or State-only requirements, as needed, in each specific emission unit.

The cited "state only enforceable: WAC 246-247-01094), 040(5), 060(5)" under the Abatement Technology section of an individual emission unit are for State-only requirements. The Federal regulations provide limits on emissions (e.g. effective dose equivalent of 10 mrem/yr), but doesn't provide specifics on abatement technology. If the Federal requirements did list abatement technology, this would be listed at the start of the permit as applicable to all emission units.

No change in the AOP is required.

Comment # 30 from Bill Green, dated April 23, 2015 (Mr. Green comment #26)
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 that appears in the annual compliance certification report required by 40 C.F.R. 70.6 (c)(5) and WAC 173-401-615 (5).

Ecology Response:
Note: There is no WAC 173-401-615(5); the monitoring, reporting and recordkeeping requirements are found in WAC 173-401-615 (1) - (4), while compliance certification requirements are found in WAC 173-401-630(5).

The requirements for each emission unit in Attachment 2 contains reference to abatement technology and monitoring requirements. For abatement technology, the technology (e.g. HEPA) is required to be in place and functional. The Licensee is required to certify the compliance status.

When multiple methods of certifying compliance is acceptable, it isn't required to specify one particular method over another. As a result, the Licensee can select the method that best fits into their work practices to certify compliance. As the case with abatement technology either being in place and functional or not, the person in charge of that system can verify by statement.

For the monitoring requirements for each emission unit in Attachment 2, the regulatory citation, monitoring and testing requirements, radionuclides requiring measurement, and sampling frequency is all specifically listed. The Licensee most follow the monitoring and testing requirements on the radionuclides required to be measured at a frequency specified in the license.

Where specific monitoring conditions are required, these conditions have been specified in Attachment 2. Where various methods of compliance certification are acceptable, a specific method has not been selected in order to allow the licensee flexibility to select the best method for them.

As each term or condition in the permit provides adequate information for the licensee to certify annual compliance status as required, no change in the AOP is required.

Comment # 31 from Bill Green, dated April 23, 2015 (Mr. Green comment #27)
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.

Track and report the total potential radionuclide emissions allowed from individual emissions units specified in *Attachment 2, Enclosure 1 Emission Unit Specific License.*

Ecology Response:
No regulatory basis exists to require the summation of potentials to emit.

40 CFR 61, subpart H (§ 61.92) sets the emission standard at an effective dose equivalent of 10 mrem/yr on actual emissions from the Site. It is the actual emissions (abated) from the Site that the Licensee certifies to have meet the 10 mrem/yr requirement, not the potential to emit.

It is important to note that the potential to emit is the theoretical unabated emissions from the Site. It is not the actual (regulated) emissions from the Site. Potential to emit is used to determine Federal and State-Only monitoring requirements. It is also used to determine State-Only abatement control requirements.

No change in the AOP is required.

Comment # 32 from Bill Green, dated April 23, 2015 (Mr. Green comment #28)
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.

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 six (6) new emission unit,**
- **removing nine (9) emissions units, and**
- **replacing about twenty-eight (28) Notice of Construction (NOC) orders of approval from the previous final version of *Attachment 2*[1], and restart public review.**

Ecology Response:
In Sierra Club v. Johnson, the court determined that all information used by the permitting authority to develop the ***air operating permit*** *must be made available to the public for public comment. The court did not require the permitting agency to make available to the public all information used to develop the underlying applicable requirements that are included in an air operating permit. Attachment 2 is created under the authority of WAC 246-247 and provided to Ecology as a whole. Ecology accepts the FF-01 license "as-is" and incorporates it into the air operating permit. If any federally enforceable requirements are not in the FF-01 license (Attachment 2 of the Hanford AOP), Ecology will add them to the Hanford AOP in an addendum to Attachment 2 and the Permittee will have to abide by the addendum requirements in addition to the requirements in Attachment 2. Thus there is no requirement for Ecology to make available to the public all the information used by the Department of Health in developing the FF-01 license.*

Nor does any requirement exist in WAC 246-247 for listing the changes in the FF-01 license. Even so, the Department of Health created a "Table of Changes" in the FF-01 License to provide a brief description of changes (starting on page 23 of Attachment 2) for the convenience of the reader even though it was not required to do so.

It is not necessary to restart the public comment and no change in the AOP is required.

Comment # 33 from Bill Green, dated April 23, 2015 (Mr. Green comment #29)
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 of the draft Hanford Site AOP does not provide Ecology, the sole permitting authority, with the legal ability to enforce the "National Emission Standards for Asbestos" (40 C.F.R. 61 subpart M). In this draft AOP asbestos requirements are created and enforced in accordance Benton Clean Air Agency (BCAA) Regulation 1, Article 8. Ecology can not enforce or otherwise act on BCAA regulations.

Ecology Response:
The Department of Ecology has adopted, by reference, 40 CFR Part 61 and Appendices in effect on July 1, 2012 {WAC 173-400-075 (1)}. Thus, Ecology has the ability and authority to enforce the National Emission Standards for Asbestos (40 CFR 61, Subpart M).

The delegation to the Benton Clean Air Agency (see the Statement of Basis for Attachment 3 on page 5 of 14, lines 54 through 56) states "In addition, we believe that RCW 70.105.240 does not give Ecology the option of delegating its final decision-making authority over preempted matters, notwithstanding any delegation to exercise day-to-day regulatory responsibility."

Attachment 3 is part of the Hanford AOP as part of the applicable requirements for the Hanford Site. The day-to-day regulatory responsibility has been delegated to BCAA, but Ecology maintains final decision making and enforcement over the delegated regulations. With final decision making, Ecology has the legal ability to enforce the delegated regulatory responsibilities.

No change to the Permit is required,

Comment # 34 from Bill Green, dated April 23, 2015 (Mr. Green comment #30)
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.

Line 1 on page iv of the Statement of Basis for Standard Terms and General Conditions contains the following statement: "Health regulates radioactive air emissions under the authority of RCW 70.92 . . .". Citing to RCW 70.92 is incorrect. The title of RCW 70.92 is "PROVISIONS IN BUILDINGS FOR AGED AND HANDICAPPED PERSONS".

Ecology Response:
Ecology agrees:

Line 1 on page iv of the Statement of Basis for Standard Terms and General Conditions will be changed from: "Health regulates radioactive air emissions under the authority of RCW 70.92 . . ." to "Health regulates radioactive air emissions under the authority of RCW 70.98 and 70.94…."

Comment # 35 from Bill Green, dated April 23, 2015 (Mr. Green comment #31)
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.

Missing from the Statements of Basis is a discussion of the factual and legal basis for not including the Bechtel National, Inc., dust control plan in the draft Hanford Site AOP. This dust control plan for the Marshalling Yard, and the federal applicable requirements contained therein, is required by Administrative Order (AO) of Correction, No. 20030006, issued by the Benton Clean Air Agency on March 12, 2003.

Ecology Response:

Benton Clean Air Agency (BCAA) issued Administrative Order (AO) of Correction, No. 20030006 in conjunction with NOV 20030006. The enforcement action was closed October 16, 2003, and no longer in effect.

In 2006, Ecology incorporated the WTP Marshalling Yard into DE02NWP-002 via Amendment 4 in response to a public comment made during review of AOP 00-05-006, Renewal 1. Separate dust control plans for both WTP locations continued to be implemented.

On March 3, 2010, the above WTP Dust Control Plans were consolidated into one plan with issuance of 24590-WTP-GPP-SENV-015, Revision 1, Fugitive Dust Control.

As the AO has been destroyed, nothing exists to be added to the AOP as an underlying requirement. Additionally, the requirements for a dust control plan for WTP are part of the AOP as an underlying requirement.

No change is required to the permit or Statement of Basis.

Comment # 36 from Bill Green, dated April 23, 2015 (Mr. Green comment #32)
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.

Missing from the Statements of Basis is the memorandum of understanding between Ecology and Health describing the roles and responsibilities of each agency in coordinating the regulation of Hanford's radionuclide air emissions. This memorandum of understanding[1] is referenced on page 4 of the legal opinion[2] required by 40 C.F.R. 70.4 (b)(3).

Ecology Response:
Please see the response to comments #5, #6, #7, and #8.

The legal and factual basis each Agency (e.g. Ecology and Health) regulating the Hanford Site is established in WAC 173-401 and WAC 246-247. The memorandum of understanding was designed to aid coordination between the agencies and not as a legal and factual basis for regulating the Hanford Site. As such, it is not required to have the memorandum in the Statements of Basis.

However, Ecology will add a sentence to the Statement of Basis for the Standard Terms and General Conditions with an internet link to the Memorandum

Ecology will add a link to the Memorandum to the Statements of Basis.

Comment # 37 from Bill Green, dated April 23, 2015 (Mr. Green comment #33)
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 radioactive air emissions in the draft Hanford

Site AOP pursuant to *The Nuclear Energy and Radiation Act* (NERA) rather than in accordance with the *Clean Air Act* (CAA).

Ecology Response:
Please see Exhibit A and Exhibit F.

No change is required.

Comment # 38 from Bill Green, dated April 23, 2015 (Mr. Green comment #34)
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 accordance with 40 C.F.R. 70.7 (a)(5) and WAC 173-401-700 (8), provide the legal and factual basis for omitting the Columbia River as a source of radionuclide air emissions.

Ecology Response:
EPA has evaluated the claim that the Columbia River is a source of emissions of radionuclides and has stated in Exhibit F at P. 28:

> *With regard to the Petitioner's claim that the Columbia River should be regulated as a source of radionuclides in the Hanford Title V Permit, the Petitioner has not demonstrated that the permit unlawfully "overlooks the Columbia River as a source of diffuse and fugitive emissions of radionuclides" that must be regulated under the Hanford Title V Permit. By its terms, Subpart H applies to operations at DOE "facilities," which is defined as "all buildings, structures and operations on one contiguous site." 40 C.F.R. § 61.91(b). The Columbia River is not a building, structure or operation and thus not part of the DOE facilities subject to Subpart H. Moreover, the Hanford Site is regulated as a "major source" under the title V program. "Major source" is defined in the Part 70 regulations in part as "any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control (or persons under common control))…." 40 C.F.R. § 70.2; see also W.A.C. 173-401-200(34). "Stationary source," in turn, is defined as building, structure, facility or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act." 40 C.F.R. § 70.2; see also W.A.C. 173-401-200(19). The Petitioner has not demonstrated that the Columbia River is a stationary source under common control with DOE and we see no reason to conclude that it is part of the title V major source subject to the title V permit for the Hanford Site.*

Ecology agrees with EPA's evaluation.

No change in the permit is required.

Comment # 39 from Jeanne Poirier, dated May 6, 2015
"Please add my name to the concerned citizens living in proximity to Hanford.
While a challenge for clean up, please adhere to EPA rules on clean air standards.
Good monitoring of potentially harmful emissions is critical to safety at Hanford."

Ecology Response:
Ecology has added your name to the list of concerned citizens living in proximity to Hanford.

Ecology is following the requirements of the Federal and Washington Clean Air Acts in regulating the Hanford Site. Ecology strives to uniformly apply these regulations, regardless of the Permittee's size, location, ownership (e.g. Government or Private), or activity being regulated.

No change to the Permit is required.

Comment # 40 from Jean Vanni, dated May 6, 2015
"I'm requesting that Ecology explain what are the PTE zones and how their analysis is performed and include a map within the AOP"

Ecology Response:
The PTE zones are derived from model results for specific discharge points or emissions units. These results are used to determine levels of risk and requirements for abatement, monitoring, etc…Each emission point generates a different PTE result for different locations. The information is part of the Notice of Construction application for radiological/toxic emissions and generated on a permit/license basis.

USDOE provides the information on PTE for the Hanford Site. As this information is generated on a NOC by NOC basis, a composite PTE doesn't exist. Ecology and Health lack the resources to composite all of the PTE data to generate a PTE map and then maintain the PTE map during each NOC application or modification.

Additionally, no requirement exists for USDOE to provide a composite PTE map for the Hanford site.

No change in the AOP is required.

Comment # 41 from USDOE, dated May 6, 2015
Item a. in this section refers to Attachment 1, Section 2.4 but it appears the reference should be to Section 1.4.

Ecology Response:
Ecology offers the following explanation.

Ecology agrees the referenced sections should be "Section 1.4" and. the text has been corrected.

Comment # 42 from USDOE, dated May 6, 2015
"Engines that are subject to only NESHAP and NSPS requirements are not subject to opacity requirements."

Ecology Response:
Ecology offers the following explanation.

Washington Administrative Code (WAC) 173-400-040 (1) states, "All sources and emissions units are required to meet the emission standards of this chapter." Engines that are subject to only

NESHAP and NSPS are not explicitly excluded from meeting opacity requirements or have specific opacity requirements established for them. As a result, the general requirements of WAC 173-400-40 are applicable.

No change is needed to the Air Operating Permit.

Comment # 43 from USDOE, dated May 6, 2015
"Please clarify what is meant by "certification" in the "Periodic monitoring" column of the SO2 requirement. Is this referring to fuel type certification or engine emission certification?"

Ecology Response:
Ecology offers the following explanation.

Ecology agrees the term certification is ambiguous. It was the intent for the certification to be for Ultra Low Sulfur fuel.

Ecology is changing the text in the column from "recordkeeping or certification" to "Recordkeeping of the certification that Ultra Low Sulfur Fuel was used."

Comment # 44 from USDOE, dated May 6, 2015
"Are either EPA Method 6 or Method 6C appropriate to use for engines? These methods pertain to stack sampling and continuous monitoring. Neither method appears to be appropriate for many of the discharge points in Section 1.4 (e.g., engines that are only subject to the requirements of 40 CFR 63 Subpart ZZZZ)."

Ecology Response:
Ecology offers the following explanation.

EPA Method 6 states in 1.2 "Applicability. This method applies to the measurement of sulfur dioxide (SO_2) emissions from stationary sources." and EPA Method 6C "is a procedure for measuring sulfur dioxide (SO_2) in stationary source emissions using a continuous instrumental analyzer."

Both of the EPA Methods are for use with stationary sources and all of the discharge points in the Hanford Air Operating Permit are stationary sources. As a result, the EPA Methods are applicable.

Please note that the "Test method" column includes a footnote that, states "The test methods identified in this table are used as compliance verification tools. A frequency is not applicable unless specified in the table." Thus it isn't a requirement to perform either of the EPA Methods on a specific periodic basis. By specifying the test method, the Permittee, Ecology, and the General Public are aware of what tests to follow when a compliance verification tool is needed.

No change to the Permit is required.

Comment # 45 from USDOE, dated May 6, 2015

"In the first paragraph the sentence "Also the compliance certification is not required for IEUs" has been deleted. This sentence provides important clarification and should be retained."

Ecology Response:
Ecology offers the following explanation.

Washington Administrative Code 173-401-530 (2)(d) describes how the to certify IEUs where testing, monitoring, recordkeeping and reporting are performed. Thus, compliance certification is required and the sentence as written is correct.

No change to the Permit is required.

Comment # 46 from USDOE, dated May 6, 2015
"The introductory text to this section states "all emission units identified in this Section are subject to the general requirements listed in Table 1.1." It is believed that some of the requirements in Table 1.1 (in particular opacity and sulfur dioxide) are not intended to be specifically applied to certain discharge points in Section 1.4. (See comment 2 above) Please clarify the introductory text as appropriate."

Ecology Response:
Ecology offers the following explanation.

*Please see responses to Ecology Comment # 42, 43, 44, and 45. The general requirements are applicable requirements for all Section 1.4 Discharge Points. Washington Administrative Code (WAC) 173-400-040 (1) states, "**All** sources and emissions units are required to meet the emission standards of this chapter." {emphasis added}*

As the requirement applies to all sources, then all sources in section 1.4 are subject to the general requirements.

No change to the permit is required.

Comment # 47 from USDOE, dated May 6, 2015
"13-NWP-043 (dated April 24, 2013) transmitted Approval Order DE02NWP-001, Revision 2 to the Office of River Protection. The letter stated that the Order would be incorporated into the first revision of AOP Renewal 2. The Order has yet to be incorporated. Please incorporate Approval Order DE02NWP-001, Revision 2, into AOP Renewal 2, Revision B. (Specific comments are noted below.)"

Ecology Response:
Ecology offers the following explanation.

Ecology agrees that all of the changes in Approval Order DE02NWP-001, Rev. 2 and PSD-02-01, Amendment 3, were not incorporated. See Ecology Comments 48 through 69 for details.

Comment # 48 from USDOE, dated May 6, 2015

"PSD-02-01 is currently Amendment 3 (not Amendment 2)"

Ecology Response:
Ecology offers the following explanation.

Ecology agrees. The Requirement Citation was changed from "Amendment 2" to "Amendment 3"

Comment # 49 from USDOE, dated May 6, 2015
"Fugitive Dust Control is covered under Section 9.8 (not 8.1) of the DE02NWP-002, Rev. 2 Permit Conditions."

Ecology Response:
Ecology offers the following explanation.

Ecology agrees. The section reference has been changed to "9.8"

Comment # 50 from USDOE, dated May 6, 2015
""Marshaling Yard" is no longer a term used to describe the BNI material storage area. The current term is "Material Handling Facility" or "MHF""

Ecology Response:
Ecology offers the following explanation.

Ecology agrees. The term "Marshaling Yard" has been changes to "Material Handling Facility"

Comment # 51 from USDOE, dated May 6, 2015
"Opacity is covered under Section 2.1 (not 1.3) of the DE02NWP-002, Rev. 2 Permit Conditions."

Ecology Response:
Ecology offers the following explanation.

Ecology agrees. The section reference has been changed to "2.1".

Comment # 52 from USDOE, dated May 6, 2015
"Opacity is covered under Section 2.1 (not 1.3) of the DE02NWP-002, Rev. 2 Permit Conditions."

Ecology Response:
Ecology offers the following explanation.

Ecology agrees. The section reference has been changed to "2.1".

Comment # 53 from USDOE, dated May 6, 2015
"Opacity is covered under Section 2.1 (not 1.3) of the DE02NWP-002, Rev. 2 Permit Conditions."

Ecology Response:
Ecology offers the following explanation.

Ecology agrees. The section reference has been changed to "2.1".

Comment # 54 from USDOE, dated May 6, 2015
"ULSF is covered under Section 2.2 (not 1.4) of the DE02NWP-002, Rev. 2 Permit Conditions."

Ecology Response:
Ecology offers the following explanation.

Ecology agrees. The section reference has been changed to "2.2".

Comment # 55 from USDOE, dated May 6, 2015
"ULSF content is 0.0015% (15 ppm) or less as per the permit conditions in Section 2.2 of the DE02NWP-002, Rev. 2 Permit and Condition 2 of the PSD-02-01 Permit."

Ecology Response:
Ecology offers the following explanation.

Ecology agrees and will change the maximum sulfur content from "0.0030%" to "0.0015%"

Comment # 56 from USDOE, dated May 6, 2015
"Fuel consumption for the steam generating boilers is covered under Section 2.3 (not 1.5) of the DE02NWP-002, Rev. 2 Permit Conditions."

Ecology Response:
Ecology offers the following explanation.

Ecology agrees. The section reference has been changed to "2.3".

Comment # 57 from USDOE, dated May 6, 2015
"NOC requirements are covered under Section 3.2 (not 2.2) of the DE02NWP-002, Rev. 2 Permit Conditions."

Ecology Response:
Ecology offers the following explanation.

Ecology agrees. The section reference has been changed to "3.2".

Comment # 58 from USDOE, dated May 6, 2015
"Do not see Condition 2.3 covered under any sections of the DE02NWP-002, Rev. 2 Permit Conditions."

Ecology Response:
Ecology offers the following explanation.

Please see Page 69 of the Air Operating Permit, line items 16-25.

No change to the Permit is required.

Comment # 59 from USDOE, dated May 6, 2015
"Performance Demonstration Plan requirements are covered under Section 4.1 (not 3.1) of the DE02NWP-002, Rev. 2 Permit Conditions."

Ecology Response:
Ecology offers the following explanation.

Ecology agrees. The section reference has been changed to "4.1".

Comment # 60 from USDOE, dated May 6, 2015
"Testing requirements are covered under Section 4.2 (not 3.2) of the DE02NWP-002, Rev. 2 Permit Conditions."

Ecology Response:
Ecology offers the following explanation.

Ecology agrees. The section reference has been changed to "4.2".

Comment # 61 from USDOE, dated May 6, 2015
"Boiler startup requirements are covered under Section 4.5 (not 3.5) of the DE02NWP-002, Rev. 2 Permit Conditions."

Ecology Response:
Ecology offers the following explanation.

Ecology agrees. The section reference has been changed to "4.5".

Comment # 62 from USDOE, dated May 6, 2015
"Boiler Carbon Monoxide Monitoring requirements are covered under Section 4.6 (not 3.6) of the DE02NWP-002, Rev. 2 Permit Conditions."

Ecology Response:
Ecology offers the following explanation.

Ecology agrees. The section reference has been changed to "4.6".

Comment # 63
This comment was intentionally left blank.

Comment # 64 from USDOE, dated May 6, 2015
"Boiler Emission Control Monitoring requirements are covered under Section 5.0 (not 4.) of the DE02NWP-002, Rev. 2 Permit Conditions."

Ecology Response:
Ecology offers the following explanation.

Ecology agrees. The section reference has been changed to "5.0".

Comment # 65 from USDOE, dated May 6, 2015
"PSD Amendment 3, Approval Condition 2, states that the emergency generators be fired by ultra-low sulfur diesel fuel, with a maximum sulfur content of 0.0015 percent by weight (15 ppm), not 0.003% by wt."

Ecology Response:
Ecology offers the following explanation.

Ecology agrees and will change the maximum sulfur content from "0.0030%" to "0.0015%".

Comment # 66 from USDOE, dated May 6, 2015
"PSD Amendment 3, Approval Condition 2, states: "today's project consists of eliminating the two Type II emergency diesel generators from the design and replaces them with two turbine generators"."

Ecology Response:
Ecology offers the following explanation.

Ecology agrees. Ecology did find the comment quote in PSD, Amendment 3, as Finding # 5 (in the Findings section) and not in the Approval Condition section.

Ecology will change the condition text from "Each Type I or Type II emergency generator shall not exceed 164 hours per year" to "Each Type I emergency generator or turbine generator shall not exceed 164 hours per year when averaged over 12 consecutive months, calculated once per month"

Comment # 67 from USDOE, dated May 6, 2015
"Inaccurate condition.
Emergency turbine generators shall not exceed 69.8 pounds per hour (each), when averaged over 1-hour and 164 hours per year averaged over 12 consecutive months", per PSD, Amendment 3, Condition 14."

Ecology Response:
Ecology offers the following explanation.

Ecology agrees. The text will be changed from "Emissions of NO_X from the Type II Generators shall not exceed 547.5 lb/day (each), when averaged over 24 consecutive hours." to "Emissions of NO_X from the Turbine Generators shall not exceed 69.8 lb/day (each), when averaged over 24 consecutive hours and 164 hours per year averaged over 12 consecutive months."

Comment # 68 from USDOE, dated May 6, 2015

"PSD Amendment 3, Approval Condition 2, states that the emergency generators be fired by ultra-low sulfur diesel fuel, with a maximum sulfur content of 0.0015 percent by weight (15 ppm), not 0.003% by wt."

Ecology Response:
Ecology offers the following explanation.

Ecology agrees and will change the maximum sulfur content from "0.0030%" to "0.0015%".

Comment # 69 from USDOE, dated May 6, 2015
"Inaccurate condition.
Diesel Fire Water Pumps hours of operation shall not exceed 230 hours per year averaged over 12 consecutive months, per PSD, Amendment 3, Condition 15."

Ecology Response:
Ecology offers the following explanation.

Ecology agrees. The text will be changed from "Hours of operation for each pump ≤ 110 hours per year averaged over 12 consecutive months." to "Hours of operation for each pump shall not exceed 230 hours per year averaged over 12 consecutive months.'.

Comment # 70 from USDOE, dated May 6, 2015
"Change the units in the condition for operational limits from "25 mmBtu/hr" to "25 MBtu/hr."
Basis: Consistency with current permit condition."

Ecology Response:
Ecology offers the following explanation.

Ecology agrees and changed the condition units from "mmBtu/hr" to MBtu/hr".

Comment # 71 from USDOE, dated May 6, 2015
"This section states "This section contains emission unit specific requirements in addition to general standards for maximum emissions." Please clearly describe how the general standards are to be applied to the specific discharge points, especially for compliance certification."

Ecology Response:
Ecology offers the following explanation.

The Statement of Basis for Attachment 1 sets forth the legal and factual basis for the AOP Attachment 1 conditions, and is not intended for enforcement purposes. The Statement includes references to the applicable statutory or regulatory provisions, technical supporting information on specific emission units, and clarifications of specific requirements. The Statement of Basis is non-enforceable, but is a supporting reference document that provides a rationale for the development of the permit and offers clarification where deemed necessary.

From the Hanford AOP, Attachment 1, Section 1.4, states "All emission units identified in this Section are subject to the general requirements listed in Table 1.1. ***More stringent conditions*** *listed for specific discharge points in this Section* ***are used in lieu of*** *the general requirements" {emphasis added}. As discussed in Ecology responses 42 through 46, the general conditions apply all of the time. It is not necessary or needed to describe how they are to be applied on a discharge point by discharge point basis.*

Compliance certification is found in the Standard Terms and General Conditions part of the Hanford Site AOP, Section 5.10. Section 5.10.1 (a) through (e) is specific for "compliance certification will consist of the following:"

As the compliance certification is already present in the Hanford Site AOP Standard Terms and General Conditions and general requirements are the minimum emission baseline for all emissions, no change to the Attachment 1 Statement of Basis is required.

Comment # 72 from Beth Sanders, dated May 8, 2015
"I am very concerned about the health and safety of Hanford workers and the public. Chemical vapor exposures are a serious problem at Hanford's tank farms. Since March of 2014, 36 workers have received medical attention after being exposed to chemical vapors at Hanford.

Minimally what is need is better monitoring practices and an accurate inventory of tank farm emission. Otherwise, it is not possible to specify the regulatory and pollution control requirements that are applicable under the Clean Air Act.

All sources of air pollution from Hanford need to be accounted for in the AOP. Why do uranium and other regulated pollutants, for example, continue to leach into the Columbia River?"

Ecology Response:
Ecology offers the following explanation.

Ecology is also concerned about the health and safety of Hanford Workers. However, the Clean Air Act (CAA) and its amendments regulate ambient air, which is defined in 40 CFR Part 50.1 (e) as "… that portion of the atmosphere, external to buildings, to which the general public has access." The workers work on the Hanford site, which is land owned or controlled by the source and to which general public access is precluded by a fence or other physical barriers. As the Hanford site doesn't qualify as ambient air, the CAA isn't applicable; but on-site personnel are covered by other laws, rules, and regulations

Monitoring of Double Shell Tank (DST) emissions is performed and sample results analyzed to determine if the emissions are below the permit levels and to determine if any new toxic air pollutants (TAPs) were discovered during the sampling. The Permittee is in compliance with the permit as long as emissions are below permit requirements.

All 'air' emission sources regulated by the CAA are in the Hanford Air Operating Permit. The 'leaching' in the Columbia River is not covered by the CAA (Ecology assumes the use of the word

"leach" by the commenter is implying the flow of contaminated groundwater into the Columbia River), but is covered by other programs.

No changes to the Permit are required.

Comment # 73 from Dale Thornton, dated May 11, 2015
"The huge size of the Hanford site, the cleanup effort ongoing and the relatively low amount of emissions per acre, square mile, or other measurement factor as compared to a large city such as Seattle, the proposed AOP should be generous in consideration of the progress being made on removing the pollutants. Holding contractors responsible for possible vapor emissions from the dangerous tanks will only slow the progress of emptying those tanks and eliminating the source. The contractors are having enough trouble protecting the workers from the vapors while still trying to make progress on cleanup, they shouldn't need to divert their funding and attention toward accounting for vapors that they have no control over.

Please keep the AOP limited to similar levels and limit additional controls to those that are prudent. Adding more and more requirements, the diesel engine requirements and licensing for radiation emissions is simply layering more state government controls on top of existing regulations. This state does not need additional regulations, many regulations are bordering on authoritarian now."

Ecology Response:
Ecology is following the requirements of the Federal and Washington Clean Air Acts in regulating the Hanford Site. Ecology strives to uniformly apply these regulations, regardless of the Permittee's size, location, ownership (e.g. Government or Private), or activity being regulated.

Vapor emissions from the Hanford Tanks are regulated by the CAA when they enter ambient air in sufficient concentration to trigger regulation requirements. However, the Clean Air Act (CAA) and its amendments regulate ambient air. Ambient air is defined in 40 CFR Part 50.1 (e) as "… that portion of the atmosphere, external to buildings, to which the general public has access." The workers work on the Hanford site, which is land owned or controlled by the source and to which general public access is precluded by a fence or other physical barriers. As the Hanford site doesn't qualify as ambient air, the CAA isn't applicable; but on-site personnel are covered by other laws, rules, and regulations.

No changes to the Permit are required.

Comment # 74 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 1, Section "**I. General Air Operating Permit (AOP) Structure**", first ¶, first sentence.
"The AOP should be structured to provide maximum possible enforcement authority to agencies regulating Hanford's varied sources of air emissions, and to provide the strongest possible standards for protecting health, safety, and the environment." "

Ecology Response:
Ecology is following the requirements of the Federal and Washington Clean Air Acts in regulating the Hanford Site. Ecology strives to uniformly apply these regulations, regardless of the Permittee's size, location, ownership (e.g. Government or Private), or activity being regulated.

No change to the Permit is required.

Comment # 75 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 1, Section "**I. General Air Operating Permit (AOP) Structure**", first ¶, second sentence.
"It {the AOP} should also maximize opportunities for meaningful public involvement.""

Ecology Response:
Ecology is following the requirements of the Federal and Washington Clean Air Acts in regulating the Hanford Site. Ecology strives to uniformly apply these regulations, regardless of the Permittee's size, location, ownership (e.g. Government or Private), or activity being regulated.

Public involvement is covered in WAC 173-401-800 and Ecology follows this rule to ensure accurate permitting information is made available to the public in a timely manner.

Comment # 76 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 2, Section "**I. General Air Operating Permit (AOP) Structure**", third ¶ of the section and first ¶ of the page, last sentence.
"This includes regulating the emission of radon gas, which is not addressed by this AOP despite the fact that radon is defined explicitly by section 112 of the CAA as a HAP, and the fact that the permittee has repeatedly acknowledged[6] that radon is being released in quantities sufficient to measurably increase the dose received by the (off-site) "maximally exposed individual.[7]""

Ecology Response:
Please see comment # 16.

Radon has not been overlooked. WAC 246-247-020 (4) and 40CFR61.91(a) (both referenced in the General Conditions of Attachment 2) allow the exclusion of naturally occurring radon and its respective decay products unless the concentrations or rates of emissions have been enhanced by industrial processes. This is the case at most of the Hanford site. However, where this is not the case, radon has been addressed. For example at the 325 building, which has a radon generator as part of its licensed process (see EU ID 361), radon emissions are tracked and reported.

Also see Exhibit F page 26 – 29

No change in the AOP is required.

Comment # 77 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 2, Section "**I. General Air Operating Permit (AOP) Structure**", fourth ¶ of the section and second ¶ of the page, last sentence.
"While Ecology often passes public comments to the Department of Health for consideration, the public would be better served by review processes protected and required by law than by informal practices.""

Ecology Response:
Please see responses to Comment # 7 and # 8.

The Department of Health follows the rules and regulation governing radiological air emissions. Ecology agrees the Nuclear Energy and Radiation Act (NERA) does not require or authorize public review or public hearings. However, the ability to change NERA rests with the Legislature and Governor of the State of Washington and not with the Department of Health.

No change in the AOP is required.

Comment # 78 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 2, Section "**I. General Air Operating Permit (AOP) Structure**", fifth ¶ of the section and third ¶ of the page, second and third sentence.
"RCW 70.94.161 (2)(a),[10] for example, requires that all proposed permits are reviewed by a professional engineer (or their staff) employed by Ecology. Among other things, this assures the public that at least one "independent" technical expert reviews a proposed AOP before it is approved, but it is not required or authorized by NERA.""

Ecology Response:
Please see response to comment # 9.

No change in the AOP is required.

Comment # 79 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 2, Section "**I. General Air Operating Permit (AOP) Structure**", fifth ¶ of the section and third ¶ of the page, fourth sentence.
"NERA is also silent on prior review by the public, affected states, the EPA, and the Pollution Control Hearings Board, while WAC 173-401 requires it.""

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.

The FF-01 license from the Department of Health is completed and sent as a unit to the Department of Ecology for inclusion into the Hanford Air Operating Permit (AOP) as an applicable requirement. The mechanism to change the FF-01 license is not part of the AOP process under Washington Administrative Code 173-401. However, if a correction needs to be represented in the AOP, an addendum will be added to Attachment 2 of the AOP to correct any omissions or error contained in the FF-01 license with respect to Subpart A or H, as Ecology also has authority to enforce the NESHAP.

The AOP does have a public comment period, is sent to affected states, and the EPA. It can be appealed to the Pollution Control Hearings Board. As such the AOP is in compliance with applicable rules and regulations.

No change in the AOP is required

Comment # 80
This comment was intentionally left blank.

Comment # 81 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 3, Section "**I. General Air Operating Permit (AOP) Structure**", fifth ¶ of the section and first ¶ of the page, fifth and sixth sentence.
"Hanford Challenge is also concerned about the omission of radon gas releases—defined as a HAP by section 112 of the CAA—in this AOP. The CAA's Title V requires that permits address all HAPs, including radon and radionuclides.""

Ecology Response:
Radon has not been overlooked. WAC 246-247-020 (4) and 40CFR61.91(a) (both referenced in the General Conditions of Attachment 2) allow the exclusion of naturally occurring radon and its respective decay products unless the concentrations or rates of emissions have been enhanced by industrial processes. This is the case at most of the Hanford site. However, where this is not the case, radon has been addressed. For example at the 325 building, which has a radon generator as part of its licensed process (see EU ID 361), radon emissions are tracked and reported.

Also see Exhibit F page 26 – 29.

Comment # 82 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 3, Section "**I. General Air Operating Permit (AOP) Structure**", sixth ¶ of the section and second ¶ of the page.
"Finally, in Attachment 3 the Benton Clean Air Agency (BCAA), rather than Ecology, is empowered to enforce "National Emission Standards for Asbestos" (40 C.F.R. 61 subpart M). As previously noted, Ecology, as the sole permitting authority, is required by the CAA to have the authority and capacity to enforce all applicable requirements.""

Ecology Response:
Please see response to Comments #5, #6, #7, and # 33 for background information.

No change is required in the AOP.

Comment # 83 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 3, Section "**I. General Air Operating Permit (AOP) Structure**", seventh ¶ of the section and third ¶ of the page, bullet 1 of 4.
"Hanford Challenge recommends that the following actions be taken to revise the AOP:

- Regulate radionuclide emissions as a hazardous air pollutant under the CAA's Title V and the Washington Clean Air Act"

Ecology Response:
Radionuclides are regulated under RCW 70.98, RCW 70.94, WAC 173-400, and WAC 246-247. From the rules and regulations, the Department of Health creates the FF-01 license for the Hanford Site. This license is considered an applicable requirement for inclusion into the Hanford AOP. With the inclusion into the AOP, radionuclides are regulated under the CAA's Title V program.

Ecology has also adopted 40 CFR 61 and Appendices in Washington Administrative Code 173-400-075. This includes the Subpart A and H, for radionuclides other than radon from Department of Energy Facilities.

Please see Exhibit A at p. 1-4; Exhibit B at p. 3, Issue 1, Exhibit F at p. 12 - 13 Claim 1

No change is required in the AOP.

Comment # 84 from Tom Carpenter, Hanford Challenge, dated May 8, 2015

"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 3, Section "**I. General Air Operating Permit (AOP) Structure**", seventh ¶ of the section and third ¶ of the page, bullet 2 of 4.
"Hanford Challenge recommends that the following actions be taken to revise the AOP:

- Ensure that Ecology's enforcement authority regarding radionuclides meets all legal requirements in the CAA"

Ecology Response:
See the response to comment # 5.

The commenter is concerned the permitting authority (e.g. 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.

Ecology has also adopted 40 CFR 61 and Appendices in Washington Administrative Code 173-400-075. This includes the Subpart A and H, for radionuclides other than radon from Department of Energy Facilities.

Please see Exhibit A at p. 1-4; Exhibit B at p. 3, Issue 1, Exhibit F at p. 12 - 13 Claim 1

No change is required in the AOP.

Comment # 85 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 3, Section "**I. General Air Operating Permit (AOP) Structure**", seventh ¶ of the section and third ¶ of the page, bullet 3 of 4.
"Hanford Challenge recommends that the following actions be taken to revise the AOP:

- Address the emission of radon within this AOP"

Ecology Response:
Radon has not been overlooked. WAC 246-247-020 (4) and 40CFR61.91(a) (both referenced in the General Conditions of Attachment 2) allow the exclusion of naturally occurring radon and its respective decay products unless the concentrations or rates of emissions have been enhanced by industrial processes. This is the case at most of the Hanford site. However, where this is not the case, radon has been addressed. For example at the 325 building, which has a radon generator as part of its licensed process (see EU ID 361), radon emissions are tracked and reported.

Comment # 86 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 3, Section "**I. General Air Operating Permit (AOP) Structure**", seventh ¶ of the section and third ¶ of the page, bullet 4 of 4.
"Hanford Challenge recommends that the following actions be taken to revise the AOP:

- Ensure Ecology, as the sole permitting authority, has the required authority to enforce all applicable standards, including those relating to radionuclides and asbestos"

Ecology Response:
See response to Comment No. 84 for radionuclides. EPA has addressed this question more than once and concluded that Ecology has sufficient authority. Please see Exhibit A and Exhibit F page 12-13:

See response to Comment No. 33 for Asbestos.

No change to the permit is required.

Comment # 87 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 3, Section "**I. General Air Operating Permit (AOP) Structure**", eighth ¶ of the section and fourth ¶ of the page, first sentence.
"…Hanford Challenge believes that the Statements of Basis should include the memorandum of understanding (MOU) between Ecology and the Department of Health that specifies the roles and responsibilities of each agency regarding radionuclide regulation at Hanford.[11]""

Ecology Response:
See response to comment No. 36.

Comment # 88 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 3, Section "**I. General Air Operating Permit (AOP) Structure**", eighth ¶ of the section and fourth ¶ of the page, second sentence.
"The Statements of Basis should also address the legal and factual bases for using NERA, rather than the CAA, for regulating radioactive emissions.""

Ecology Response:

Please see Exhibit A and Exhibit F.

The premise of the comment is inaccurate in that when Ecology incorporates the Health issued license as Attachment 2, the terms and conditions clearly indicate Ecology is adopting the terms and conditions of the NERA license as CAA requirements.

As the Terms and Conditions of the actual Title V Permit are based on the CAA and not NERA, no change to the Statement of Basis is required.

Comment # 89 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 3, Section "**I. General Air Operating Permit (AOP) Structure**", ninth ¶ of the section, bullet 1 of 4.
"… Hanford Challenge recommends the following modifications to the AOP's Standard Terms and General Conditions:

- (Section 4.6) [12] -- Clarify that federally enforceable requirements includes all requirements of the CAA, including those related to radionuclides. While radionuclides are regulated by the state under NERA, they do not thus cease to be federally regulated under the CAA [including 42 U.S.C. 7416 & 40 C.F.R. 70]. ""

Ecology Response:
Unless the AOP states otherwise, all provisions in the AOP, are federally enforceable. Provisions that are not federal enforceable are specifically identified as "State only" (e.g. Section 4.12 has "{… RCW 70.94.221 (State only)].

For radionuclides, Attachment 2 contains a section titled "DOE Federal Facilities 40CFR61 Subparts A, H, and WAC 246-247 Standard Conditions and Limitations" at the start of the Attachment. The conditions in this section apply to all of the individual licenses on an emission unit basis and indicate the Federal and State only requirements.

Additionally, each emission unit will call out additional citations (Federal or State), as required, that apply to that particular emission unit.

As citations in the AOP are already identified as federally enforceable or "State only", no change in the permit is required.

Comment # 90 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 3, Section "**I. General Air Operating Permit (AOP) Structure**", ninth ¶ of the section, bullet 2 of 4.

"… Hanford Challenge recommends the following modifications to the AOP's Standard Terms and General Conditions:

- (Section 4.12) -- Specify how the permittee and the public would be able appeal terms and conditions created or enforced by the Department of Health pursuant to NERA (RCW 70.98) in License FF-01. This is necessary because the Pollution Control Hearings Board does not have jurisdiction over licenses created under NERA, and the Department of Health does not have the authority to issue an AOP under RCW 70.94, the CAA, or 40 C.F.R. 70.""

Ecology Response:
The appeal process for the AOP is presented in section 4.12 of the Standard Terms and General Conditions and Attachment 2 is part of the AOP.

The requirements of Health license issued under state law is appealable within the timeframe provided after the license is issued, but only the applicant or licensee can appeal under RCW 70.98.080, 70.98.130(3) and RCW 43.70.115. But, per the EPA Order (Exhibit F), bottom of page 24 – 25 and footnote 18, any conditions in the Health license that are used to address federal requirements are appealable to the PCHB at the time the AOP is issued/finalized.

No change in the AOP is required.

Comment # 91 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 3 and 4, Section "**I. General Air Operating Permit (AOP) Structure**", ninth ¶ of the section, bullet 3 of 4.
"… Hanford Challenge recommends the following modifications to the AOP's Standard Terms and General Conditions:

- (Section 5.19) – Clarify that all modifications allowed by sections 5.19 and 5.20 do not apply to License FF-01 (Attachment 2), which was created under regulations and statutes that do not recognize either "Off-permit Changes" or "Changes Not Requiring Permit Revisions"""

Ecology Response:
The language of sections 5.19 and 5.20 will be changed to:

5.19.1 The source shall be allowed to make changes to Attachment 1 not specifically addressed or prohibited by the permit terms and conditions without requiring a permit …"

"5.20.1 Permittee is authorized to make the changes described in this section to Attachment 1 without a permit revision, providing the following conditions are met"

Comment # 92 from Tom Carpenter, Hanford Challenge, dated May 8, 2015

"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 4, Section "**I. General Air Operating Permit (AOP) Structure**", ninth ¶ of the section, bullet 4 of 4.
"… Hanford Challenge recommends the following modifications to the AOP's Standard Terms and General Conditions:

- (Section 5.19 & 5.20) – Clarify that new addresses provided by the EPA or Ecology are also acceptable.""

Ecology Response:
Please see the response to comment # 21.

No change to the permit is needed.

Comment # 93 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 4, Section "**II. Addressing Tank Vapors**", second ¶ of the section.

Efforts to identify and characterize toxic chemical vapors, as well as to stop these vapors from escaping and protect workers, have been inadequate. Workers in and near Hanford's 177 aging high-level waste tanks have periodically reported serious illnesses and injuries connected with powerful odors for decades, but the tank farms are currently categorized as "insignificant emissions units" in the AOP. According to the Hanford Tank Vapor Assessment Report,[14] which was released in October 2014 by the Savannah River National Laboratory (SRNL), both the number of air pollutants and their concentration have been underreported. Without better monitoring practices and an accurate inventory of tank farm emissions, it is not possible to identify the regulatory and pollution control requirements that are applicable under the CAA. Yet, Ecology is obliged, under the CAA [40 C.F.R. 70.6 (a)(1)], to incorporate all applicable requirements, including those connected to all hazardous and toxic air pollutants (HAPSs and TAPs), into the AOP."

Ecology Response:
Ecology has incorporated all applicable requirements in to the Hanford AOP. This includes Notice of Construction permits for double shell tanks and single shell tanks in the Hanford Tank Farms.

The data presented in the Hanford Tank Vapor Assessment Report (TVAR) is not being questioned, but the applicability or relevancy of the data to the Federal Clean Air Act and the Washington Clean Air Act is not clear as the data is lacking important meta-data (e.g. where was the sample collected, how was the sample collected, what protocols were used for sample collection, etc.). Ecology doesn't have access to the actual data presented in the TVAR and can only depend on the information as presented in the report. This raises a question on how relevant the data are for use

in determining ambient air concentration data to be compared to acceptable source impact level (ASIL) values of Washington Administrative Code 173-460, a State-Only requirement, in developing a Notice of Construction Permit. It is the Notice of Construction Permit that is the applicable requirement for inclusion in the AOP.

The objective of the Hanford Tank Vapor Assessment Team is stated on page 12 of 153 of the TVAR as "WRPS asked the Savannah River National Laboratory (SRNL) to assemble and lead the Hanford Tank Vapors Assessment Team (TVAT) 2014 to determine the adequacy of the established WRPS program and prevalent site practices to protect workers from adverse health effects of exposure to the chemical vapors on the Hanford tank farms." [emphasis added] Ambient air is defined in 40 CFR Part 50.1 (e) as "… that portion of the atmosphere, external to buildings, to which the general public has access." [emphasis added] In addition, WAC 173-460-070 requires compliance with the state TAPs requirements to be demonstrated "in any area to which the applicant does not restrict or control access." The Hanford site is land owned or controlled by the source and to which general public access is precluded by a fence or other physical barriers. The air at the Hanford Site doesn't qualify as ambient air. Therefore, the State TAP requirements need not be met within the boundaries of the Hanford Site. However, on-site personnel are covered by other laws, rules, and regulations in regards to their safety.

As the underlying requirements from the Notice of Construction Permits were generated in accordance with the rules and regulations for the creation of the permits, no need exists to change the underlying conditions. With no need to change the underlying condition, no need exists to change the AOP.

Comment # 94 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 4, Section "**II. Addressing Tank Vapors**", third ¶ of the section.

There may be some confusion about where such requirements and monitoring would apply, and who they are intended or required to protect. Ecology must ensure that the requirements of this AOP protect everyone, including those inside of the property line. Fortunately, in CAA Title V permits the emission limits, associated monitoring, reporting, and recordkeeping requirements apply at the individual emissions unit, rather than only at the source's property boundaries,[15] and many of its protections apply to all "persons,"[16] rather than only the (offsite) "public." Hanford employees do not stop being "persons" after arriving at work, and Ecology has the authority and responsibility under the CAA to protect them from dangerous emissions.

FN 16 The CAA does not define "person" with reference to the site boundary [42 U.S.C. 7602(e)], and recognizes as part of its definition of criminal activity placing a "person." without reference to whether they are beyond the site boundary, in imminent danger. [42 U.S.C. 7413]."

Ecology Response:
Please see response to comments #12, #13, #14, and #15.

The requirements for monitoring, reporting, and recordkeeping are specific to each emission unit and relate to the type of emission being monitored. Each emission unit is subject to appropriate monitoring requirements in the issued permit for that unit. These requirements become part of the AOP monitoring, reporting, and record keeping requirements. As such, each emission unit is currently properly monitoring, reporting, and recordkeeping emission data. It is agreed that certain emission units have different points of compliance (e.g. opacity at the stack, HAPS and TAPS in ambient air, etc…), but these are addressed in the NOC permit and the AOP.

The commenter points out that the federal Clean Air Act defines "person" without reference to the site boundary, and makes it a criminal offense to place a "person" in imminent danger, without reference to the location of that "person" when harmed, citing 42 USC 4713 [CAA § 113]. The commenter neglects to note that the provision cited, 42 USC 7413(c)(4) makes it unlawful for any person to "negligently release into the ***ambient air*** *any hazardous air pollutant…" [emphasis added]. Ambient air has been defined previously (see comment # 13) and ambient air is a location. Thus, the CAA protects people located in ambient air.*

Ecology agrees with the commenter that permits must "… be adequate to determine whether any hazardous air pollutant or extremely hazardous air pollutant released into the environment could harm any "person"." But this requirement is applicable to ambient air and the current monitoring, reporting, and recordkeeping meets this requirement.

No change in the permit is required.

Comment # 95 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 6, Section "**II. Addressing Tank Vapors**", ninth ¶ of the section, last two sentences.

"…WRPS does not attempt to protect workers from the synergistic effects of exposure to this dangerous mix of toxic vapors. Engineered controls at vapor release points or putting workers on supplied air are the obvious and recommended ways to effectively protect Tank Farm workers. However, currently there are no technologies deployed for capturing and treating the toxic vapors, nor is supplied air required in most cases at Hanford.""

Ecology Response:
The Clean Air Act regulates ambient air. Ambient air is defined in 40 CFR Part 50.1 (e) as "… that portion of the atmosphere, external to buildings, to which the general public has access." [emphasis added] In addition, WAC 173-460-070 requires compliance with the state TAPs requirements to be demonstrated "in any area to which the applicant does not restrict or control access." The Hanford site is land owned or controlled by the source and to which general public access is precluded by a fence or other physical barriers. The air at the Hanford Site doesn't qualify as ambient air. Therefore, the State TAP requirements need not be met within the boundaries of the Hanford Site. However, on-site personnel are covered by other laws, rules, and regulations in regards to their safety.

No change to the AOP is required.

Comment # 96 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 6 and 7, Section "**II. Addressing Tank Vapors**", tenth ¶ of the section.

"Internal memoranda generated by Department of Ecology personnel in 2014 indicate that Hanford is not in compliance with Clean Air Act standards set for either mercury or NDMA. One memo, dated September 27, 2014, indicates that the Acceptable Source Impact Levels (ASIL) had been exceeded for mercury by 111% of its ASIL and 1159% of the ASIL for NDMA.[26] Assuming that the model for the point of compliance was "the public", which in Hanford's case would be miles away from the tank farms (such as Route 243), exceedance of these standards is surprising. Even more worrisome, however, is the dose that humans closer to the emission sources must be encountering."

Ecology Response:

Ecology is assuming the commenter in referring to the Clean Air Act standards for mercury and NDMA is referring to the Washington Clean Air Act in general and State-only requirements of WAC 173-460 specifically.

The internal memorandum discussed by the commenter was based on initial analytical results submitted by the Permittee. It was discovered the Permittee reported the wrong units associated with the results. The initial units were reported as milligram per cubic meter. The actual values were in micrograms per cubic meter. This reduces the percentage by 1000%, so the actual values reported are below the WAC 173-460 ASIL values.

No change to the AOP is required.

Comment # 97 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 10, Section "**II. Addressing Tank Vapors**", twenty-seventh ¶ of the section.

Ecology and the EPA have the authority, under 40 C.F.R. 70.7 (f)(1)(iii)[36] & (iv),[37] to reopen the AOP, given the uncertainty regarding the variety and concentration of past and current tank vapor emissions. Hanford Challenge urges both agencies to exercise this authority, and make the strongest possible actions to protect human health and the environment from tank vapors mandatory under the AOP. Despite decades of recommendations by Hanford Challenge and others, as well as the devastating health effects they have had for many of those exposed, very little has

been done by the U.S. Department of Energy and its contractors to address this issue. We therefore believe that action on tank vapors must be legally required and enforced aggressively. To the extent possible under the CAA, Ecology should incorporate the recommendations Hanford Tank Vapor Assessment Report into the AOP."

Ecology Response:
The Clean Air Act regulates ambient air. Ambient air is defined in 40 CFR Part 50.1 (e) as "… that portion of the atmosphere, external to buildings, to which the general public has access." [emphasis added] In addition, WAC 173-460-070 requires compliance with the state TAPs requirements to be demonstrated "in any area to which the applicant does not restrict or control access." The Hanford site is land owned or controlled by the source and to which general public access is precluded by a fence or other physical barriers. The air at the Hanford Site doesn't qualify as ambient air. Therefore, the State TAP requirements need not be met within the boundaries of the Hanford Site. However, on-site personnel are covered by other laws, rules, and regulations in regards to their safety.

No change to the AOP is required.

Comment # 98 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 10, Section "**II. Addressing Tank Vapors**", twenty-eighth ¶ of the section, bullet 1 of 6

Hanford Challenge urges Ecology to:
- Reopen the Hanford AOP."

Ecology Response:
No compelling reason exists or has been presented in comments to reopen the AOP

Comment # 99 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 10, Section "**II. Addressing Tank Vapors**", twenty-eighth ¶ of the section, bullet 2 of 6

Hanford Challenge urges Ecology to:
- Provide a schedule of compliance regarding adequate monitoring of tank vapors and for the identification and control of unaccounted for HAPs and TAPs, including those associated with transient peaks. These schedules are required under 40 C.F.R. 70.6(c)(3) and WAC 173-401-630 (3). Six-month progress reports are also required under 40 C.F.R. 70.6 (c)(4) and WAC 173-401-630 (4)

Ecology Response:

Please see response to comment # 12 and # 13.

The underlying Notice of Constructions for emissions incorporated into this AOP as applicable requirements considered the emissions for the discharge point covered by that NOC. The impact to ambient air was evaluated at that time using modeled impacts to the ambient air from the best available sample data and application of conservative assumptions. From this evaluation an Approval Order was issued to the Permittee to operate the emissions point.

A schedule of compliance is not required for state toxic air pollutants (TAPs) as these pollutants have not reached ambient air in concentrations requiring action or have already been assigned permit conditions in the underlying applicable requirement (e.g. NOC permit). WAC 173-460-150 is used with TAPs to determine when modeling is required. The process in WAC 173-460 has been followed for NOC issued permits that have become incorporated into this AOP as applicable requirements. As such, the individual permits have already established and addressed TAPs and the permittee is required to follow those requirements.

A schedule of compliance is not required for federal hazardous air pollutants (HAPs) as Hanford is already required to comply with all the applicable NESHAPs.

With the permittee following the requirements of the underlying NOC permits, they do not need to supply a schedule of compliance.

No change to the permit is needed.

Comment # 100 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 10, Section "**II. Addressing Tank Vapors**", twenty-eighth ¶ of the section, bullet 3 of 6

Hanford Challenge urges Ecology to:

- Revise emission limits, monitoring, sampling, reporting, and recordkeeping requirements to reflect the findings and recommendations of the SRNL report."

Ecology Response:
See response to comment # 12.

The data presented in the Hanford Tank Vapor Assessment Report (TVAR) is not being questioned, but the applicability or relevancy of the data to the Federal Clean Air Act and the Washington Clean Air Act is not clear as the data is lacking important meta-data (e.g. where was the sample collected, how was the sample collected, what protocols were used for sample collection, etc.). Ecology doesn't have access to the actual data presented in the TVAR and can only depend on the information as presented in the report. This raises a question on how relevant the data are for use in determining ambient air concentration data to be compared to acceptable source impact level (ASIL) values of Washington Administrative Code 173-460 in developing a Notice of Construction

Permit. It is the Notice of Construction Permit that is the applicable requirement for inclusion in the AOP.

The objective of the Hanford Tank Vapor Assessment Team is stated on page 12 of 153 of the TVAR as "WRPS asked the Savannah River National Laboratory (SRNL) to assemble and lead the Hanford Tank Vapors Assessment Team (TVAT) 2014 to determine the adequacy of the established WRPS program and prevalent site practices to protect workers from adverse health effects of exposure to the chemical vapors on the Hanford tank farms." [emphasis added] Ambient air is defined in 40 CFR Part 50.1 (e) as "… that portion of the atmosphere, external to buildings, to which the general public has access." [emphasis added] In addition, WAC 173-460-070 requires compliance with the state TAPs requirements to be demonstrated "in any area to which the applicant does not restrict or control access." The Hanford site is land owned or controlled by the source and to which general public access is precluded by a fence or other physical barriers. The air at the Hanford Site doesn't qualify as ambient air. Therefore, the State TAP requirements need not be met within the boundaries of the Hanford Site. However, on-site personnel are covered by other laws, rules, and regulations in regards to their safety.

As the underlying requirements from the Notice of Construction Permits were generated in accordance with the rules and regulations for the creation of the permits, no need exists to change the underlying conditions. With no need to change the underlying condition, no need exists to change the AOP.

Comment # 101 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 10, Section "**II. Addressing Tank Vapors**", twenty-eighth ¶ of the section, bullet 4 of 6

Hanford Challenge urges Ecology to:

- Provide a full and accurate inventory of regulated air pollutants, from both point sources and fugitive emissions that could be expected to be emitted by the tanks in a manner consistent with SRNL's recommendations."

Ecology Response:
Please see response to comment # 100.

Comment # 102 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 10, Section "**II. Addressing Tank Vapors**", twenty-eighth ¶ of the section, bullet 5 of 6

Hanford Challenge urges Ecology to:

- Re-evaluate the categorization of the tank farms as "insignificant emissions units." Because tank vapors have not been adequately characterized, it is not possible to know what federal standard may be applicable. WAC 173-401-530 (2)(a) makes it clear that "no emissions unit or activity subject to a federally enforceable applicable requirement shall qualify as an insignificant emissions unit or activity." Additionally, radionuclides are regulated without a de minimis under 40 C.F.R. 61 subpart H, which is a federally enforceable requirement. Therefore no emission unit subject to 40 C.F.R. 61 subpart H can be "insignificant," including the tank farms, and should be included in Attachment 1 rather than Attachment 2, which is based on state law (NERA). Attachment 1, Section 1.2, pg. 11, lines 9-11[38] should therefore be deleted."

Ecology Response:
See response to Comment # 27.

No change in the AOP is required.

Comment # 103 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 10, Section "**II. Addressing Tank Vapors**", twenty-eighth ¶ of the section, bullet 6 of 6

Hanford Challenge urges Ecology to:

- Ensure that all of these requirements are subject to public review, as required by 40 C.F.R. 70.7 (h) and WAC 173-401-800."

Ecology Response:
Ecology is following the requirements of the Federal and Washington Clean Air Acts in regulating the Hanford Site. Ecology strives to uniformly apply these regulations, regardless of the Permittee's size, location, ownership (e.g. Government or Private), or activity being regulated.

Public involvement is covered in WAC 173-401-800 and Ecology follows this rule to ensure accurate permitting information is made available to the public in a timely manner.

Comment # 104 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 110, Section "**III. Other Comments**", bullet 1 of 6

- Attachment 1, Table 1.4 should include conditions from BCAA Administrative Order (AO) of Correction, No. 20030006, for control of fugitive dust from the Marshaling Yard."

Ecology Response:
Please see response to comment # 23.

The conditions of the AO are found in the terms of the underlying requirement in Approval Order DE02NWP-002, Amendment 4. DE02NWP-002, Amendment 4 states a dust control plan shall be "developed and implemented". Additionally, the dust control plan "shall be made "available to Ecology upon request."

No change in the AOP is required.

Comment # 105 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 110, Section "**III. Other Comments**", bullet 2 of 6

- Include Dust Control Plan 24590-WTP-GPP-SENV-015, Revision 1 in the public review plan."

Ecology Response:
See response to comment # 24.

No change is required to the permit or Statement of Basis.

Comment # 106 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 110, Section "**III. Other Comments**", bullet 3 of 6

- In License FF-01 (Attachment 2), the sum of allowable potentials-to-emit exceeds 10 mrem/year. Ecology should track and report the total potential radionuclide emissions allowed from individual emissions units specified in Attachment 2, Enclosure 1 (Emission Unit Specific License). It should also include potential radionuclide emissions from emissions unit regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)."

Ecology Response:
Attachment 2 (FF-01 License) is created under the authority of WAC 246-247 and WAC 246-247 does not require the sum of all potentials-to-emit radionuclides. As no regulatory basis exists to require the summation, it will not be added as a permit condition.

Regulations promulgated under statutory authority other than the CAA (e.g., RCRA and CERCLA) are not Title V applicable requirements and are not included in the license. In addition, actions taken pursuant to CERCLA are exempt from permitting. However, the actions taken must meet the substantive requirements of applicable or relevant and appropriate requirements (ARARs) (e.g., WAC 246-247-040, ALARACT). Characterization and cleanup activities are being conducted at Hanford pursuant to CERCLA. The characterization and cleanup activities are applying best available radionuclide control technology to control emissions, and emissions are being monitored to ensure that the offsite dose to the maximally exposed individual is below the applicable standards. The CERCLA decision documents, such as an Action Memo, identify ARARs. Hanford is required to report all radioactive air emissions (including those resulting from CERCLA actions) to demonstrate compliance with all dose standards (WAC-246-247 and 40CFR61).

Also, see response to comment # 31.

Ecology offers the following explanation.

Comment # 107 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 110, Section "**III. Other Comments**", bullet 4 of 6

- The Statement of Basis for Standard Terms and General Conditions, Renewal 2, Revision B contains an error (page iv, line 1). It states "Health regulates radioactive air emissions under the authority of RCW 70.92," but RCW 70.92 does not authorize any air pollution regulations.

Ecology Response:
Ecology agrees:

*Line 1 on page iv of the Statement of Basis for Standard Terms and General Conditions will be changed from: "Health regulates radioactive air emissions under the authority of RCW 70.92 . . ." to "Health regulates radioactive air emissions under the authority of RCW 70.98 and 70.94****…."***

Comment # 108 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 110, Section "**III. Other Comments**", bullet 5 of 6

- Provide the public with all of the information used in the permitting process, including the addition of six new emission units, the removal of nine emission units, and the replacement of twenty eight Notice of Construction orders of approval from the Draft

Statement of Basis for Attachment 2, Table of Changes from FF-01 12-10-14 (pgs. 23-32). This is required under 40 C.F.R. 70.7 (h)(2). The EPA, in Sierra Club v. Johnson,[39] interpreted 40 C.F.R. 70.7 (h)(2) such that the use of any information in the permitting process makes it "relevant" to the permit decision, and should thus be available to the public. Public review should be restarted so that this information can be taken into account by commenters."

Ecology Response:
In Sierra Club v. Johnson, the court determined that all information used by the permitting authority to develop the ***air operating permit*** *must be made available to the public for public comment. The court did not require the permitting agency to make available to the public all information used to develop the underlying applicable requirements that are included in an air operating permit. Attachment 2 is created under the authority of WAC 246-247 and provided to Ecology as a whole. Ecology accepts the FF-01 license "as-is" and incorporates it into the air operating permit, in the same way Ecology incorporates the federal NESHAPs requirements into the air operating permit. Thus there is no requirement for Ecology to make available to the public all the information used by the Department of Health in developing the FF-01 license.*

No requirement exists in WAC 246-247 for listing the changes in the FF-01 license. Even so, the Department of Health created a "Table of Changes" in the FF-01 License to provide a brief description of changes (starting on page 23 of Attachment 2) for the convenience of the reader even though it was not required to do so.

It is not necessary to restart the public comment and no change in the AOP is required.

Comment # 109 from Tom Carpenter, Hanford Challenge, dated May 8, 2015
"The submitted comments are presented in a text format (as opposed to a listing format). Ecology has made a best faith effort to extract and list each comment from the text and present it as a specific and unique comment. The full text of the submitted comments is presented in **Exhibit E.**

Page 110, Section "**III. Other Comments**", bullet 6 of 6

- Revisions to the AOP should also either include the Columbia River as a conduit for the emission of airborne radionuclides, or the legal and factual reasons for its exclusion should be presented to the public. Uranium from the soil and groundwater of Hanford's 300 area is leeching into the Columbia River,[40] and uranium decays into (among other things) radon, which is a dangerous radioactive gas. As previously mentioned, the regulation of radon emissions has been improperly omitted from the AOP, and must be incorporated into the permit. This uranium and radon contamination is a result of previous Hanford operations, and so creates exposures beyond natural background radiation levels. It is therefore required under the CAA that it be regulated as an HAP in this AOP."

Ecology Response:
See response to comment # 38.

No change in the AOP is required.

Comment # 110 from USDOE, dated July 28, 2012
This comment was submitted as part of the public comment period for the Hanford AOP Renewal 2. It is identified as Comment 50 in Exhibit H.

A number of additional revisions to the FF-01 license have been approved/issued by DOH since the 2/23/2012 version that was included in the AOP public comment draft issued. Prior to final issuance of the AOP renewal, an updated version of the FF-01 needs to be issued and incorporated into the AOP.

Recommendation: Verify all additional radioactive air emissions licensing activities issued/performed since DOH issued the renewed FF-01 on 2/23/2012 are identified and captured in an updated FF-01 for issuance with the final AOP.

Ecology Response:
The additional revisions to the FF-01 license that were issued/approved by DOH since the 2/23/2012 version were incorporated and are part of this revision of the AOP.

No change to AOP Revision B is required.

Comment # 111 from USDOE, dated July 28, 2012
This comment was submitted as part of the public comment period for the Hanford AOP Renewal 2. It is identified as Comment 54 in Exhibit H.

EU141 has been closed and should be removed from the FF-01. A report of closure for EU141 (DOE letter 12-ECD-0014) was transmitted to DOH on 6/6/2012.

Recommendation: Revise the FF-01 License to remove EU141 and update the Health SOB to add it to the list of obsolete emission units.

Ecology Response:
This EU141 has been removed from the FF-01 license and ATT 2.

No change to AOP Revision B is required.

Comment # 112 from USDOE, dated July 28, 2012
This comment was submitted as part of the public comment period for the Hanford AOP Renewal 2. It is identified as Comment 63 in Exhibit H.

EU1180 has been closed and no longer exists. It should be removed from the FF-01, along with its approval letter AIR 11-302 and NOC ID 787.

Recommendation: Revise the FF-01 License to remove EU1180 and update the Health SOB to add it to the list of obsolete emission units.

Ecology Response:
EU1180 has been removed from the FF-01 license and ATT 2.

No change to AOP Revision B is required.

Comment # 113 from Bill Green, dated December 19, 2013
This comment was submitted as part of the public comment period for the Hanford AOP Renewal 2, Revision A. It is identified as Comment 36 in Exhibit G.

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 70.98[1].
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 WCAA[2], 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.

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[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)

Ecology Response:
The first two changes recommended in the comment are administrative in nature and do not impact the enforceability or functionality of the permit. The comment has been provided to the Washington Department of Health for their consideration.

The third comment was about removing "the Washington Clean Air Act, RCW 70.94" from the sentence. The purpose of WAC 173-480 is to "… define maximum allowable levels for radionuclides in the ambient air and control emissions from specific sources." The Statutory Authority for this is RCW 70.94.331. Further, WAC 173-480-050 states "all emission units shall meet chapter 246-247 or 246-248 WAC…" The Statutory Authority is given as RCW 70.94.331 and 70.94.422.

Thus emission limits are established under the authority of RCW 70.94.331 and it is these limits the licenses are based upon. The listing of RCW 70.94 in the paragraph is accurate and doesn't need to be removed.

No change to AOP Revision B is required.

Comment # 114 from USDOE, dated December 19, 2013
This comment was submitted as part of the public comment period for the Hanford AOP Renewal 2, Revision A. It is identified as Comment 48 in Exhibit G.

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

Recommendation: 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 required abatement control devices are listed for the emission unit. If USDOE would like to add additional requirements (e.g. pre-filters) to the license, then they should start a Notice of Construction Modification with the Department of Health to add additional requirements to their license for this emission unit.

No change to AOP Revision B is required.

Comment # 115 from USDOE, dated December 19, 2013
This comment was submitted as part of the public comment period for the Hanford AOP Renewal 2, Revision A. It is identified as Comment 49 in Exhibit G.

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).

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

Ecology Response:
The damper is a required State-Only required abatement control device as it is used to limit the permitted flow rate to no greater than 1000 scfm.

No change to AOP Revision B is required.

Comment # 116 from USDOE, dated December 19, 2013
This comment was submitted as part of the public comment period for the Hanford AOP Renewal 2, Revision A. It is identified as Comment 50 in Exhibit G.

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).

Recommendation: Remove the Radial Damper from the Abatement Technology table for 296-A-43.

Ecology Response:
The damper is a required State-Only required abatement control device as it is used to limit the permitted flow rate to no greater than 1000 scfm.

No change to AOP Revision B is required.

Comment # 117 from USDOE, dated December 19, 2013
This comment was submitted as part of the public comment period for the Hanford AOP Renewal 2, Revision A. It is identified as Comment 51 in Exhibit G.

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.

Recommendation: Abatement Technology, Additional Description:
Remove "2 parallel flow paths" from the HEPA, Fan, and Heater descriptions.

Ecology Response:
The current application for this emission unit indicates that it has 2 parallel flow paths and the requirement for a heater. If the emission unit only has one flow path, then submit a Notice of Construction modification to the Department of Health to have the license modified.

The heater is a State-Only requirement for the emission unit. If it is non-functional, then the emission is not operating compliantly. The heater either needs to be made functional or USDOE needs to submit a notice of Construction modification to the Department of Health to have the license modified.

No change to AOP Revision B is required.

Comment # 118 from USDOE, dated December 19, 2013
This comment was submitted as part of the public comment period for the Hanford AOP Renewal 2, Revision A. It is identified as Comment 52 in Exhibit G.

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.

Recommendation: Replace the additional requirement with the following:
"Breather filters shall be aerosol tested every 365 days."

Ecology Response:
The current license State-Only conditions and requirements under WAC 246-247-040(5) allow the Department of Health to set" set requirements and limitations on the operation of the emission unit(s) as specified in a license". *The specification for replacement of the filter every 365 is within the authority of the Department of Health.*

If USDOE wants to change the requirement, a Notification of Construction modification will need to be submitted to the Department of Health.

No change to AOP Revision B is required.

Comment # 119 from USDOE, dated December 19, 2013
This comment was submitted as part of the public comment period for the Hanford AOP Renewal 2, Revision A. It is identified as Comment 53 in Exhibit G.

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.

Recommendation: Replace the additional requirement with the following:
"Breather filters shall be aerosol tested every 365 days."

Ecology Response:
See the response to comment # 118.

Comment # 120 from USDOE, dated December 19, 2013
This comment was submitted as part of the public comment period for the Hanford AOP Renewal 2, Revision A. It is identified as Comment 54 in Exhibit G.

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."

Recommendation: 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:
The current State-Only license conditions and requirements under WAC 246-247-040(5) allow the Department of Health to set" limits on emission rates for specific radionuclides from specific emission units". *The specification for the radioisotopes are allows under WAC 246-247-040(5)*

No change to AOP Revision B is required.

Comment # 121 from USDOE, dated December 19, 2013
This comment was submitted as part of the public comment period for the Hanford AOP Renewal 2, Revision A. It is identified as Comment 55 in Exhibit G.

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."

Recommendation: 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:
The current State-Only license conditions and requirements under WAC 246-247-040(5) allow the Department of Health to set" limits on emission rates for specific radionuclides from specific emission units". *The specification for the radioisotopes are allows under WAC 246-247-040(5)*

No change to AOP Revision B is required.

Comment # 122 from USDOE, dated December 19, 2013
This comment was submitted as part of the public comment period for the Hanford AOP Renewal 2, Revision A. It is identified as Comment 56 in Exhibit G.

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."

Recommendation: 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:
The current State-Only license conditions and requirements under WAC 246-247-040(5) allow the Department of Health to set" limits on emission rates for specific radionuclides from specific emission units". *The specification for the radioisotopes are allows under WAC 246-247-040(5)*

No change to AOP Revision B is required.

Comment # 123 from USDOE, dated December 19, 2013
This comment was submitted as part of the public comment period for the Hanford AOP Renewal 2, Revision A. It is identified as Comment 57 in Exhibit G.

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."

Recommendation: 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:
The current State-Only license conditions and requirements under WAC 246-247-040(5) allow the Department of Health to set" limits on emission rates for specific radionuclides from specific emission units". *The specification for the radioisotopes are allows under WAC 246-247-040(5)*

No change to AOP Revision B is required.

Comment # 124 from USDOE, dated December 19, 2013
This comment was submitted as part of the public comment period for the Hanford AOP Renewal 2, Revision A. It is identified as Comment 58 in Exhibit G.

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)

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

Ecology Response:
The addition has occurred.

No change to AOP Revision B is required.

APPENDIX A: COPIES OF ALL PUBLIC NOTICES

Public notices for this comment period:

1. Statement of Basis
2. Public notice (focus sheet)
3. Classified advertisement in the *Tri-City Herald*
4. Notice sent to the Hanford-Info email list
5. Event posted on Ecology Hanford Education & Outreach Facebook page

Hanford Air Operating Permit Revision

The Department of Ecology invites you to comment on proposed changes to Hanford's Air Operating Permit (AOP). This permit regulates air emissions at Hanford to ensure the public is protected.

Air Pollution Regulations

Ecology is following Washington Administrative Code 173-400, General Regulations for Air Pollution Sources, for the Hanford AOP revision. These regulations cover how we conduct this public comment period. They outline when, where, and how we notify the public and provide the proposal for review.

What the Permit Regulates

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

Two USDOE offices, the Richland Operations Office and the Office of River Protection, are regulated jointly under this 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.

Permit Revision Scope

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.

We are reformatting the part of the permit for toxic emission units (e.g., a stack, engine, or building) so all information for each unit is in one place. We are also adding newly identified engines into the permit. These are diesel engines that are no longer mobile, so they must be regulated by the permit.

Reviewing the proposed changes

Information about the public comment period is in the sidebar on this page. Document review locations are listed on the back.

WHY IT MATTERS

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

PUBLIC COMMENT PERIOD

March 22 – April 24, 2015
Extended to May 8, 2015

TO SUBMIT COMMENTS

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

Philip Gent
Department of Ecology
3100 Port of Benton Blvd.
Richland, WA 99354
509-372-7950
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
509-372-7950
Hanford@ecy.wa.gov

SPECIAL ACCOMMODATIONS

To request ADA accommodation for disabilities, or printed materials in a format for the visually impaired, call Ecology at 509-372-7950.

Persons with impaired hearing may call Washington Relay Service at 711.

DEPARTMENT OF ECOLOGY
State of Washington

Public Comment Period
Hanford's Air Operating Permit
Permit Modification
March 22 – April 24, 2015
Extended to May 8, 2015

Information Repositories and other document review locations

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 Scarano 509-372-7443
DOE.reading.room@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: Cass Hartnett 206-685-3130
Cass@uw.edu

Spokane

Gonzaga University Foley Center
502 E Boone Avenue
Spokane, WA 99258
Contact: John S. Spencer 509-313-6110
spencer@gonzaga.edu

Publication Number: 15-05-003

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at Kennewick, ton this 16th day

esley Priddy
Director
3-1304#15-8475
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**BENTON
UNTY WATER
RVANCY BOARD
C NOTICIFICATION
E WATER RIGHT
GE/TRANSFER
ICATIONS AND
LIC HEARING**

Notice is hereby t the Benton Cou- ter Conservancy s formally received ons for water right ransfer and has ed such applica- ve for Water Board public hearing re- he applications will by the Water Board 19, 2015, at 4:00 the BCWCB office at 3030 W. er, Ste., 205-A, ck, WA 99336. See pplication informa-

Application by: others, %Mercer 46 Sonova Rd., WA 99350. The n relates to the water right and date: CG3- 1, priority date of 20, 1974, for purposes, BENT- The existing right s annual use for for 213 acre-ft., for of 120 acres, 5 to October 15, g with 1 acre-ft. of use. The existing withdrawal is all e NW1/4 of the of section 5, T.4N, M; and the existing use is all within 5 and 6, T.4N, M. The overall re- for a permanent adding places of points of diversion, L. Klickitat River g to the Columbia a. The requested for points of with- rom the existing withdrawal and all Columbia River hin NE1/4 of the Section 6, T.4N, M; and all within 4 of the NE1/4 of 30, T.3N, R.20 e proposed added use is all within: 3, 4, 11, 15, 20, T.5N, and R.24 d all within the section 13 and section 24, T.3N, M; and all within of section 7, and , and N1/2 of sec- d NW1/4 of Sec- d N1/2 of section R.20 EWM. There nge to period of proposed irrigated 164 acres, to be njunction with ex- nservation O&M on Mercer Can- gated agriculture KE NOTICE: per -153-080 admin- le for public no- ation, interested hereby directed the actual ap- documentation, detailed legal s therein, from er Board, at 523.

Application by: hers, %Mercer 46 Sonova Rd., VA 99350. The relates to the water right and date: CG3- , priority date of 20, 1974, for urposes, BENT- e existing right use (1 acre-ft.) The requested change is for points of diversion all within the Columbia River reach within: NE1/4 of the NE1/4 of Section 6, T.4N, R.24 EWM; and all within the SW1/4 of the NE1/4 of Section 30, T.3N, R.20 EWM. The proposed added place of use is all within: sections 3, 4, 11, 15, 20, and 21, T.5N, and R.24 EWM; and all within the SE1/4 of section 13 and NE1/4 of section 24, T.3N, R.19 EWM; and all within the SW1/4 of section 7, and section 18, and N1/2 of section 19, and NW1/4 of Section 20, and N1/2 of section 30, T.3N, R.20 EWM. There is no change to purpose of use or period of use, and proposed irrigated is for up to 142 acres, to be used in conjunction with existing Conservation O&M program on Mercer Canyons irrigated agriculture lands. TAKE NOTICE: per WAC 173-153-080 administrative rule for public notice information, interested parties are hereby directed to request the actual application documentation, and the detailed legal descriptions therein, from the Water Board, at 509-783-1623.

Under WADOE Rule WAC 173-153 and other agency regulations, any protests or objections to the approval of this application may be filed with the Department of Ecology and must include a detailed statement of the basis for objections; protests must be accompanied by a fifty dollar ($50) recording fee and filed with the Cashiering Section, State of Washington, Department of Ecology, P.O. Box 47611, Olympia, WA 98504-7611 within thirty (30) days from the date of publication.

Any interested party may submit comments, objections, and other information to the board regarding this application. The comments and information may be submitted in writing or verbally at any public meeting of the board held to discuss or decide on the application. Comments should include: name, address, and phone number of commenting party; identification of the change/transfer receiving comments; and detailed information or documentation to substantiate facts presented within the comments. All comments are noted within the Report of Examination and Record of Decision affecting the subject application. This application will be on the board agenda during its regular meetings, contact the board for meeting schedules. Written comments or information for the board may be sent to: Attention, Dr. Darryll Olsen, BCWCB, 3030 W. Clearwater, Ste., 205-A, Kennewick, WA 99336.
#15-8454 3/15 & 3/22/2015

BENTON & FRANKLIN COUNTIES DEPARTMENT OF HUMAN SERVICES 2015 HOUSING SERVICES REQUEST FOR PROPOSALS

Benton and Franklin Counties Department of Human Services are soliciting interested applicants to provide Housing Services to HEN and TANF consumers in Benton and Franklin Counties. Any qualified agency, wishing to participate in the Request for Proposals process, should forward a letter of interest to be received by 12:00 p.m. on April 1, 2015 to:

Benton and Franklin Counties Department of Human Services

start serving consumers on July 1, 2015.
#15-8457 3/18 & 3/22/2015

BID MEETING:

Tuesday March 24: Benton Irrigation District Board of Directors is having an inspection at the river pump station at 13079 W O.I.E. HWY at 10:00AM. The meeting is open to the public.
#15-8487 3/22 & 3/23/2015

CITY OF KENNEWICK DETERMINATION OF NON-SIGNIFICANCE

FILE/PROJECT NUMBER:
ZOA 15-01/
AMD-2015-00536

DESCRIPTION OF PROPOSAL:
Reduce minimum lot width in the RM zone from 50 feet to 30 feet

PROPONENT:
Hayden Homes, LLC (2464 SW Glacier Pl., Suite 110, Redmond, OR 97756)

LOCATION OF PROPOSAL, INCLUDING STREET ADDRESS, IF ANY: City wide proposal

LEAD AGENCY:
City of Kennewick

DETERMINATION:
The City of Kennewick has determined that this proposal does not have a probablesignificant adverse impact o the environment. An Environmental Impact Statement (EIS) will not be required underRCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and otherinformation on file with the City. This information is available to the public on request. Application for other required permits may require further review under SEPA procedures.

_X_There is no comment period for this DNS.

This DNS is issued after using the optional DNS process in WAC 197-11-355. There is no further comment period on the DNS.

This DNS is issued under 197?11?340(2); the City will not act on this proposal for fifteen days from the datebelow. Comments must be submitted by _____.

_____. After the review period has elapsed, all commentsreceived will be evaluated and the DNS will be retained, modified, or withdrawn as required by SEPA regulations.

RESPONSIBLE OFFICIAL:
Gregory McCormick, AICP
POSITION/TITLE:
Community Planning Director
ADDRESS: 210 W 6th Ave., P.O. Box 6108, Kennewick, WA 99336
PHONE: (509) 585-4463

Changes, modifications and /or additions to the checklist have been made on the attached Environmental Checklist Review.

This DNS is subject to the attached conditions:

_X_No conditions.

See attached condition(s).

Date: March 22, 2015

Signature: _____

Appeal: An appeal of this determination must be submitted to the Community Planning Department withinfourteen (14) calendar days after the date issued. This appeal must be written and make specific factual objections to the City's threshold determination. Appeals shall be conducted in conformance with Section 4.12.090(9) of the Kennewick Municipal Code and the required fees

Department of Transportation15-8482
3/22/2015

Hanford Air Operating Permit Revision

The Department of Ecology invites you to comment on proposed changes to Hanford's Air Operating Permit (AOP). This permit regulates air emissions at Hanford to ensure the public is protected.

The public comment period runs from March 22 through April 25, 2015.

Air Pollution Regulations: Ecology is following Washington Administrative Code 173-400, General Regulations for Air Pollution Sources, for the Hanford AOP revision. These regulations cover how we conduct this public comment period. They outline when, where, and how we notify the public and provide the proposal for review.

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

Two USDOE offices, the Richland Operations Office and the Office of River Protection, are regulated jointly under this 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.

Permit revision scope: 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.

We are reformatting the part of the permit for toxic emission units (e.g., a stack, engine, or building) so all information for each unit is in one place. We are also adding newly identified engines into the permit. These are diesel engines that are no longer mobile, so they must be regulated by the permit.

Public meeting - a public meeting 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, 509-372-7950, or Hanford@ecy.wa.gov.

To submit comments, send them (email preferred) to Philip Gent, Department of Ecology, 3100 Port of Benton Blvd, Richland WA 99354, 509-372-7950, or Hanford@ecy.wa.gov.

You can find the draft revised permit and supporting information online at www.ecy.wa.gov/programs/nwp/commentperiods.htm. You can find the information also at the following locations:

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

Department of Energy
Administrative Record
2440 Stevens Drive,
Room 1101
Richland, WA 99354
Contact: Heather Childers
509-376-2530 Heather_M_Childers@ri.gov

Department of Energy
Reading Room
2770 Crimson Way,
Contact: Cass Hartnett
206-685-6110
Hartnettc@uw.edu

Spokane
Gonzaga University
Foley Center
502 E. Boone Avenue
Spokane, WA 99258
Contact: John Spencer
509-313-6110
spencer@gonzaga.edu

To request ADA accommodation for disabilities, or printed materials in a format for the visually impaired, call Ecology at 509-372-7950.

Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.
#15-8446 3/22/2015

In the matter of the Estate of Leslie L. Young Deceased January 27, 2015. The notice agent named below has elected to give notice to creditor of the above named decedent. Any person having a claim against the deceased must before the time the claim would be barred by any applicable statue of limitations, present the claim by mailing to personal representative at the address stated below:

Date of First Publication: March 8, 2015

Personal Representative
Pat Young
P.O. Box 913
Benton City, WA 99320
#15-8430 3/8 & 3/15 & 3/22/2015

INVITATION FOR BIDS PASCO POLICE COMMUNITY SERVICES BUILDING PROJECT #C5-GN-9A-14-01

You are invited to bid on construction of a new 38,000 sq. ft. Police Station in the City of Pasco on W Nixon St., between N 1st, and N 3rd Ave., and briefly described as follows:

Two small lower level spaces (total 5,700 sq. ft.), 29,200 main level, and 3,100 sq. ft. second floor. The building will be comprised of administration, patrol, investigation, records, evidence, garage, community room and other related spaces, Building exterior will be precast concrete panels interspersed with Corten metal panels, oversized concrete blocks, CMU and exterior glazing. Site work will include the expansion of the existing secure parking area and the addition of 20 visitor parking spaces. This project also includes the relocation of existing IT services and consolidate operations from the existing telecommunications in city hall. The project does not include dispatch related operations or holding cells.

Bids shall be addressed to the Mayor and the City Council and will be received at the Engineering Division Office, 2nd Floor of City Hall, 525 North 3rd Avenue, Pasco, Washington, up to the hour of **2:00 p.m., Tuesday, April 7, 2015 and then shall be opened in the City Council Chambers located on the first floor of the City Hall Building.**

Beginning **March 17th, 2015**, Plans and Specifications will be available for download, upon registration, on the city?s website at www.pasco-wa.gov at no cost. Hard copies of the documents will be available at the listed plan centers for a cost of $200, fifty percent of which is refundable if two checks are provided and the documents are returned in good condition. Those

tal maximum Bid must accompany each Bidder?s proposal in accordance with Instructions to Bidders.

A non-mandatory pre-bid meeting will be held on ***Thursday, March 26, 2015 at 10:00 a.m.*** in the Parks and Recreation Classroom located on the 1st Floor of City Hall, 525 North 3rd, Pasco WA. Technical questions may be directed to **Terence L. Thornhill Architect,** attention Devin Geisler, Ph. 509-547-8854, Email dgg@tltarch.com.

No bidder may withdraw his proposal after the date and time set for opening thereof or before Award of Contract, unless said Award is delayed beyond 60 days.

The City of Pasco reserves the right to waive irregularities and to reject any and all bids and to accept any Bid deemed to be responsive in the best interest of the City of Pasco and reserves the right to re-solicit new bids.

DATED: March 12, 2015

Ahmad Qayoumi, PE
Public Works Director
#15-8453 3/15 & 3/22/2015

Kennewick Irrigation District (KID) Requests Qualifications from Engineers and Consultants

Per RCW 39.80.030 the KID in procuring surveying, geotechnical, structural, architectural, hydraulics, planning, environmental, construction management, and biological science services invites firms lawfully engaged in the practice of these professions to submit a statement of qualifications and performance data. Firms must indicate in their response which of the above services they are engaged in. These services are solicited annually. For inclusion on our 2015 professional services roster go to www.kid.org , click Doing Business with KID, Professional Services, and print out our registration form. Firms must return the completed registration form along with three (3) copies (not to exceed 20 pages front and back) of their Statement of Qualifications (SOQ) to KID, PO Box 6900, 12 W. Kennewick Ave., Kennewick WA 99336 Attn: Engineering. Submittals must be received by April 10th, 2015. SOQ and performance information will be reviewed, and used as the source from which to select one or more qualified firms for future projects. Selection criteria will include: 1) Experience of firm including responses from references, 2) Experience of Principal Staff, including responses from references, 3) Ability to adhere to a schedule, 4) Location of office where work will be performed. Minority, women-owned, federally disadvantaged and small businesses are encouraged to apply.
#15-8476 3/22 & 3/29/2015

ORDINANCE NO. 07-15

AN ORDINANCE of the City of Richland establishing and dedicating the rights-of-way for Polar Way, 1st Street, Logston Boulevard and Robertson Drive. This ordinance shall take effect the day following its publication in the official newspaper of Richland.

Signed by David W. Rose, Mayor;
Form Approved by Heather Kintzley, City Attorney.

its publication in the official newspaper of Richland.

Signed by David W. Rose, Mayor;
Form Approved by Heather Kintzley, City Attorney.

A copy of this ordinance available at the City Clerk's Office, 975 George Washington Way, Richland, WA 99352 or
(509) 942-7388.
#15-4893 3/22/2015

PORT OF BENTON NOTICE OF ACCEPTANCE OF WORK RICHLAND AIRPORT OBSTRUCTION MITIGATION AND FENCING PROJECT

Notice is hereby given that the Port of Benton accepts the work done by Stone Creek Land Design & Development LLC for the scope of work on the Richland Airport Obstruction Mitigation and Fencing Project in Richland, Washington: Any laborer, mechanic, sub-contractor, material man or person claiming to have supplied material, provisions or goods for the prosecutions of such work or the making of such improvements who has not been paid should present to and file with the Bond of Commissioners a notice in accordance with RCW 39.08.030 and within the time set fourth therein.

/s/ John Haakenson,
Director of Airports & operations, Port of Benton
#15-8447 3/15 & 3/22/2015

PORT OF KENNEWICK SPECIAL JOINT COMMISSION MEETING

The legislative authorities of the Port of Kennewick and the Confederated Tribes of the Umatilla Indian Reservation will hold a special joint public meeting on Friday, March 27, 2015 at 10:00 a.m. in the Clover Island Inn, 435 Clover Island Drive, Kennewick, WA 99336. The purpose of the meeting is to discuss port projects and economic development partnerships. The public is welcome and encouraged to attend.

/s/

Don Barnes President,
Board of Commissioners
Port of Kennewick

Please Direct Questions to: 509.586.1186

Public Notice PASCO SCHOOL DISTRICT NO. 1 NOTICE TO CONTRACTORS

Applications are now being accepted by the Pasco School District from contractors wishing to be placed on the District's Small Works Roster for the period March, 2015 through March, 2016. Qualified contractors wishing to be considered for small works projects are encouraged to submit applications.

Applications can be obtained by calling 509-543-6713, or view the Procurement Department page of the District web site, www.psd1.org.

The Pasco School District will affirmatively ensure that disadvantaged business enterprises will be afforded full opportunity to participate in this process and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
#15-8376 3/8 & 3/22/2015

Access Road at the Airport, Prosser, W Reconstruction wo clude demolition paving of a 350 sq section of the FB taxilane pavement the FBO building a of a 300 square foo of Apron Paveme will include exc pavement remov grade preparation, rock, crushed a base rock, bitu surfacing, gradi placement of a Por ment valley gutte basin, percolation two infiltration beds ity conduit crossing and specifications, ing bid forms and documents, may b ined at the followi tions:

• Port of Benton Adr tive Office, 3250 Benton Blvd, Richla Richland Washingto

• J-U-B ENGINEER 2810 Clearwater Suite 201, Kennewi 99336

The following Plan have been contac garding this invitati may have down plans and specs for nation:

• Spokane Region Center, 102 E Boon kane, Washington

• Spokane Chap A.G.C., E. 4935 Tre nue, Spokane, Was

• Yakima Plan Centi N 20th Avenue, Washington

• Builders Exchan Washington, Inc., Wetmore Avenue, E Washington§

•Tri-City Constr Council, 20 E Ken Avenue, Kenne Washington

Copies may be obta the office of J-U-B E EERS, Inc., located a Clearwater Avenue, 201, Kennewick, 99336, upon payme $50.00 for each set, is non-refundable.

Plans and Specific will also be available J-U-B FTP site. Dire to the FTP site are in below. ***Bids will o accepted from regi planholders who purchased a set of and Contract Docu from J-U-B ENGIN Inc.*** All addenda will placed on the FTP s

To access J-U-B's ft

Navigate to the fol URL - ftp.jub.com User: ProsserAirpo Pass: TaxilaneF (case sensitive)

Each bid must be panied by a certified cash, cashier's che bid bond in an amou less than 5% of the bid.

CIVIL RIGHTS TITLE

The Port of Bento accordance with the sions of Title VI of th Rights Act of 1964 (7 252, 42 U.S.C. §§ 20 2000d-4) and the lations, hereby notif bidders that it will matively ensure tha contract entered into ant to this advertise disadvantaged bus enterprises will be af full and fair opportu submit bids in respo this invitation and will discriminated again the grounds of race, or national origin in c eration for an award.

NON SEGREGATED FACILITIES REQUIREMENTS

Notice to Prospective erally Assisted Constr

To Place Your Legal Announcement, Call 582-1560

Hanford Air Permit comment period extended to May 8

Washington's Department of Ecology is extending the comment period on proposed changes to Hanford's Air Operating Permit (AOP) for two weeks in response to a request. The permit ensures Hanford's air emissions stay within safe limits that protect people and the environment.

The extended comment period now runs through May 8, 2015.

Proposed Changes

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.

Ecology is reformatting the part of the permit for toxic emission units (e.g., a stack, engine, or building) so all information for each unit is in one place. We are also adding newly identified engines into the permit. These are diesel engines that are no longer temporary, so they must be regulated by the permit.

Two U.S. Department of Energy offices are applying jointly for the permit. The Richland Operations Office has the lead.

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

Madeleine Brown
509-372-7950
Hanford@ecy.wa.gov

Please send comments by email (preferred), U.S. Mail, or hand deliver them by May 8 to:

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

You can review the proposed changes and supporting information at Ecology's Nuclear Waste Program **website**, www.ecy.wa.gov/programs/nwp/commentperiods.htm.

The proposal and supporting info are also at the Hanford Public Information Repositories:

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

Department 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 Scarano
509-372-7443 DOE.
reading.room@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 Washington
Suzzallo Library
PO Box 352900
Seattle, WA 98195
Contact: Cass Hartnett
206-685-6110
Hartnettc@uw.edu

Spokane

Gonzaga University
Foley Center
502 E. Boone Avenue
Spokane, WA 99258
Contact: John Spencer
509-313-6110
spencer@gonzaga.edu
#15-8664 4/24/2015

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THE COUNTY OF FRANKLIN

when due.

DATED: February 25, 2015

McCarthy & Holthus, LLP
/s/ Mary Stearns

[ ] Angela M. Michael, WSBA #37727
[X] Mary Stearns, WSBA #42543
108 1st Avenue South, Ste. 300
Seattle, WA 98104
(855) 809-3977
Attorneys for Plaintiff
#15-8379 3/20 & 3/27 & 4/3 & 4/10 & 4/17 & 4/28/2015

NOTICE OF TRUSTEE'S SALE APN: 113391214 TS No: 14-31347 Deed of Trust Reference No.: 1725154 Grantor: JOSE ESPINOZA AND MARIA ESPINOZA, HUSBAND AND WIFE Grantee: LOAN NETWORK LLC, A WASHINGTON LLC as Lender THIS NOTICE IS THE FINAL STEP BEFORE THE FORECLOSURE SALE OF YOUR HOME. You have only 20 DAYS from the recording date of this notice to pursue mediation. DO NOT DELAY. CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW to assess your situation and refer you to mediation if you are eligible and it may help you save your home. See below for safe sources of help. SEEKING ASSISTANCE - Housing counselors and legal assistance may be available at little or no cost to you. If you would like assistance in determining your rights and opportunities to keep your house, you may contact the following: The statewide foreclosure hotline for assistance and referral to housing counselors recommended by the Housing Finance Commission: Telephone: 1-877-894-HOME (1-877-894-4663) Web site: http://www.dfi.wa.gov/consumers/homeownership/ The United States Department of Housing and Urban Development: Telephone: 1-800-569-4287 Web site: http://portal.hud.gov/hudportal/HUD The statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys Telephone: 1-800-606-4819 Web site: http://www.ocla.wa.gov/ I. NOTICE IS HEREBY GIVEN that the undersigned Trustee, BENJAMIN DAVID PETIPRIN will on 5/1/2015, at 10:00 AM at The main entrance of the Franklin County Courthouse, 1016 North 4th in the City of Pasco, WA 99301 sell at public auction to the highest and best bidder, payable at the time of sale, the following described real property, situated in the County of Franklin, State of Washington, to-wit: Lot 3, Block 2, HOLT'S ADDITION TO PASCO, according to the Plat thereof recorded in Volume B of Plats, Page 72, records of Franklin County, Washington. Commonly known as: 1740 N 6TH AVE PASCO, Washington 99301-3608 which is subject to that certain Deed of Trust dated 9/15/2008, recorded 9/26/2008, under Auditor's File No. 1725154, in records of Franklin County, Washington, from JOSE ESPINOZA AND MARIA ESPINOZA, HUSBAND AND WIFE, as Grantor(s), to JOAN H. ANDERSON, EVP ON BEHALF OF FLAGSTAR BANK, FSB, as Trustee, to secure an obligation in favor of LOAN NETWORK LLC, A WASHINGTON LLC as Lender, Matrix Financial Services Corporation is the holder of the Promissory Note and current Beneficiary of the Deed of Trust. II. No action commenced by the Beneficiary of the Deed of Trust is now pending to seek satisfaction of the obligation in any Court by reason of the Borrower's or Grantor's default on the obligation secured by the Deed of Trust. III. The default(s) for which this

of Default was posted in a conspicuous place on the real property described in Paragraph I above, and the Trustee has possession of proof of such service or posting. VII. The Trustee whose name and address are set forth below will provide in writing to anyone requesting it, a statement of all costs and fees due at any time prior to the sale. VIII. The effect of the sale will be to deprive the Grantor and all those who hold by, through or under the Grantor of all their interest in the above described property. IX. Anyone having any objections to this sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale. X. NOTICE TO OCCUPANTS OR TENANTS ? The purchaser at the Trustee's Sale is entitled to possession of the property on the 20th day following the sale, as against the Grantor under the deed of trust (the owner) and anyone having an interest junior to the deed of trust, including occupants and tenants. After the 20th day following the sale the purchaser has the right to evict occupants and tenants by summary proceedings under the Unlawful Detainer Act, Chapter 59.12 RCW. For tenant-occupied property, the purchaser shall provide a tenant with written notice in accordance with RCW 61.24.060. DATED: 12-23-14 Benjamin David Petiprin, Esq., c/o Law Offices of Les Zieve as Trustee Address for service: Law Offices of Les Zieve 1100 Dexter Avenue North Suite 100 Seattle, WA 98109 Phone No: (206) 866-5345 Beneficiary / Servicer Phone: 1-800-393-4887 A-4503435 04/03/2015, 04/24/2015
#15-8459 4/3 & 4/24/2015

NOTICE OF TRUSTEE'S SALE Pursuant to the Revised Code of Washington 61.24, et seq. TS No.: WA-13-564825-SH APN No.: 112-222-167 Title Order No.: 130129410-WA-MSI Deed of Trust Grantor(s): GABRIEL CUEVAS Deed of Trust Grantee(s): MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR MILA, INC. Deed of Trust Instrument/Reference No.: 1655588 I. NOTICE IS HEREBY GIVEN that Quality Loan Service Corp. of Washington, the undersigned Trustee, will on 5/22/2015, at 10:00 AM The main entrance of the Franklin County Courthouse, 1016 North 4th in the City of Pasco, WA 99301 sell at public auction to the highest and best bidder, payable in the form of credit bid or cash bid in the form of cashier's check or certified checks from federally or State chartered banks, at the time of sale the following described real property, situated in the County of FRANKLIN, State of Washington, to-wit: THE LAND REFERRED TO IN THIS COMMITMENT IS SITUATED IN THE STATE OF WASHINGTON, COUNTY OF FRANKLIN AND IS DESCRIBED AS FOLLOWS: LOT 1, BLOCK 3, COLUMBIA ADDITION, ACCORDING TO THE PLAT THEROF RECORDED IN VOLUME B OF PLATS, PAGE 68, RECORDS OF FRANKLIN COUNTY, WASHINGTON, TOGETHER WITH WESTERLY 10 FEET OF MERIDIAN AVENUE (NOW 19TH AVENUE) ADJOINING LOT 1 ON THE EAST, AS VACATED UNDER ORDINANCE NO. 1691, RECORDED DECEMBER 4, 1974 UNDER FRANKLIN COUNTY AUDITOR S FILE NO. 349282. More com-

address(es): NAME GABRIEL CUEVAS, AN UNMARRIED MAN ADDRESS 1904 W IRVING ST, PASCO, WA 99301 by both first class and certified mail, proof of which is in the possession of the Trustee; and the Borrower and Grantor were personally served, if applicable, with said written Notice of Default or the written Notice of Default was posted in a conspicuous place on the real property described in Paragraph I above, and the Trustee has possession of proof of such service or posting. These requirements were completed as of 12/11/2014. VII. The Trustee whose name and address are set forth below will provide in writing to anyone requesting it, a statement of all costs and fees due at any time prior to the sale. VIII. The effect of the sale will be to deprive the Grantor and all those who hold by, through or under the Grantor of all their interest in the above-described property. IX. Anyone having any objections to this sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale. NOTICE TO OCCUPANTS OR TENANTS - The purchaser at the Trustee's Sale is entitled to possession of the property on the 20th day following the sale, as against the Grantor under the deed of trust (the owner) and anyone having an interest junior to the deed of trust, including occupants who are not tenants. After the 20th day following the sale the purchaser has the right to evict occupants who are not tenants by summary proceedings under Chapter 59.12 RCW. For tenant-occupied property, the purchaser shall provide a tenant with written notice in accordance with RCW 61.24.060. THIS NOTICE IS THE FINAL STEP BEFORE THE FORECLOSURE SALE OF YOUR HOME. You have only 20 DAYS from the recording date of this notice to pursue mediation. DO NOT DELAY. CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW to assess your situation and refer you to mediation if you are eligible and it may help you save your home. See below for safe sources of help. SEEKING ASSISTANCE Housing counselors and legal assistance may be available at little or no cost to you. If you would like assistance in determining your rights and opportunities to keep your house, you may contact the following: The statewide foreclosure hotline for assistance and referral to housing counselors recommended by the Housing Finance Commission: Toll-free: 1-877-894-HOME (1-877-894-4663) or Web site: http://www.dfi.wa.gov/consumers/homeownership/post_purchase_counselors_foreclosure.htm. The United States Department of Housing and Urban Development: Toll-free: 1-800-569-4287 or National Web Site: http://portal.hud.gov/hudportal/HUD or for Local counseling agencies in Washington: http://www.hud.gov/offices/hsg/sfh/hcc/fc/index.cfm?webListAction=search&searchstate=WA&filterSvc=dfc The statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys: Telephone: 1-800-606-4819 or Web site: http://nwjustice.org/what-clear. If the sale is set aside for any reason, including if the Trustee is unable to convey title, the Purchaser at the sale shall be entitled only to a return

in the above estate may appear and file objections to and contest the Final Report.

Dated April 21st, 2015

By Chris Moore,
Personal Representative

Attorneys for
Personal Representative:
BEAU RUFF,
WSBA #34095
LEAVY, SCHULTZ, DAVIS & RUFF, P.S.
#15-8651 4/24 & 5/1 & 5/8/2015

SUPERIOR COURT OF WASHINGTON COUNTY OF BENTON JUVENILE COURT

Dependency of
CRESENCIA GUIA-MIRELES,

DOB 01/19/2004

No 15-7-00141-3

Notice and Summons by Publication (Guardianship) (SMPB)

To David Guia Olvera, Father

YOU ARE HEREBY NOTIFIED that a Petition for Order Appointing Title 13 RCW Guardian was filed on March 26, 2015, in which it is requested that a guardianship be created as to the above named child. A Guardianship hearing will be held on this matter on June 9, 2015 at 1:30 p.m. at Benton/Franklin Juvenile Justice Center, 5606 W Canal Pl, Kennewick, WA 99336 The purpose of the hearing is to hear and consider evidence on the petition You are hereby summoned to appear at the above time and place to answer a petition or the petition will be granted.

Any party has the right to be represented by an attorney in all proceedings, to introduce evidence, to be heard in his or her own behalf, to examine witnesses, to receive a decision based solely on the evidence addressed at the hearing, and to an unbiased fact finder If you cannot afford a lawyer, one will be appointed by the court to represent you To request a lawyer, contact the Benton/Franklin County Juvenile Court by called (509) 783-2151 and request the legal process unit

YOUR FAILURE TO APPEAR MAY RESULT IN THE COURT ENTERING AN ORDER ESTABLISHING A TITLE 13 RCW GUARDIANSHIP OF THE ABOVE NAMED CHILD

Dated this 21st day of April, 2015

DEPUTY CLERK
#15-8650 4/24 & 5/1 & 5/8/2015

Trustee Sale # 005591- WA Title # TSG1308-WA-700403 NOTICE OF TRUSTEE'S SALE PURSUANT TO THE REVISED CODE OF WASHINGTON CHAPTER 61.24 ET. SEQ. THIS NOTICE IS THE FINAL STEP BEFORE THE FORECLOSURE SALE OF YOUR HOME. You have only 20 DAYS from the recording date on this notice to pursue mediation. DO NOT DELAY. CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW to assess your situation and refer you to mediation if you are eligible and it may help you save your home. See below for safe sources of help. SEEKING ASSISTANCE Housing counselors and legal assistance may be available at little or no cost to you. If you would like assistance in determining your rights and opportunities to keep your house, you may contact the following: The statewide foreclosure hotline for assistance and referral to housing counselors recommended by the Housing Finance Commission Telephone: 1-877-894-HOME(1-877-894-4663) . Web site: http://www.dfi.wa.gov/consumers/homeownership/post_purc-

NO.PMT.....3
AMOUNT.....$6,052.56
TOTAL.....$18,157.68
FROM.....7/1/2013
NO. PMT.....18
AMOUNT.....$6,084.73
TOTAL.....$109,525.14

ADVANCES/ LATE CHARGES

DESCRIPTION/TOTAL
TOTAL FEES.....$72.00
Accrued Late Charges $694.32
OTHER FEES DUE $237.25
Corporate Advance $4,640.46

ESTIMATED FORECLOSURE FEES AND COSTS

DESCRIPTION/TOTAL
Trustee's Fee's...$1,280.00
Posting of Notice of Default $125.00
Posting of Notice of Sale $75.00
Record Substitution of Trustee.....$14.00
Title Datedown Fee $100.00
Mailings.....$131.04
TOTAL DUE AS OF 12/26/2014.....$135,139.01

IV. The sum owing on the obligation secured by the Deed of Trust is: The principal sum of $774,905.15, together with interest as provided in the Note from 4/1/2013, and such other costs and fees as are provided by statute. V. The above described real property will be sold to satisfy the expense of sale and the obligation secured by the Deed of Trust as provided by statute. Said sale will be made without warranty, expressed or implied, regarding title, possession or encumbrances on 5/8/2015. The defaults referred to in Paragraph III must be cured by 4/27/2015, (11 days before the sale date) to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time before 4/27/2015 (11 days before the sale) the default as set forth in Paragraph III is cured and the Trustee's fees and costs are paid. Payment must be in cash or with cashiers or certified checks from a State or federally chartered bank. The sale may be terminated any time after the 4/27/2015 (11 days before the sale date) and before the sale, by the Borrower or Grantor or the or the Grantor's successor interest or the holder of any recorded junior lien or encumbrance by paying the principal and interest secured by the Deed of Trust, plus costs, fees and advances, if any, made pursuant to the terms of the obligation and/or Deed of Trust and curing all other defaults. VI. A written Notice of Default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor at the following address(es): SEE ATTACHED EXHIBIT "1" by both first class and certified mail on 4/22/2014, proof of which is in the possession of the Trustee; and the Borrower and Grantor were personally served, if applicable, with said written Notice of Default or the written Notice of Default was posted in a conspicuous place on the real property described in Paragraph I above, and the Trustee has possession of proof of such service or posting. VII. The Trustee whose name and address are set forth below will provide in writing to anyone requesting it, a statement of all costs and fees due at any time prior to the sale. VIII. The effect of the sale will be to deprive the Grantor and all those who hold by, through or under the Grantor of all their interest in the above-described property. IX. Anyone having any objections to this sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale

Richland 9
csabuildin

Welcome t
brand new
space! 13
space is ava
one of the b
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to offer! It's
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Richland. Loc
Bellerive
$2,310 110 Ga
Suite 100 S
leslie@andy
509-591-5

Storage Spa

BADGER MO
STORAG
10X20, 10X10
10X6, climate c
& boat and RV. 6

400
Announcem

Public Notices

BIG TOE AU
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ABANDONI
VEHICLE AUC
April 29, 20
at 10:00 a
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prior to auct

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Special Notice

♥ADOPTION
At-Home Mom, D
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Musician, Fin
Security, Lots of
Travel await p
baby. Expenses
1-800-933-19
♥Sara & Na

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Independent Contractors

DO YOU HA
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Comment period underway!

Washington's Department of Ecology invites you to comment on proposed changes to Hanford's Air Operating Permit (AOP). The permit ensures Hanford's air emissions stay within safe limits that protect people and the environment.

The comment period runs March 22 through April 24, 2015.

Proposed Changes

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.

We are reformatting the part of the permit for toxic emission units (e.g., a stack, engine, or building) so all information for each unit is in one place. We are also adding newly identified engines into the permit. These are diesel engines that are no longer temporary, so they must be regulated by the permit

Two USDOE offices are applying jointly for the permit. The Richland Operations Office has the lead.

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

Madeleine Brown
509-372-7950
Hanford@ecy.wa.gov

Please send comments by email (preferred), U.S. Mail, or hand deliver them to:

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

You can review the proposed changes and supporting information at Ecology's Nuclear Waste Program website www.ecy.wa.gov/programs/nwp/commentperiods.htm

The proposal and supporting info are also at the four Hanford Public Information Repositories and two other locations in Richland:

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

Department 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 Scarano 509-372-7443
DOE.reading.room@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 Washington Suzzallo Library
PO Box 352900
Seattle, WA 98195
Contact: Cass Hartnett 206-685-6110
Hartnettc@uw.edu

Spokane
Gonzaga University Foley Center
502 E. Boone Avenue
Spokane, WA 99258
Contact: John Spencer 509-313-6110
spencer@gonzaga.edu

Subject line: Comment periods underway!

Washington's Department of Ecology invites you to comment on proposed changes for air emissions from Hanford's tank farms. The formal name of the changes is "Approval Order for Notice of Construction," and two separate change packages are open for public comment.

The comment periods run May 31 through July 3, 2015.

Proposed Changes

Rotary Core Sampling Systems for Hanford's tank farms

The change would allow the US Department of Energy Office of River Protection (permittee) to install up to two rotary core sampling systems for Hanford's underground tanks. The rotary core sampling systems are needed to collect samples of solid materials in the tanks so the waste can be managed more safely.

Please send comments by email (preferred), U.S. Mail, or hand deliver them by July 3 to:

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

Air Permit Changes to Begin Waste Retrieval from Hanford Tank AY-102

In support of retrieving waste from Tank AY-102, the permittee wants to remove a broken piece of equipment that is restricting air flow in the tank's ventilation system.

The permittee also wants to add an exhauster to the space between the inner and outer tanks (annulus space). This exhauster will cool the inner tank's outer surface and send any airborne particulates in the annulus space through high-efficiency particulate air (HEPA) filters.

Two U.S. Department of Energy offices are applying jointly for the permit. The Richland Operations Office has the lead.

Please send comments by email (preferred), U.S. Mail, or hand deliver them by July 3 to:

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

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

Dieter Bohrmann
509-372-7950
Hanford@ecy.wa.gov

You can review the proposed changes and supporting information at Ecology's Nuclear Waste Program website.

The proposal and supporting info are also at the Hanford Public Information Repositories.

Email subject : Comment period is extended to May 8, 2015

Washington's Department of Ecology has extended the comment period an additional two weeks. The comment period is on proposed changes to Hanford's Air Operating Permit (AOP). The permit ensures Hanford's air emissions stay within safe limits that protect people and the environment.

The comment period runs through May 8, 2015.

Proposed Changes

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.

Ecology is reformatting the part of the permit for toxic emission units (e.g., a stack, engine, or building) so all information for each unit is in one place. We are also adding newly identified engines into the permit. These are diesel engines that are no longer temporary, so they must be regulated by the permit

Two U.S. Department of Energy offices are applying jointly for the permit. The Richland Operations Office has the lead.

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

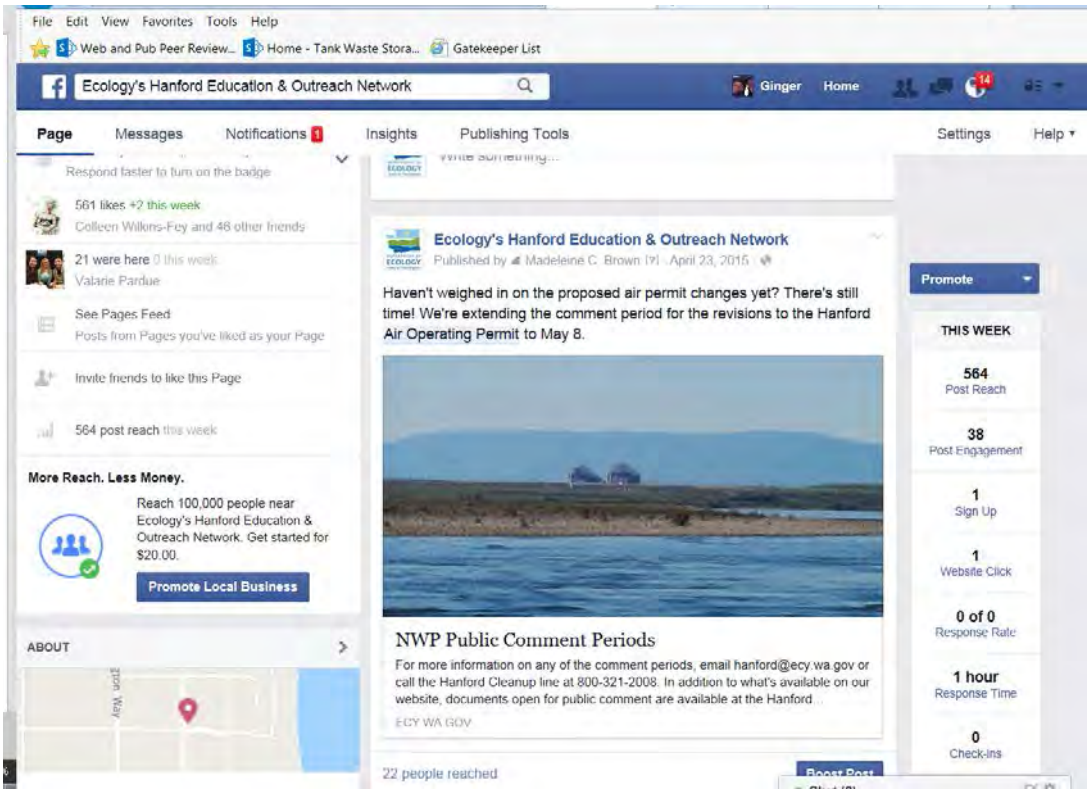
Madeleine Brown
509-372-7950
Hanford@ecy.wa.gov

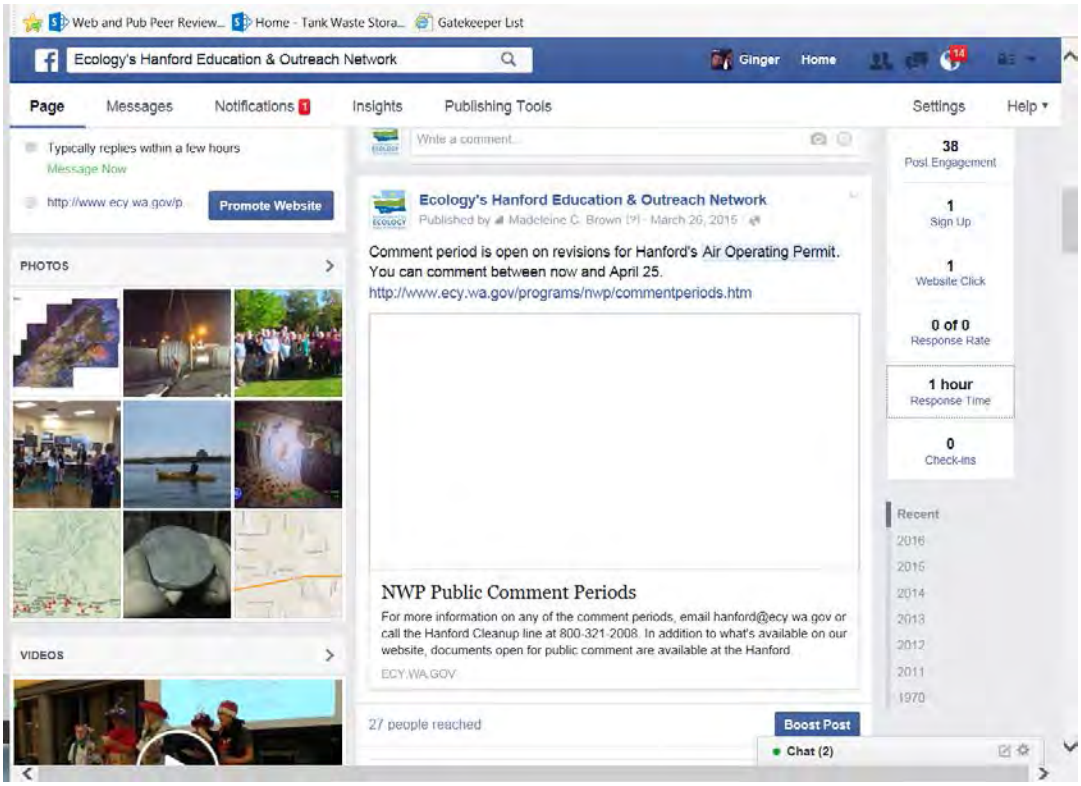
Please send comments by email (preferred), U.S. Mail, or hand deliver them by April 24 to:

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

You can review the proposed changes and supporting information at Ecology's Nuclear Waste Program website.

The proposal and supporting info are also at the Hanford Public Information Repositories.


File Edit View Favorites Tools Help
Web and Pub Peer Review... Home - Tank Waste Stora... Gatekeeper List
Ecology's Hanford Education & Outreach Network
Ginger Home
Page Messages Notifications 1 Insights Publishing Tools Settings Help
Respond faster to turn on the badge
561 likes +2 this week
Colleen Wilkins-Fey and 46 other friends
21 were here 0 this week
Valarie Pardue
See Pages Feed
Posts from Pages you've liked as your Page
Invite friends to like this Page
564 post reach this week
More Reach. Less Money.
Reach 100,000 people near Ecology's Hanford Education & Outreach Network. Get started for $20.00.
Promote Local Business
ABOUT
Ecology's Hanford Education & Outreach Network
Published by Madeleine C. Brown [?] · April 23, 2015
Haven't weighed in on the proposed air permit changes yet? There's still time! We're extending the comment period for the revisions to the Hanford Air Operating Permit to May 8.
NWP Public Comment Periods
For more information on any of the comment periods, email hanford@ecy.wa.gov or call the Hanford Cleanup line at 800-321-2008. In addition to what's available on our website, documents open for public comment are available at the Hanford
ECY.WA.GOV
22 people reached
Boost Post
Promote
THIS WEEK
564 Post Reach
38 Post Engagement
1 Sign Up
1 Website Click
0 of 0 Response Rate
1 hour Response Time
0 Check-ins


Web and Pub Peer Review... Home - Tank Waste Stora... Gatekeeper List
Ecology's Hanford Education & Outreach Network
Ginger Home
Page Messages Notifications 1 Insights Publishing Tools Settings Help
Typically replies within a few hours
Message Now
http://www.ecy.wa.gov/p
Promote Website
PHOTOS
VIDEOS
Write a comment...
Ecology's Hanford Education & Outreach Network
Published by Madeleine C. Brown [?] · March 26, 2015
Comment period is open on revisions for Hanford's Air Operating Permit. You can comment between now and April 25.
http://www.ecy.wa.gov/programs/nwp/commentperiods.htm
NWP Public Comment Periods
For more information on any of the comment periods, email hanford@ecy.wa.gov or call the Hanford Cleanup line at 800-321-2008. In addition to what's available on our website, documents open for public comment are available at the Hanford
ECY.WA.GOV
27 people reached
Boost Post
38 Post Engagement
1 Sign Up
1 Website Click
0 of 0 Response Rate
1 hour Response Time
0 Check-ins
Recent
2016
2015
2014
2013
2012
2011
1970
Chat (2)

APPENDIX B: COPIES OF ALL WRITTEN COMMENTS

From: Bill Green <greenrchn@gmail.com>
Sent: Wednesday, April 22, 2015 11:46 AM
To: Gent, Philip (ECY)
Subject: Comments, Revision B, Hanford Air Operating Permit
Attachments: FINAL-Comments_AOP_Rev_B.pdf

Mr. Gent,

The attached ".pdf" file contains my comments on the subject permit. A paper copy of these comments was delivered to Ecology's office earlier this morning.

Bill Green

From: Dale Thornton [mailto:det@aol.com]
Sent: Friday, May 08, 2015 1:18 PM
To: Hanford (ECY)
Subject: AOP for Hanford

Hi,
The huge size of the Hanford site, the cleanup effort ongoing and the relatively low amount of emissions per acre, square mile, or other measurement factor as compared to a large city such as Seattle, the proposed AOP should be generous in consideration of the progress being made on removing the pollutants. Holding contractors responsible for possible vapor emissions from the dangerous tanks will only slow the progress of emptying those tanks and eliminating the source. The contractors are having enough trouble protecting the workers from the vapors while still trying to make progress on cleanup, they shouldn't need to divert their funding and attention toward accounting for vapors that they have no control over.
Please keep the AOP limited to similar levels and limit additional controls to those that are prudent. Adding more and more requirements, the diesel engine requirements and licensing for radiation emissions is simply layering more state government controls on top of existing regulations. This state does not need additional regulations, many regulations are bordering on authoritarian now.

Thank you,
Dale Thornton
Benton City, WA

From: Tom Carpenter [mailto:tomc@hanfordchallenge.org]
Sent: Friday, May 08, 2015 2:01 PM
To: Hanford (ECY)
Subject: Comments for Hanford Site Air Operating Permit, Renewal 2, Revision B

May 8, 2015

Philip Gent
Department of Ecology
3100 Port of Benton Blvd.
Richland, WA 99354

Dear Mr. Gent,

Please accept the attachment containing the Comments of Hanford Challenge pertaining to the Hanford Site Air Operating Permit, Renewal 2, Revision B.

Sincerely,

Tom Carpenter

Tom Carpenter
Executive Director
Hanford Challenge
(206) 292-2850 , ex 22 Work
(206) 419-5829 Mobile
tomc@hanfordchallenge.org
219 First Avenue S., Suite 310
Seattle WA 98104
United States of America
www.hanfordchallenge.org

This E-mail is covered by the Electronic Communications Privacy Act, 18 USC Sections 2510-2521 and is legally privileged. This information is confidential and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you think that you have received this e-mail message in error, please notify the sender via e-mail or by telephone at 206-292-2850, ex 22.

From: Mike [mailto:mikeconlan@hotmail.com]
Sent: Wednesday, April 01, 2015 12:22 PM
To: Hanford (ECY)
Subject: Hanford Air Operating Permit Revision

Philip Gent, Ecology:
It makes sense to have all the info for air emissions in one database - that really should have been done years ago - government does move at a snail's pace esp. w/pollution issues (lobbyists).
Hanford:
1) completely clean the Hanford site -
2) don't allow anymore radioactive waste on Hanford -
3) get the radiation out of the ground water seeping into the Columbia!
Mike Conlan Redmond WA

From: Jean Vanni [mailto:JVanni@ynerwm.com]
Sent: Wednesday, May 06, 2015 12:03 PM
To: Brown, Madeleine (ECY)
Cc: Jean Vanni
Subject: RE: Hanford Air Operating Permit

Ok. As an individual, I'm requesting that Ecology explain what are the PTE zones and how their analysis is performed and include a map within the AOP.

If you need more explanation about what I'm talking about you can talk with Phil Gent as we just discussed this issue. In any event, I'd like to understand this process and have a map of the boundaries.
Thank you, have a good week. Jean

From: Brown, Madeleine (ECY) [mabr461@ecy.wa.gov]
Sent: Wednesday, May 06, 2015 11:58 AM
To: Jean Vanni
Subject: RE: Hanford Air Operating Permit

No special form or link, Jean. I wish!

Madeleine C. Brown
Washington Department of Ecology
Nuclear Waste Program
Mabr461@ecy.wa.gov
(509) 372-7936

From: Jean Vanni [mailto:JVanni@ynerwm.com]
Sent: Wednesday, May 06, 2015 11:50 AM
To: Brown, Madeleine (ECY)
Subject: Hanford Air Operating Permit

Madeline, Is there a special form for submitting comments? Can you send me a link if yes is the answer?
Thank you, Jean Vanni

From: jeannepoirier@yahoo.com [mailto:jeannepoirier@yahoo.com]
Sent: Wednesday, May 06, 2015 11:05 AM
To: Hanford (ECY)
Subject: Hanford

Please add my name to the concerned citizens living in proximity to Hanford.
While a challenge for clean up, please adhere to EPA rules on clean air standards.
Good monitoring of potentially harmful emissions is critical to safety at Hanford.

Regards,
Jeanne Poirier
Cashmere, WA

From: Sue Johns [mailto:prayjohns@hotmail.com]
Sent: Monday, March 23, 2015 1:40 PM
To: Hanford (ECY)
Subject: Hanford's AOP Attention Philip Gent

RE Hanford's AOP att: Phil Gent
If we were building with paper everything would be done. Enough is enough. Diesels temp or permanent. You guys are making it impossible to complete anything with a reasonable cost and timeframe. Stop it!
Bill Johns

From: Schmidt, John W (DOH)
Sent: Tuesday, April 21, 2015 4:55 PM
To: Gent, Philip (ECY)
Cc: Berven, Shawna D (DOH)
Subject: FW: TRANSMITTAL OF AIR 15-302; CLOSEOUT INSPECTION (AUDIT 1104) FOR WSCF

Phil,

We will try to make this correction in the comment resolution.

Thank you,

JWS

-----Original Message-----
From: Kaldor, Reed A [mailto:Reed_A_Kaldor@rl.gov]
Sent: Wednesday, March 18, 2015 3:45 PM
To: Martell, P John (DOH)
Cc: Schmidt, John W (DOH); McCormick, Ernest R (DOH)
Subject: RE: TRANSMITTAL OF AIR 15-302; CLOSEOUT INSPECTION (AUDIT 1104) FOR WSCF

John -

Thank you for the letter. One thing I noticed is that in the current version of the FF-01 license, EU 1419 in Table 2-1 is identified as J-969W1, I think it should have been J-696W1. This would keep the nomenclature similar to the stack nomenclature when it was EU 62 and make it easier to track the change in the future if needed. Probably not a big deal but I thought I would bring it to your attention.

Reed

-----Original Message-----
From: Kennedy, Cheri A (DOH) [mailto:Cheri.Kennedy@DOH.WA.GOV]
Sent: Thursday, March 05, 2015 3:13 PM
To: Charboneau, Stacy L
Cc: Allen, Ruth M; Barnett, Matthew; Borneman, Lucinda E; Bostic, Lee (URS) (lbostic@bechtel.com); Cammann, Jerry W; Clark, Clifford E (Cliff); Donnelly, Jack W; Engelmann, Richard H; Faulk, Dennis (EPA); Fritz, Gary; Gent, Phil (Washington Department of Ecology); Greene, Michael R; Jackson, Dale E; Kaldor, Reed A; Karschnia, Paul T; MacAlister, Edward D (Ed); McCormick, Ernest; Peery, Valarie L; Schmidt, John; Skorska, Maria; Voogd, Jeffry A; Williams, Joel F Jr; Woolard, Joan G; zhen.davis@epamail.epa.gov; ^Environmental Portal; Berven, Shawna
Subject: TRANSMITTAL OF AIR 15-302; CLOSEOUT INSPECTION (AUDIT 1104) FOR WSCF

Attached is your courtesy copy of the subject document. The original document will be sent out tomorrow via U.S. Postal Service.

Please contact me should you have any trouble with the attached .pdf file.

Thank you,

Cheri Kennedy
Washington State Department of Health
Division of Environmental Health
Office of Radiation Protection
309 Bradley Blvd, Ste 201
Richland, WA 99352-4381
Hanford Mailstop: B1-42
(509) 943-5214 Comm
(509) 946-0876 Fax
cheri.kennedy@doh.wa.gov

Resent-From: <hanford@ecy.wa.gov>
From: Beth Sanders <bsanders@drizzle.com>
Date: May 8, 2015 at 7:48:46 AM PDT
To: "Hanford (ECY)" <hanford@ECY.WA.GOV>
Subject: The Hanford Air Operating Permit (AOP)

Hello,

I am very concerned about the health and safety of Hanford workers and the public. Chemical vapor exposures are a serious problem at Hanford's tank farms. Since March of 2014, 36 workers have received medical attention after being exposed to chemical vapors at Hanford.

Minimally what is need is better monitoring practices and an accurate inventory of tank farm emission. Otherwise, it is not possible to specify the regulatory and pollution control requirements that are applicable under the Clean Air Act.

All sources of air pollution from Hanford need to be accounted for in the AOP. Why do uranium and other regulated pollutants, for example, continue to leach into the Columbia River?

Sincerely,

Beth Sanders

From: Kaldor, Reed A <Reed_A_Kaldor@rl.gov>
Sent: Wednesday, May 06, 2015 4:28 PM
To: Hanford (ECY)
Cc: Gent, Philip (ECY); Jackson, Dale E; Bowser, Dennis W; 'TOM.MCDERMOTT@PNSO.SCIENCE.DOE.GOV'; MacAlister, Edward D (Ed); Shattuck, Ann F
Subject: Hanford Site Draft AOP R2RB 3-22-2015
Attachments: draft AOP Renewal 2 Revision B comments.docx

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 B transmitted by Ecology to the U.S. Department of Energy (DOE) on March 11, 2015 (Letter 15-NWP-052). 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 Ecology's efforts to streamline the permit so that all information for each unit is in one place.

I respectfully request and will appreciate a reply confirmation that you have received these comments and we have met Ecology's May 8, 2015 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
509-372-1992

From: Bill Green <greenrchn@gmail.com>
Sent: Thursday, March 26, 2015 9:26 AM
To: Gent, Philip (ECY)
Subject: Re: Incorrect version of Attachment 2?

Mr. Gent,

Ecology's announcement (Publication # 15-05-003) specifically states: "the Washington State Department of Health has issued a new radioactive air emissions license." The announcement strongly implies incorporating this new license is a major reason for the revision.

Is Ecology's announcement correct?

Bill Green

On Thu, Mar 26, 2015 at 8:22 AM, Gent, Philip (ECY) <pgen461@ecy.wa.gov> wrote:

> Mr. Green,
>
> I checked again with the Department of Health and they confirm Attachment 2 is the currently released FF-01 license for Hanford.
>
> Philip Gent, PE
> Waste Management Section
> Nuclear Waste Program
> Washington Department of Ecology
> Phone: (509) 372-7983
> Email: pgen461@ecy.wa.gov
> FAX: (509) 372-7971
>
> **From:** Bill Green [mailto:greenrchn@gmail.com]
> **Sent:** Wednesday, March 25, 2015 2:31 PM
> **To:** Gent, Philip (ECY)
> **Subject:** Re: Incorrect version of Attachment 2?
>
> Thanks Mr. Gent.

Two of the reasons I am suspicious the included file for Attachment 2 was incorrect are: 1. the date of the signature is August 30, 2013; and 2. the definitions from WAC 246-247 on page 9/843 do not reflect Health's most current rulemaking where the definition of "license" was changed.

On Wed, Mar 25, 2015 at 10:10 AM, Gent, Philip (ECY) <pgen461@ecy.wa.gov> wrote:

Mr. Green,

The Department of Health confirmed Attachment 2 is the correct version of the FF-01 permit. I checked our DVDs, printed copy, and the public comment period section of the NWP website and they are the correct one. The link below has been confirmed by Health to work and is the version of the FF-01 license for Revision B of the AOP.

http://www.ecy.wa.gov/programs/nwp/permitting/AOP/renewal/two/Revision_B/Draft/Att-2/Att-2_R2RB.pdf

Health did indicate it is an update of the license in Revision A and not a 'new' license.

Please let me know if I didn't address your concerns correctly.

Philip Gent, PE
Waste Management Section
Nuclear Waste Program
Washington Department of Ecology
Phone: (509) 372-7983
Email: pgen461@ecy.wa.gov
FAX: (509) 372-7971

From: Bill Green [mailto:greenrchn@gmail.com]
Sent: Wednesday, March 25, 2015 9:34 AM
To: Gent, Philip (ECY)
Subject: Incorrect version of Attachment 2?

Mr. Gent,

I downloaded the documents supporting Revision B to the Hanford Site AOP and noticed the Attachment 2 file appeared unchanged from the version in Revision A. Ecology's public announcement stated the scope of Revision B included a new radioactive air emissions license. Would it be possible to get an electronic copy of Health's new license?

Bill Green

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 Agency[1] 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.

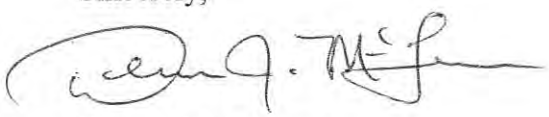
Your Petition also contends that Ecology's and PSCAA's Part 70 programs do not meet CAA requirements because there is no opportunity for public comment, judicial review, or other Part 70 administrative process for the issuance or revision of the WDOH license containing the Rad NESHAP requirements, which 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.

EXHIBIT B

#2

Washington State Department of Health

WASHINGTON STATE DEPARTMENT OF ECOLOGY

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.

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.

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,

Stuart A. Clark
Air Quality Program Manager
Washington Department of Ecology

Sincerely,

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,

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such challenges are outside of the scope of the Title V operating permits program.

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

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EXHIBIT D

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
- **Hanford Vapor Report** is the *Hanford Tank Vapor Assessment Report*, SRNL-RP-2014-00791, Oct. 30, 2014, authored by W.R. Wilmarth et al. Included as *Enclosure 2*.

<u>Comments include any associated endnote(s) or footnote(s).</u>

GENERAL:

Comment 1: (general AOP structure): **The regulatory structure of this draft AOP is 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), because this structure does not provide Ecology, the sole permitting authority, with the legal ability to enforce all standards or other requirements controlling emissions of radionuclides, a *hazardous air pollutant* under CAA § 112 [42 U.S.C. 7412].**

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 therein[2]. 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 necessity 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 doesn't 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.

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[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): **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, contrary to *Clean Air Act* (CAA) section 502 (b)(5)(A)[1] [42 U.S.C. 7661a (b)(5)(A)], 40 C.F.R. 70[2], and WAC 173-401[3].**

The regulatory structure of this draft Permit denies Ecology, the sole permitting authority, the legal ability to act on 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 NERA[4]. 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-01[5]. 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. 70[2], and WAC 173-401[3], 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.

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[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): **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, 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 173-401-800[4]. 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.

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 hearing[6]. However, RCW 70.98, the statute under which License FF-01 is issued, is silent with regard to public comments or public hearings. Both 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.

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[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

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 created pursuant to authority provided by 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 is silent with regard to the opportunity for judicial review by any person who participated in the public comment process. 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.

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[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): **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, contrary to RCW 70.94.161 (2)(a)[1] and WAC 173-400-700 (1)(b).**

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", nor does NERA even contain the words "professional engineer".

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.

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[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) **In this draft Hanford Site AOP, regulate radionuclide air emissions in accordance with WAC 173-400 rather than in accordance with WAC 246-247. Radionuclides regulated as an applicable requirement under WAC 173-401, require pre-issuance review by the public, affected states, and EPA; are subject to judicial review by the Pollution Control Hearings Board; and can be enforced by Ecology; all of which satisfy requirements of the *Clean Air Act*. Radionuclides regulated pursuant to WAC 246-247 cannot satisfy these CAA requirements.**

Under WAC 173-400 Ecology has authority to regulate radionuclide air emissions. Ecology incorporated the radionuclide NESHAPs by reference into *The General Regulations for Air Pollution Sources*, codified at WAC 173-400[1]. These regulations apply statewide[2]. Because Ecology is a permitting authority, and because Ecology has incorporated the radionuclide NESHAPs into its regulations, Ecology has authority under the CAA to implement and enforce the radionuclide NESHAPs against the Hanford Site. Furthermore, terms and conditions developed by Ecology pursuant to the radionuclide NESHAPs are federally enforceable.

[1] "(1) National emission standards for hazardous air pollutants (NESHAPs). 40 C.F.R. Part 61 and Appendices in effect on July 1, 2012, are adopted by reference. The term "administrator" in 40 C.F.R. Part 61 includes the permitting authority." WAC 173-400-075 (1)
[2] "(1) The provisions of this chapter shall apply statewide, . . ." WAC 173-400-020 (1)

Comment 7: (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, is not authorized by EPA to 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 8: (general AOP, *Attachment 1*, and *Attachment 2*, License FF-01): **Provide an accurate inventory of regulated air pollutants expected from Tank Farm point sources and fugitive sources that is consistent with the findings of the Hanford Vapor Report[1].**

The entire Title V permitting process begins with and depends heavily upon an accurate emissions inventory. Absent an accurate emissions inventory it is difficult, if not impossible, to determine the applicability of:

1. any particular regulatory requirement;
2. any implicated pollution control requirements, and;
3. any applicable monitoring method(s)

needed to assure continuous compliance with the applicable requirements.

According to the Hanford Vapor Report, previous estimates of emissions, both point source and fugitive, understated not only the number of air pollutants[2] potentially released into the environment from Tank Farms, but also the concentrations of these pollutants.

> "It is the head space composition that determines the composition of the vent, stack, and most fugitive emissions. . . . Past head space characterization did not evaluate the effect of waste disturbing activities on the chemicals in the head space and their concentrations." W.R. Wilmarth et al., *Hanford Tank Vapor Assessment Report*, SRNL-RP-2014-00791, Oct. 30, 2014 at 23

and;

> "The present list of COPCs [chemicals of potential concern] appears to rely on several assumptions all of which may not be valid at all times. . ." *Id.* at 25

and;

> "Radiolytically generated free radicals can produce compounds not seen with the tank head space characterization sampling and analytical methods used to generate the lists used to define COPCs [chemicals of potential concern]." (references omitted) *Id.* at 36

The first (1st) step in complying with Title V of the CAA is to accurately assess the chemicals that are both present and subject to regulation. Flawed characterization of Tank Farm emissions has so far delayed this process. Until an accurate emission inventory has been supplied to the permitting authority (Ecology), the permittee can not even start the process leading to compliance with Title V.

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[1] W.R. Wilmarth et al., *Hanford Tank Vapor Assessment Report*, SRNL-RP-2014-00791, Oct. 30, 2014

[2] 'The term ''air pollutant'' means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term ''air pollutant'' is used.' 42 U.S.C. 7602 (g); CAA § 302 (g)

Comment 9: (general AOP, *Attachment 1*, and *Attachment 2*, License FF-01): **Reopen Hanford's AOP in accordance with 40 C.F.R. 70.7 (f)(1)(iii) & (iv) and revise Tank Farm emission limits, monitoring, and sampling to be consistent with the regulated air pollutants expected pursuant to the Hanford Vapor Report (W.R. Wilmarth et al., *Hanford Tank Vapor Assessment Report*, SRNL-RP-2014-00791, Oct. 30, 2014)[1]. The Hanford Vapor Report establishes that all previous estimates of emissions by the permittee understated both the number of regulated air pollutants and the concentration of these regulated air pollutants in Tank Farm emissions from both point sources and from fugitive sources. Absent an accurate assessment of emissions, Ecology cannot establish appropriate emission controls, emissions limits, and monitoring, reporting, and recordkeeping conditions that assure continuous compliance with requirements of the federal *Clean Air Act* (CAA).**

The driver for the Hanford Vapor Report was numerous complaints regarding continuing problems of health-related exposures to chemical vapors by workers at Hanford's Tank Farms. The authors found that the data "strongly suggests a causal link between chemical vapor releases [from Hanford's Tank Farms] and subsequent adverse health effects experienced by tank farm workers." The report further determined that "ongoing emission of tank vapors, which contain a mixture of toxic chemicals, is inconsistent with the provisions of a safe and healthful workplace free from recognized hazards." Based on the findings in this report, the Washington State Attorney General served the U.S. Department of Energy and the responsible Hanford contractor with a Notice of Endangerment and Intent to File Suit (NOI) under the Resource Conservation and Recovery Act (RCRA). (NOI enclosed as *Enclosure 3*.) A second NOI regarding these same worker exposures was filed by Hanford Challenge, the Washington Physicians for Social Responsibility, and the United Association of Plumbers and Steamfitters, Local Union 598, the local union which represents the exposed workers. This second NOI is available at: http://www.hanfordchallenge.org/wp-content/uploads/2014/11/2014.11.18-FINAL-Hanford-RCRA-Notice-with-Attachments.pdf.

Had existing monitoring and sampling been compliant with the CAA and the Washington Clean Air Act (WCAA), these unaccounted-for hazardous and toxic emissions would have been assessed and addressed in the very first (1st) version of Hanford's AOP. There would have been no need to commission the Hanford Vapor Report and likely no basis for the "Knowing Endangerment" NOIs, because all toxic and hazardous air pollutants would have been monitored and reported.

Now that Ecology is aware that Energy's air permitting applications contained material mistakes and, through ignorance, inaccurate statements, Ecology is obligated to reopen Hanford's AOP to bring emission controls, emissions limits and monitoring, reporting, and recordkeeping requirements for all Tank Farm hazardous and toxic air pollutants into compliance with the CAA and the WCAA.

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[1] This federally-funded report was prepared by an independent panel of experts, commissioned through the Savannah River National Laboratory. Report enclosed as *Enclosure 2*.

Comment 10: (general AOP, *Attachment 1*, and *Attachment 2*, License FF-01): **Supply a *schedule of compliance*[1] as required by 40 C.F.R. 70.6(c)(3) and WAC 173-401-630 (3) for establishment of monitoring and for identification and control of emissions of previously unaccounted for *hazardous air pollutants* (HAPs) and *toxic air pollutants* (TAPs), including those associated with transient peaks in release rates from Tank Farm emissions units. Also, in accordance with 40 C.F.R. 70.7 (h) and WAC 173-401-800, provide the public with the opportunity to review the schedule of compliance, and any resulting applicable requirements Ecology incorporates into the Hanford Site AOP.**

An independent panel of experts issued the federally-funded Hanford Tank Vapor Assessment Report[2] (Hanford Vapor Report). This report proposes implementation of specific remedial actions to identify and reduce ongoing emissions of harmful tank vapors. The compliance schedule required by 40 C.F.R. 70.6(c)(3) and WAC 173-401-630 (3) should provide enforceable dates by which these recommendations are implemented along with a schedule for submission of certified progress reports [40 C.F.R. 70.6 (c)(4)].

In the Hanford Vapor Report the authors stated that:

> ". . . under certain weather conditions, concentrations approaching 80% of the [tank] head space concentration could exist 10 feet downwind from the release point ...." W.R. Wilmarth et al., *Hanford Tank Vapor Assessment Report*, SRNL-RP-2014-00791, Oct. 30, 2014, at 30

and:

> "Monitoring and sampling policy [at Tank Farms] appears to be inadequate with respect to detecting short-term episodic exposure. The current policy does not address the potential for wafting plumes or puffs of chemical vapors in relatively high concentrations, which may be occasional and isolated in nature." *Id.* at 30

and:

> "The materials originally present are subject to complex thermal and radiolytic reactions that vastly increased the compound classes and individual compounds present. It is the head space composition that determines the composition of the vent, stack, and most fugitive emissions." *Id.* at 23

The Hanford Vapor Report leaves no doubt that the current methodology used by the permittee to characterize tank vapors and to justify current emissions limits, and monitoring, frequency of sampling, and approved analytical methods understates the actual emissions and the composition and concentration of the regulated air pollutants in these emissions.

Under the CAA, Ecology has a non-discretionary duty to issue an AOP that assures compliance with all applicable requirements. [40 C.F.R. 70.6 (a)(1)] The current characterization scheme used by the permittee did not capture all *hazardous air pollutants* (HAPs) and *toxic air pollutants* (TAPs).

> "Radiolytically generated free radicals can produce compounds not seen with the tank head space characterization sampling and analytical methods used to generate the lists used to define COPCs [chemicals of potential concern]." (references omitted) *Id.* at 36

Given this ignorance gap, neither the permittee nor Ecology can assure compliance with all applicable requirements for HAPs and TAPs. A source not in compliance with all

applicable requirements at the time of permit issuance is required to adhere to a schedule of compliance as specified in 40 C.F.R. 70.6(c)(3) and WAC 173-401-630 (3). Such a source is also required to submit certified progress reports at least every six (6) months in accordance with 40 C.F.R. 70.6 (c)(4) and WAC 173-401-630 (4).

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[1] 'The term ''schedule of compliance'' means a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition.' CAA § 501 (3); 42 U.S.C. 7661 (3)
[2] Wilmarth et al., *Hanford Tank Vapor Assessment Report*, SRNL-RP-2014-00791, Oct. 30, 2014, at 90-91.

Comment 11: (general AOP, *Attachment 1*, and *Attachment 2*, License FF-01): **Provide emission limits, and associated monitoring, reporting, and recordkeeping requirements sufficient to assure continuous compliance with any requirements for control of all regulated air pollutants anticipated by the Hanford Vapor Report[1] and expected from Tank Farm emissions units[2].**

Ecology is prohibited from issuing a permit that does not comply with all emission limits and applicable monitoring, reporting, and recordkeeping requirements at the time the permit is issued. 40 C.F.R. 70.6 (a)(1) & (3). Monitoring must be sufficient to yield reliable data from the relevant time period to comply with 40 C.F.R. 70.6 (a)(3)(i)(B).

The CAA requires a major stationary source, such as Hanford, to account for all regulated air pollutants[3] released from any emissions unit.

> '"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA. . . .' WAC 173-401-200 (12) (*See also* definition in 40 C.F.R. 70.2)

An emissions unit is the specific point-of-application for all applicable requirements.

> "*Applicable requirement* means all of the following as they **apply to emissions units** in a part 70 source . . ." (emphasis added) 40 C.F.R. 70.2

Applicable requirements under 40 C.F.R. 70 include the National Emission Standards for Hazardous Air Pollutants (NESHAPs). While at least one (1) NESHAP contains a standard that applies to the public (thus applies at the source's property boundary) [*see* 40 C.F.R. 61.92] and, while air dispersion modeling quite often focuses on the public and the source's boundary[4], any emission limit and associated monitoring, reporting and recordkeeping requirements in a Title V permit applies at the individual emissions unit. For example, the 20% opacity requirement in WAC 173-400-040 (2) for air contaminants applies at the implicated emissions unit (stack, in this example) and not at the source's boundary. Monitoring for the opacity requirement must occur very near the point of entry of the air contaminants into the atmosphere and not at the source's boundary. Even in the case of 40 C.F.R. 61 subpart H, monitoring and sampling for major point sources is applicable at the emissions unit. [40 C.F.R. 61.93 (b)(4)(i)] Emissions from other potential sources of radionuclides require periodic confirmatory measurements to verify low emissions where these emissions enter the environment.

The word "person" is defined in the CAA without any association to any property boundary.

> 'The term ''person'' includes an **individual**, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of

> the United States and any officer, agent, or employee thereof.' (emphasis added) 42 U.S.C. 7602 (e); CAA § 302 (e)

Additionally, criminal enforcement under 42 U.S.C. 7413 [CAA § 113] applies to harm suffered by a "person", without reference to the location of that "person" when harmed.

> Any person who negligently releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002(a)(2) of this title that is not listed in section 7412 of this title, and **who at the time negligently places another person in imminent danger** of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment. (emphasis added) 42 U.S.C. 7413 (c)(4); CAA § 113 (c)(4)

and:

> Any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002(a)(2) of this title that is not listed in section 7412 of this title, and **who knows at the time that he thereby places another person in imminent danger** of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment of not more than 15 years, or both. Any person committing such violation which is an organization shall, upon conviction under this paragraph, be subject to a fine of not more than $1,000,000 for each violation. . . . (emphasis added) 42 U.S.C. 7413 (c)(5)(A); CAA § 113 (c)(5)(A)

Consistent with 42 U.S.C. 7413 [CAA § 113], emission limits, and associated monitoring sufficient to yield reliable data from the relevant time period [40 C.F.R. 70.6 (a)(3)(i)(B)], reporting, and recordkeeping requirements must be adequate to determine whether any hazardous air pollutant or extremely hazardous air pollutant released into the environment could harm any "person". The point of compliance is at the emissions unit where these pollutants are released into the environment and not at the source's property line.

The Hanford Vapor Report finds that not only has Hanford overlooked regulated air pollutants from Tank Farm emissions and, therefore, any associated emission limits units, but Hanford has also employed monitoring that did not detect these pollutants. In accordance with these findings, provide emission limits, and associated monitoring, reporting, and recordkeeping requirements sufficient to assure continuous compliance with any applicable requirements for control of all regulated air pollutants anticipated from Tank Farm point sources and fugitive sources.

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[1] W.R. Wilmarth et al., *Hanford Tank Vapor Assessment Report*, SRNL-RP-2014-00791, Oct. 30, 2014

[2] "*Emissions unit* means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act." 40 C.F.R. 70.2

[3] As defined in 40 C.F.R. 70.2 and WAC 173-401-200 (26)

[4] The standard in 40 C.F.R. 61 subpart H (40 C.F.R. 61.92) applies to "any member of the public". Compliance with this standard is determined using approved sampling procedures including approved modeling. *See* 40 C.F.R. 61.93 (a). All past compliance determinations are now suspect because emissions from all Tank Farm emissions units have never been accurately measured. *See* W.R. Wilmarth et al., *Hanford Tank Vapor Assessment Report*, SRNL-RP-2014-00791, Oct. 30, 2014

Comment 12: (general AOP, *Standard Terms and General Conditions* Section 5.27 and Table 5-1, *Attachment 1*, and *Attachment 2*, License FF-01): **This draft Hanford Site AOP omits regulation of radon, the only radionuclide identified by name as a *hazardous air pollutant* in section 112 of the *Clean Air Act* (CAA).**

The CAA requires a Title V permit contain requirements addressing all *hazardous air pollutants* (HAPs) emitted by the source. Radon is a radioactive gas listed as a HAP in CAA § 112 (b) [42 U.S.C. 7412 (b)]. The permittee acknowledges radon is released from the Hanford Site and that these releases of radon contribute to the off-site dose received by the maximally exposed individual[1] (MEI). This acknowledgement appears in six (6) of the last seven (7) published annual radionuclide air emissions reports[2] required by 40 C.F.R. 61 subpart H, as augmented by WAC 246-247, a state-only enforceable regulation. These reports are certified, under penalty of law, as "true, accurate, and complete"[3] by the manager of the U.S. Department of Energy, Richland Operations Office.

The permittee certifies to releasing radon, a HAP, and further certifies these releases of radon have a quantifiable impact the MEI who, by definition, is any member of the public who abides or resides off the Hanford Site. Yet this draft Hanford AOP omits all federal requirements addressing these releases. Even though EPA has not yet promulgated a regulation or standard specific to releases of radon from Hanford emissions units, CAA § 112 (j)(5)[4] requires EPA or the state to establish an equivalent limitation on a case-by-case basis.

This draft Hanford AOP cannot comply with the CAA when it omits all federally-enforceable requirements regulating radon, a listed *hazardous air pollutant*.

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[1] '"Maximally exposed individual" (MEI) means any member of the public (real or hypothetical) who abides or resides in an unrestricted area, and may receive the highest TEDE from the emission unit(s) under consideration, taking into account all exposure pathways affected by the radioactive air emissions.' WAC 246-247-030 (15)

[2] See "Abstract" in the following documents: DOE/RL-2008-03, Rev. 0 (2008); DOE/RL-2009-14, Rev. 0 (2009); DOE/RL-201 0-17, Rev. 0 (2010); DOE/RL-2011-12, Rev. 0 (2011); DOE/RL-2012-19, Rev. 0 (2012); DOE/RL-2013-12, Rev. 0 (2013); and DOE/RL-2014-14, Rev. 0 (2014)

[3] 'Each report shall be signed and dated by a corporate officer or public official in charge of the facility and contain the following declaration immediately above the signature line: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001."' 40 C.F.R. 61.94 (b)(9)

[4] "The permit shall be issued pursuant to subchapter V of this chapter and shall contain emission limitations for the hazardous air pollutants subject to regulation under this section [§ 112] and emitted by the source that the Administrator (or the State) determines, on a case-by-case basis, to be equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner . . ." CAA §112 (j)(5); 42 U.S.C. 7412 (j)(5)

Comment 13: (general AOP, *Standard Terms and General Conditions*, *Attachment 1*, and *Attachment 2*, License FF-01): **This draft Hanford Site AOP overlooks the Columbia River as a source of Hanford's diffuse and fugitive emissions of radionuclides.**

For many decades the Columbia River has acted as the conduit for the transport of radionuclides originating from Hanford that are deposited downstream in sediments behind McNary Dam[1]. Radionuclides of Hanford Site origin include isotopes of uranium. All isotopes or uranium are radioactive, and thus subject to radioactive decay. The decay chain for all uranium isotopes includes radon. Therefore, where there is uranium there is also radon. If that uranium is from Hanford's past operations, then the accompanying radon is above background and both unsafe[2] and regulated in accordance with the *Linear No Threshold Model* used by EPA.

In a study published in 2007, researchers at the Pacific Northwest National Laboratory (PNNL) reported:

> "Radionuclide concentrations in sediment collected from riverbank spring discharges along the Hanford Site shoreline were similar to levels in Columbia River sediment, with one exception—the 300 Area, where the average uranium concentrations were usually two to three times the concentrations measured [upstream] at Priest Rapids."[3]

The 300 Area is just north of the City of Richland and housed research and development laboratories, six (6) small nuclear reactors[4], plus uranium fuel fabrication facilities and associated waste sites, now inactive. When active, "hundreds of thousands of tons of raw uranium was sent to the 300 Area to be manufactured into fuel assemblies . . ."[5] The PNNL report continues, stating:

> "[S]ite groundwater contaminated from past operations continues to discharge into the river from riverbank springs and groundwater seeps (Poston et al. 2005; Dirkes 1990)."[6]

and:

> "Riverbank spring water samples collected along the Hanford Site 300 Area (adjacent to a contaminated groundwater plume) have concentrations of uranium and gross alpha radioactivity that can exceed drinking water standards, with both concentrations decreasing rapidly upon release to the river (Poston et al. 2005; Patton et al. 2002)." [7]

A report published in 2012 by the U.S. Department of Energy (USDOE) informs that uranium is present in the groundwater underneath the 300 Area[8] and that there was elevated uranium levels in near-shore water samples taken from the Columbia River at two (2) 300 Area locations[9]. Additionally, there certainly is the potential for Hanford's radionuclides to be deposited into the Columbia River from contaminated dust and from contaminated organic debris, such as tumbleweeds, that may have grown in contaminated groundwater. Severe dust storms in this region of the country are not uncommon.

Thus, groundwater discharges from springs in Hanford's 300 Area into the Columbia River include uranium of Hanford Site origin, and near-surface water samples confirm measurable uranium of Hanford origin in the Columbia River. Where there is uranium there is radon. Because the uranium is from Hanford's past operations, the accompanying radon is also attributable to Hanford's past operations. Such radon is therefore above natural background radiation.

The depth of the Columbia River is also subject to fluctuations. These fluctuations may change the depth of the river by ten (10) feet in a 24 hour period[10]. Rapid changes in river stage have the potential to strand uranium from groundwater

releases on dry river banks, if only temporally. Any uranium in open air results in radon being released directly into the air.

Any potential-to-emit radionuclide air pollutants attributable to radionuclides of Hanford Site origin is subject to inclusion in Hanford's AOP along with monitoring, reporting, and recordkeeping sufficient to ensure "reliable data from the relevant time period."[11] The Columbia River has the potential-to-emit radon owing to the existence of Hanford's radionuclide pollutants. The large fluctuations in river stage only exacerbate the potential-to-emit radionuclides.

At the end of 2005 the Hanford Site ceased monitoring the Columbia River shoreline in response to budget cuts[12]. In 2006, Health began an independent monitoring program with 26 thermoluminescent dosimeters (TLDs) located along the Columbia River[13]. However, the radionuclides are Hanford's and so is the responsibility to monitor and report these radionuclide emissions. Until the EPA sets a *de minimis* by rule for radionuclide air emissions, all of Hanford's radionuclide air emissions above background are required by the CAA to be addressed in Hanford's Title V permit. All Hanford's radionuclide air emissions include those that likely emanate from the Columbia River.

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[1] Beasley M.T., D.C. Jennings, and A.D. McCullough, "Sediment Accumulation Rates in the Lower Columbia River.", 1986 *J. Environ. Radioactivity* 3:103-123; Robertson, D.E. and J.J. Fix, *Association of Hanford Origin Radionuclides with Columbia River Sediments*, BNWL-2305, 1977

[2] 'There is no firm basis for setting a "safe" level of exposure [to radiation] above background. . . Many sources emit radiation that is well below natural background levels. This makes it extremely difficult to isolate its stochastic effects. In setting limits, 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 March 31, 2015.

[3] G. W. Patton and R. L. Dirkes, *Summary of Radiological Monitoring of Columbia and Snake River Sediment, 1988 Through 2004*, Pacific Northwest National Laboratories, PNNL-16990, Oct. 2007, at iv . Available at: http://www.pnl.gov/main/publications/external/technical_reports/PNNL-16990.pdf)

[4] http://www.hanford.gov/page.cfm/300area Last visited March 31, 2015.

[5] *Id*.

[6] G. W. Patton and R. L. Dirkes, *Summary of Radiological Monitoring of Columbia and Snake River Sediment, 1988 Through 2004*, Pacific Northwest National Laboratories, PNNL-16990, Oct. 2007, at 2.4 .

[7] *Id*. at 4.5

[8] U.S. Dept. of Energy, Richland Operations Office, *Hanford Site Environmental Report for Calendar Year 2011*, DOE/RL-2011-119, Rev. 0, Sept. 2012, at 7.15
Available at http://msa.hanford.gov/files.cfm/2011_DOE-RL_2011-119_HanfordSiteEnviroReport4CY2011.pdf

[9] *Id*. at 7.17.

[10] "As a result of daily fluctuations in discharges from Priest Rapids Dam, the depth of the river varies significantly over a short time period. River stage changes of up to 3 m (10 ft) during a 24-hr period may occur along the Hanford Reach (Poston et al. 2000)."
D. A. Neitzel, *Editor, Hanford Site National Environmental Policy Act (NEPA) Characterization*, PNNL-6415, Rev. 13, Sep. 2001 at 4.61
Available at: http://www.pnl.gov/main/publications/external/technical_reports/pnnl-6415rev13.pdf

[11] 40 C.F.R. 70.6 (a)(3)(i)(B)

[12] Pacific Northwest National Laboratory, *Hanford Site Environmental Report for Calendar Year 2010*, PNNL-20548, Sept. 2011, at 8.124
Available at: http://msa hanford.gov/files.cfm/2010_PNNL-20548_Env-Report.pdf

[13] *Id*. at 8.125.

STANDARD TERMS AND GENERAL CONDITIONS

Comment 14: (*Standard Terms and General Conditions*, Section 4.6, pg. 13 of 53): **Clarify *Section 4.6. Enforceability*. Federally-enforceable requirements include any requirement of the CAA, or any of its applicable requirements, including CAA § 116 [42 U.S.C. 7416] and any requirements in 40 C.F.R. 70.**

For example, standard permit terms required by WAC 173-401-620 are federally-enforceable. Both 40 C.F.R. 70.6(b) and WAC 173-401-625 state that all terms and conditions of a Title V permit are federally enforceable except those designated as "state only", and that "state-only" requirements are those requirements that are not required under the CAA or any of its applicable requirements. Thus almost all requirements in Sections 4.0 and 5.0 (e.g. "Duty to comply", § 5.1; "Permit actions", § 4.10; "Permit fees", § 5.3; "Inspection and entry", § 5.2; "Permit appeals", § 4.12, etc.) are federally enforceable and apply to all draft Hanford Site AOP attachments; *Attachment 1*, *Attachment 2*, and *Attachment 3*. All requirements in Part 70 (40 C.F.R. 70) are also federally enforceable because Part 70 is required by the CAA. Thus all requirements in Part 70 also apply to Attachments 1, 2, and 3.

Additionally, where both a federal requirement and a state (or local) requirement apply to the same source, both must be included in the AOP, regardless of whether one is more stringent than the other.

> "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)
> (*See also* WAC 173-401-600 (4) "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.")

In particular, this requirement is overlooked in *Attachment 2*.

Radionuclides are a *hazardous air pollutant* listed under CAA § 112 [42 U.S.C. 7412]. Radionuclides do not cease to be federally regulated under the CAA simply because they are also regulated by Washington State. Any requirement Ecology deems as "state-only" enforceable must be accompanied by the analogous federal requirement, even if the "state-only" requirement is more stringent. Only Ecology, as the issuing the permitting authority, can designate a requirement as "state-only" enforceable. [40 C.F.R. 70.6 (b)(2) & WAC 173-401-625 (2)]

> ". . . the **permitting authority shall specifically designate** as not being federally enforceable under the FCAA . . ." (emphasis added) WAC 173-401-625 (2) see also 40 C.F.R. 70.6 (b)(2)

Compliance with requirements in the CAA cannot be avoided by claiming federally-enforceable requirements implemented through a state regulation are no longer federally-enforceable requirements.

Please clarify *Section 4.6*.

Comment 15: (*Standard Terms and General Conditions*, Section 4.12, pg. 14 of 53): **Specify the appeal process applicable to AOP terms and conditions in *Attachment 2* that are created and enforced by Health pursuant to RCW 70.98 and the regulations adopted thereunder.**

Neither the permittee nor the public can appeal terms and conditions contained in *Attachment 2* of this draft AOP as stated in *Section 4.12*. This is because the specified appeal process does not apply to *Attachment 2*. The Pollution Control Hearings Board (PCHB) does not have jurisdiction over licenses created under the authority of RCW 70.98, *The Nuclear Energy and Radiation Act*. Such licenses are enforced only by the Washington State Department of Health (Health). Health is not a permitting authority nor does Health have the legal ability to issue an AOP in accordance with RCW 70.94, the CAA, and 40 C.F.R. 70.

Specify the appeal process applicable to AOP terms and conditions in *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 16: (*Standard Terms and General Conditions*, Section 5.19, pg. 28 of 53): **State that changes allowed by sections 5.19 and 5.20 only apply to *Attachment 1* and *Attachment 3*. The statute and the regulation under which *Attachment 2* was created do not recognize either "Off-permit Changes" or "Changes Not Requiring Permit Revisions".**

Comment 17: (*Standard Terms and General Conditions*, Section 5.19.3, pgs. 28 & 29 of 53): **After line 39 on page 28 add the phrase "or other such address as provided by Ecology". After the EPA address on page 29 add the phrase "or other such address as provided by EPA". These additions will avoid a technical violation should either Ecology or EPA change addresses during the term of the AOP.**

Comment 18: (*Standard Terms and General Conditions*, Section 5.20.1, pg. 29 of 53): **After Ecology's address, add the phrase "or other such address as provided by Ecology". After the EPA address, add the phrase "or other such address as provided by EPA". These additions will avoid a technical violation should either Ecology or EPA change addresses during the term of the AOP.**

ATTACHMENT 1

Comment 19: (*Attachment 1*, Table 1.4, Marshalling Yard fugitive dust control) **Missing from Table 1.4 are conditions from BCAA Administrative Order (AO) of Correction, No. 20030006, for control of fugitive dust from the Marshalling Yard. Requirements from this AO survive for at least as long as the Marshalling Yard**

exists. According to EPA, requirements in an AO are to be treated as "applicable requirements" under Title V that must be included in a source's AOP.

Control of fugitive dust pursuant to WAC 173-400-040(8) (2002) is part of the EPA-approved state implementation plan (SIP), and therefore is a federally enforceable requirement. In its response to public comments on the draft Hanford Site AOP Renewal 2, Ecology states: "On March 21, 2003, a separate *WTP Marshalling Yard Dust Control Plan* was developed in response to a BCAA Order of Correction 20030006". [Ecology response to Comment No. 98, as provided to EPA pursuant to WAC 173-401-700 (9); *see* Publication no. 13-05-010: available at: http://www.ecy.wa.gov/biblio/nwp.html] While an AO may result in "closing" a case, federally enforceable requirements in that AO remain in force until the subject of those conditions no longer exists. Neither Ecology nor BCAA have the requisite authority to vacate applicable federal requirements. As of April 12, 2015, the Marshalling Yard still existed.

EPA addresses the status of requirements in an AO with respect to Title V as follows:

> 'EPA believes that, because CDs [consent decrees] and AOs [administrative orders] reflect the conclusion of a judicial or administrative process resulting from the enforcement of "applicable requirements" under the Act, all CAA-related requirements in such CDs and AOs are appropriately treated as "applicable requirements" and must be included in title V permits, regardless of whether the applicability issues have been resolved in the CD.' *In the Matter of CITGO Refining and Chemicals Company L.P.*, Petition Number VI-2007-01, at 12 (May 28, 2009). Available at: http://www.epa.gov/region07/air/title5/petitiondb/petitions/citgo_corpuschristi_west_response2007.pdf

Consistent with this EPA position, Ecology must include in the Hanford Site AOP requirements from the AO for control of fugitive dust at the Marshalling Yard.

Comment 20: (*Attachment 1*and public review file): **Missing from the public review file is Dust Control Plan 24590-WTP-GPP-SENV-015, Revision 1, *Fugitive Dust Control*. Pursuant to 40 C.F.R. 70.7 (h)(2), all information Ecology deemed to be relevant by using it in the permitting process must be made available to support public review.**

In its response to public comments on the draft Hanford Site AOP Renewal 2, Ecology states "[o]n March 3, 2010, the above implemented and compliant Dust Control Plans [for the Marshalling Yard and WTP] were consolidated into one plan with issuance of 24590-WTP-GPP-SENV-015, Revision 1, *Fugitive Dust Control*." [Ecology response to Comment No. 98, as provided to EPA pursuant to WAC 173-401-700 (9); *see* Publication no. 13-05-010: available at: http://www.ecy.wa.gov/biblio/nwp.html] Ecology thus acknowledges it utilized "24590-WTP-GPP-SENV-015, Revision 1, *Fugitive Dust Control*" in the permitting process. This plan should, therefore, have been included in the information provided to the public pursuant to 40 C.F.R. 70.7 (h)(2) and *Sierra Club v. Johnson*, 436 F.3d 1269, (11th Cir. 2006).

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.

> "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. . . " *Sierra Club v. Johnson*, 436 F.3d 1269, 1284, (11th Cir. 2006)

Ecology acknowledges it used "24590-WTP-GPP-SENV-015, Revision 1, *Fugitive Dust Control*" in the permitting process. In accordance with 40 C.F.R. 70.7 (h)(2) Ecology must provide the public with an opportunity to review "24590-WTP-GPP-SENV-015, Revision 1, *Fugitive Dust Control*".

Restart public review and support this review by providing all information Ecology deemed relevant by using it in the permitting process, including "24590-WTP-GPP-SENV-015, Revision 1, *Fugitive Dust Control*".

Comment 21: (*Attachment 1*, Section 1.1, pg. 8, line 6): **Correct "emission units" to read "emissions unit". It is "Emissions unit" that is defined in WAC 173-401-200 (12).**

> '"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA. . . .' WAC 173-401-200 (12)

Comment 22: (*Attachment 1*, Section 1.2, pg. 11, lines 9-11): **Delete the sentence beginning on line 9: "~~All emission units not identified in Section 1.4 Discharge Points that are subject to 40 CFR 61, Subpart H in Attachment 2, Health License, have been determined to represent insignificant sources of non-radioactive regulated air pollutants~~". Ecology can not use a permit to revise a regulation[1], specifically WAC 173-401-530 (2)(a).**

Ecology's regulation, WAC 173-401-530 (2)(a)[2], states that, (with certain exceptions not applicable here) ". . .no emissions unit or activity subject to a federally enforceable applicable requirement shall qualify as an insignificant emissions unit or activity." WAC 173-402-530 (2)(a). 40 C.F.R. 61 subpart H is a federally enforceable applicable requirement under which radionuclides are regulated without a *de minimis*. Therefore, under Ecology's regulation an emission unit or activity subject to 40 C.F.R. 61 subpart H cannot be insignificant. If Ecology wishes, it can change its regulation by using the rulemaking process as codified in the state *Administrative Procedure Act,* (APA) RCW 34.05. However, Ecology cannot use language in a permit to change its regulation.

Furthermore, until emissions from Tank Farm emissions units have been adequately characterized, Ecology can not know if 40 C.F.R. 61 subpart H is the only federally enforceable requirement applicable to these emission units.

Delete the referenced sentence.

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[1] 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)

[2] "Notwithstanding any other provision of this chapter, no 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 23: (*Attachment 1*, Section 1.2 "Insignificant Emission Units"): **Re-evaluate Tank Farm emissions units[1] currently designated as insignificant emissions units (IEUs) based on requirements of WAC 173-401-530 (2)(a) and on findings in the Hanford Vapor Report[2].**

These emissions units are currently regulated only in *Attachment 2* even though they are subject to 40 C.F.R. 61 subpart H, a federally enforceable applicable requirement. According to WAC 173-401-530 (2)(a) "no emissions unit or activity subject to a federally enforceable applicable requirement . . . shall qualify as an insignificant emissions unit or activity. . .". Thus, any emissions units subject to 40 C.F.R. 61 subpart H can't be considered IEUs and must be addressed in *Attachment 1*. In addition, all Tank Farm emissions units were permitted using characterization information that greatly underestimated both the number of chemicals in the expected emissions and the respective concentrations of these chemicals.

> "[U]under certain weather conditions, concentrations approaching 80% of the head space concentration could exist 10 feet downwind from the release point. . . " W.R. Wilmarth et al., *Hanford Tank Vapor Assessment Report*, SRNL-RP-2014-00791, Oct. 30, 2014 at 9

and:

> "The materials originally present [in the tanks] are subject to complex thermal and radiolytic reactions that vastly increased the compound classes and individual compounds present. It is the head space composition that determines the composition of the vent, stack, and most fugitive emissions. Spills and leaks during transfers and recovery may lead to condensed phase fugitive emissions from fugitive sources such as valves and line connections. Waste disturbing activities can greatly alter the concentration and composition of the head space gases and vapors. Past head space characterization did not evaluate the effect of waste disturbing activities on the chemicals in the head space and their concentrations." *Id.* at 23

and:

> "Monitoring and sampling policy appears to be inadequate with respect to detecting short-term episodic exposure. The current policy does not address the potential for wafting plumes or puffs of chemical vapors in relatively high concentrations, which may be occasional and isolated in nature." *Id.* at 30

Accurate characterization information will certainly increase the number of currently-reported regulated air pollutants present in emissions from Tank Farm emissions units, and may implicate other NESHAPs, either directly or in accordance with CAA §112 (j)(5) [42 U.S.C. 7412 (j)(5)]. WAC 173-401-530 (2)(c) indicates that if an emissions unit is no longer considered an IEU, that unit is subject to all testing, monitoring, recordkeeping, and reporting requirements necessary to assure compliance with WAC 173-401.

Using accurate characterization information, re-evaluate all Tank Farm emissions units with regard to WAC 173-401-530 (2)(a) and require appropriate emissions limits, emissions controls, monitoring, reporting, and recordkeeping necessary to assure continuous compliance with WAC 173-401 for those units that can no longer be considered as IEUs.

_____

[1] '"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA. . . .' WAC 173-401-200 (12)
[2] W.R. Wilmarth et al., *Hanford Tank Vapor Assessment Report*, SRNL-RP-2014-00791, Oct. 30, 2014

Comment 24: (*Attachment 1*, Section 1.4.25, pg. 84, Discharge Point: Ventilation Systems for 241-AN and 241AW-Tank Farms, and Section 1.4.32, pg. 110, Discharge Point: 241-AP, 241-SY, and 241-AY/AZ Ventilation): **Revise the emission limits, and requirements for monitoring, reporting, and recordkeeping for these discharge points (collectively "exhausters") to reflect findings in the Hanford Vapor Report[1]. (*See* Enclosure 2)**

The very same harmful emissions that necessitated the Hanford Vapor Report are emissions that are regulated under the CAA and should have been addressed in all previous versions of the Hanford Site AOP. Under the CAA there can be no unmonitored emissions of regulated air pollutants. It is only because of inaccurate characterization of Tank Farm emissions in all permit applications submitted to Ecology that these harmful emissions have been allowed to escape regulation under the CAA.

The authors of the Hanford Vapor Report point out that:

> "The Hanford tank waste is a complex matrix of aqueous soluble and insoluble inorganic salts combined with an inventory of water and organic components that number into the thousands. These organic components are constantly undergoing radiolysis from the tank radioactivity plus thermal and chemical reactions with tank contents." W.R. Wilmarth et al., *Hanford Tank Vapor Assessment Report*, SRNL-RP-2014-00791, Oct. 30, 2014 at 16

and:

> "The materials originally present are subject to complex thermal and radiolytic reactions that vastly increased the compound classes and individual compounds present. . . . Waste disturbing activities can greatly alter the concentration and composition of the head space gases and vapors. Past head space characterization did not evaluate the effect of waste disturbing activities on the chemicals in the head space and their concentrations." *Id.* at 23

and:

> "The exhausters used for active venting occasionally shut down, . . . When this occurs, an interlock shuts down sluicing and retrieval operations, and the inlet vent on any tank involved is effectively rendered a passive exhaust vent. Although the waste disturbance activities have ceased, the head space then being vented through the inlet vents and fugitive pathways is potentially at orders of magnitude greater concentration of vapors than during routine passive venting." *Id.* at 28

It is apparent that the regulatory orders now in force (all versions of DE05NWP-001 and subsequent amendments; and DE11NWP-001) greatly underestimated not only the number of *hazardous air pollutants* (HAPs) and *toxic air pollutants* (TAPs) in the exhauster emissions, but also the concentration of HAPs and TAPs in these emissions. Without knowledge of the chemicals in the exhauster emissions it is not possible to determine whether TAPs are below their respective acceptable source impact level (ASIL). Such knowledge is also necessary to determine any HAPs requirements, including emission limits, and requirements for monitoring sufficient to yield reliable data from the relevant time period [40 C.F.R. 70.6 (a)(3)(i)(B)], reporting, and recordkeeping.

Ecology can't determine if a HAP or TAP is properly regulated absent accurate characterization of the emissions.

Current sampling is focused primarily on ammonia and VOCs. Sampling for ammonia occurs at six (6) month intervals. Sampling for VOCs occurs annually and uses time-weighted averaging. Using time weighted averaging greatly underestimates the actual emissions.

> "[A] time weighted average concentration of less than 10 ppm can be thousands to tens of thousands of ppm when delivered as a bolus." *Id.* at 35

Furthermore, the test methods used and the sampling frequencies are not capable of determining both the number of HAPs and TAPs and the respective concentrations.

> "[T]he [sampling] program should not rely on stack or exhauster sampling results to understand the possible releases as these samples represent mixtures of tank contents exhausted through a mutual stack or exhauster that have been diluted during the process." *Id.* 16

The Hanford Vapor Report recommends:

> Hanford "[i]dentify and implement sampling and or *in situ* analytical methods as appropriate for reactive VOCs, submicron aerosol, volatile metal compounds, and volatile metalloid compounds that may be present but would have been missed by past head space sampling and analytical methods." *Id.* at 36

Consistent with this recommendation, the current regulatory orders for these exhausters should be corrected to require:

1. sampling sufficient to detect all regulated air pollutants exhausted into the air;
2. controls to adequately limit these emissions;
3. requirements for monitoring at a frequency sufficient to yield reliable data from the relevant time period [40 C.F.R. 70.6 (a)(3)(i)(B)], and;
4. adequate reporting, and recordkeeping .

[1] W.R. Wilmarth et al., *Hanford Tank Vapor Assessment Report*, SRNL-RP-2014-00791, Oct. 30, 2014

ATTACHMENT 2

Comment 25: (*Attachment 2*, General): **Address federally-enforceable requirements as specified in WAC 173-401-625, 40 C.F.R. 70.6 (b), and CAA § 116.**

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*[1];
- 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)[2].

The Washington State Department of Health (Health) cannot seek to avoid federal enforceability by incorporating federal requirements by reference (*see* WAC 246-247-035[3]) 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)[4]), limitations on emissions (WAC 246-247-040(5)[5]), and the need to follow WAC 246-247 requirements, including federal regulations incorporated by reference (WAC 246-247-060(5)[6]; *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 under 40 C.F.R. 70.6.

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 analogous federally-enforceable requirement. 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)
>
> (*See* also WAC 173-401-600 (4) "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.")

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.

Treat federally enforceable requirements as specified in WAC 173-401-625 and 40 C.F.R. 70.6 (b).

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[1] *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.

[2] "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).

[3] "(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

[4] "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)

[5] "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)

[6] "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 26: (*Attachment 2*, General): **In *Attachment 2*, provide the specific monitoring, reporting, and recordkeeping requirements needed to demonstrate continuous compliance with each term or condition that appears in the annual compliance certification report required by 40 C.F.R. 70.6 (c)(5) and WAC 173-401-615 (5).**

The licensee/permittee is required by 40 C.F.R. 70.6 (c)(5) and WAC 173-401-615 (5) to annually certify compliance status (either continuous or intermittent) with each term or condition in the permit that is the basis for the certification. Absent some specified criteria, neither the licensee/permittee nor the public can determine what constitutes continuous compliance and how continuous compliance can be demonstrated. Without such criteria, the public is denied the information needed to assess compliance.

Comment 27: (*Attachment 2*, General): **Track and report the total potential radionuclide emissions allowed from individual emissions units specified in *Attachment 2, Enclosure 1 Emission Unit Specific License.***

The sum of allowable potentials-to-emit from emission units regulated in License FF-01 alone exceeds 10 mrem/yr to the maximally-exposed member of the public. Provide the sum of all potentials-to-emit radionuclides.

Comment 28: (*Attachment 2*, General): **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 six (6) new emission unit,**
- **removing nine (9) emissions units, and**
- **replacing about twenty-eight (28) Notice of Construction (NOC) orders of approval**

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.

> "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 six (6) new emissions units and about 28 new NOC approvals replacing older versions. In addition there are nine (9) emission units that were removed. 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 12-10-14, pgs. 23-32 of 33

ATTACHMENT 3

Comment 29: (*Attachment 3*, General): **The regulatory structure of the draft Hanford Site AOP does not provide Ecology, the sole permitting authority, with the legal ability to enforce the "National Emission Standards for Asbestos" (40 C.F.R. 61 subpart M). In this draft AOP asbestos requirements are created and enforced in accordance Benton Clean Air Agency (BCAA) Regulation 1, Article 8. Ecology can not enforce or otherwise act on BCAA regulations.**

Sections 502 (b)(5)(A) & (E) and section 502 (b)(6) of the CAA require a permitting authority have all authority necessary to issue permits and ensure compliance with all applicable requirements, to enforce permits including the authority to recover civil penalties, and the ability to offer the opportunity for public comment and a hearing.

Only the BCAA can fulfill these requirements of the CAA with respect to BCAA Regulation 1, Article 8. However, for the Hanford Site AOP, the BCAA is not a permitting authority, but rather a "permitting agency". Ecology is the only permitting authority and Ecology can not act on BCAA Regulation 1, Article 8.

STATEMENTS OF BASIS

Comment 30: (*Statement of* Basis for Standard Terms and General Conditions, Renewal 2, Revision B, pg. iv, line 1) **Line 1 on page iv of the Statement of Basis for Standard Terms and General Conditions contains the following statement: "Health regulates radioactive air emissions under the authority of RCW 70.92, . . .". Citing to RCW 70.92 is incorrect. The title of RCW 70.92 is "PROVISIONS IN BUILDINGS FOR AGED AND HANDICAPPED PERSONS".**

"PROVISIONS IN BUILDINGS FOR AGED AND HANDICAPPED PERSONS", RCW 70.92, doesn't provide Health authority to regulate radioactive air emissions. This statute doesn't even mention the Department of Health nor does this statute address radionuclides.

Provide an accurate source for Health's authority to regulate radionuclide air emissions.

Comment 31: (*Statements of Basis*; general): **Missing from the Statements of Basis is a discussion of the factual and legal basis for not including the Bechtel National, Inc., dust control plan in the draft Hanford Site AOP. This dust control plan for the Marshalling Yard, and the federal applicable requirements contained therein, is required by Administrative Order (AO) of Correction, No. 20030006, issued by the Benton Clean Air Agency on March 12, 2003**.

EPA has concluded CAA applicable requirements include conditions resulting from a judicial or administrative process resulting from the enforcement of "applicable requirements" under the CAA. Such conditions must be included in title V permits.

> "EPA believes that, because CDs [consent decrees] and AOs [administrative orders] reflect the conclusion of a judicial or administrative process resulting from the enforcement of "applicable requirements" under the Act, all CAA-related requirements in such CDs and AOs are appropriately treated as "applicable requirements" and must be included in title V permits, regardless of whether the applicability issues have been resolved in the CD." *In the Matter of CITGO Refining and Chemicals Company L.P.*, Petition Number VI-2007-01, at 12 (May 28, 2009). Available at: http://www.epa.gov/region07/air/title5/petitiondb/petitions/citgo_corpuschristi_west_response2007.pdf

In accordance with 40 C.F.R. 70.7 (a)(5) and WAC 173-401-700 (8), provide the factual and legal basis for omitting applicable federal requirements contained in the AO from this draft AOP.

Comment 32: (*Statements of* Basis; general): **Missing from the Statements of Basis is the memorandum of understanding between Ecology and Health describing the roles and responsibilities of each agency in coordinating the regulation of Hanford's radionuclide air emissions. This memorandum of understanding[1] is referenced on page 4 of the legal opinion[2] required by 40 C.F.R. 70.4 (b)(3).**

Ecology, the permitting authority, is required by 40 C.F.R. 70.7 (a)(5) and WAC 173-401-700 (8) to "provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions)." (40 C.F.R. 70.7 (a)(5)) This requirement cannot be met when Ecology fails to include the agreement establishing the respective roles and responsibilities of Ecology and Health that resulted in regulating pollutants in the Hanford Site Title V permit based on whether they are radioactive.

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[1] *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*
[2] M. S. Wilson, *Attorney General's Opinion for the Washington State Department of Ecology*, 10-27-1993

Comment 33: (*Statements of* Basis; general): **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 radioactive air emissions in the draft Hanford Site AOP pursuant to *The Nuclear Energy and Radiation Act* (NERA) rather than in accordance with 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. One of the CAA pollutants the Hanford Site is required to control is radionuclides. However, in the draft Hanford Site AOP applicable requirements regulating Hanford's radionuclide air emissions 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 pollutant in a CAA-required permit?

Comment 34: (*Statements of* Basis; general): **In accordance with 40 C.F.R. 70.7 (a)(5) and WAC 173-401-700 (8), provide 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 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.

EXHIBIT E

Hanford Challenge | 219 1st Ave S, Ste. 310, Seattle, WA 98104 | 206-292-2850 | hanfordchallenge.org

Filed by Email to Hanford@ecy.wa.gov and First Class Mail

May 8, 2015

Philip Gent
Department of Ecology
3100 Port of Benton Blvd.
Richland, WA 99354

Dear Mr. Gent,

Please accept the following comments on the Hanford Site Air Operating Permit, Renewal 2, Revision B. Hanford Challenge is an independent 501(c)3 organization based in Seattle, WA whose purpose is to help create a future for Hanford that secures human health and safety, advances transparency and accountability, and promotes a sustainable environmental legacy. Hanford Challenge supports and empowers whistleblowers, collaborates with NW stakeholders, including the Hanford workforce, Tribes, Hanford Advisory Board members, community organizations and concerned citizens to advocate for safe and protective cleanup remedies.

These comments were prepared with the help of Bill Green.

Comments: Draft Hanford Site Air Operating Permit, Renewal 2, Revision B

I. General Air Operating Permit (AOP) Structure

The AOP should be structured to provide maximum possible enforcement authority to agencies regulating Hanford's varied sources of air emissions, and to provide the strongest possible standards for protecting health, safety, and the environment. It should also maximize opportunities for meaningful public involvement. I am concerned that the current revision does not satisfy these principles, and may not be consistent with some sections of Title V of the Clear Air Act (CAA).

The Washington State Department of Ecology (Ecology), as the sole permitting authority under CAA Title V, is required to have the authority and ability to fully enforce the AOP. The minimum requirements for enforcement authority are laid out in 42 U.S.C. 7661a (b)(5)(E)[1] and 40 C.F.R. 70.11 (a). These requirements include the ability to "enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties in a maximum amount of not less than $10,000 per day for each violation, and provide appropriate criminal penalties."[2] The permitting agency must also be able to "restrain or enjoin immediately and effectively any person by suit or in court" that is violating the permit and endangering the public or environment, as well as to "seek criminal remedies" and injunctive relief, and to "sue to recover civil penalties."[3]

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[1] CAA § 502(b)(5)(E)
[2] CAA § 502(b)(5)(E) [42 U.S.C. 7661a (b)(5)(E)]
[3] 40 C.F.R. 70.11 (a)

Yet, the AOP is structured such that Ecology does not have these authorities in regards to radioactive emissions, which are regulated in this draft AOP only in Attachment 2 (License FF-01). License FF-01 relies upon the Nuclear Energy and Radiation Act (NERA),[4] which is a Washington State law that can only be enforced by the state's Department of Health.[5] Because Ecology has no authority to enforce NERA, it is not authorized by the legislature to act on regulatory products created using this act. The state's Department of Health, on the other hand, is not a permitting authority under the CAA, and does not have a program approved by the EPA to enforce 40 C.F.R. 70 and the CAA's Title V. Ecology is the sole permitting authority for this AOP, and so it should thus be responsible for enforcing requirements regarding "hazardous air pollutants" (HAP), including radionuclides [42 U.S.C. 7412], under the CCA's Title V. This includes regulating the emission of radon gas, which is not addressed by this AOP despite the fact that radon is defined explicitly by section 112 of the CAA as a HAP, and the fact that the permittee has repeatedly acknowledged[6] that radon is being released in quantities sufficient to measurably increase the dose received by the (off-site) "maximally exposed individual.[7]"

If this AOP structure is not corrected, it could mean that Ecology would not be required or even authorized to seek public review or organize public hearings on the AOP's terms and conditions for radionuclide emissions, and that public commenters may not have access to judicial review of the final permit actions related to radionuclide emissions. License FF-01 (Attachment 2) relies on NERA, which does not require or authorize public review or public hearings, rather than the CAA. CAA § 502 (b)(6),[8] 40 C.F.R. 70.7 (h), RCW 70.94.161 (2)(a) & (7), and WAC 173-401-800 all require public comment periods and the chance for a public hearing. NERA is also silent on the question of judicial review, unlike CAA § 502 (b)(6),[9] 40 C.F.R. 70.4(b)(3)(x) and (xii), and WAC 173-401-735 (2). While Ecology often passes public comments to the Department of Health for consideration, the public would be better served by review processes protected and required by law than by informal practices.

License FF-01's reliance on NERA may also make other forms of review optional or even impossible, which could make the AOP less responsive to the concerns of some stakeholders, and less informed by the kinds technical expertise often needed to craft standards and requirements that effectively protect the public and the environment from radionuclide emissions. RCW 70.94.161 (2)(a),[10] for example, requires that all proposed permits are reviewed by a professional engineer (or their staff) employed by Ecology. Among other things, this assures the public that at least one "independent" technical expert reviews a proposed AOP before it is approved, but it is not required or authorized by NERA. NERA is also silent on prior review by

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[4] RCW 70.98

[5] "The department of health is designated as the state radiation control agency, hereinafter referred to as the 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)

[6] DOE/RL-2008-03, Rev. 0 (2008); DOE/RL-2009-14, Rev. 0 (2009); DOE/RL-201 0-17, Rev. 0 (2010); DOE/RL-2011-12, Rev. 0 (2011); DOE/RL-2012-19, Rev. 0 (2012); DOE/RL-2013-12, Rev. 0 (2013); and DOE/RL-2014-14, Rev. 0 (2014)

[7] As defined by WAC 246-247-030 (15).

[8] 42 U.S.C. 7661a (b)(6)

[9] 42 U.S.C. 7661a (b)(6)

[10] The Washington Clean Air Act

the public, affected states, the EPA, and the Pollution Control Hearings Board, while WAC 173-401 requires it. Hanford Challenge is also concerned about the omission of radon gas releases—defined as a HAP by section 112 of the CAA—in this AOP. The CAA's Title V requires that permits address all HAPs, including radon and radionuclides.

Finally, in Attachment 3 the Benton Clean Air Agency (BCAA), rather than Ecology, is empowered to enforce "National Emission Standards for Asbestos" (40 C.F.R. 61 subpart M). As previously noted, Ecology, as the sole permitting authority, is required by the CAA to have the authority and capacity to enforce all applicable requirements.

Hanford Challenge recommends that the following actions be taken to revise the AOP:

- Regulate radionuclide emissions as a hazardous air pollutant under the CAA's Title V and the Washington Clean Air Act
- Ensure that Ecology's enforcement authority regarding radionuclides meets all legal requirements in the CAA
- Address the emission of radon within this AOP
- Ensure Ecology, as the sole permitting authority, has the required authority to enforce all applicable standards, including those relating to radionuclides and asbestos

Additionally, Hanford Challenge believes that the Statements of Basis should include the memorandum of understanding (MOU) between Ecology and the Department of Health that specifies the roles and responsibilities of each agency regarding radionuclide regulation at Hanford.[11] The Statements of Basis should also address the legal and factual bases for using NERA, rather than the CAA, for regulating radioactive emissions.

Finally, Hanford Challenge recommends the following modifications to the AOP's Standard Terms and General Conditions:

- (Section 4.6) [12] -- Clarify that federally enforceable requirements includes all requirements of the CAA, including those related to radionuclides. While radionuclides are regulated by the state under NERA, they do not thus cease to be federally regulated under the CAA [including 42 U.S.C. 7416 & 40 C.F.R. 70].
- (Section 4.12) -- Specify how the permitee and the public would be able appeal terms and conditions created or enforced by the Department of Health pursuant to NERA (RCW 70.98) in License FF-01. This is necessary because the Pollution Control Hearings Board does not have jurisdiction over licenses created under NERA, and the Department of Health does not have the authority to issue an AOP under RCW 70.94, the CAA, or 40 C.F.R. 70.
- (Section 5.19) – Clarify that all modifications allowed by sections 5.19 and 5.20 do not apply to License FF-01 (Attachment 2), which was created under regulations and statutes

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[11] This MOU is referenced in page four of: M. S. Wilson, *Attorney General's Opinion for the Washington State Department of Ecology*, 10-27-1993

[12] "All terms and conditions are enforceable by the U.S. Environmental Protection Agency (EPA) and United States citizens unless specifically designated as not federally enforceable or listed as an inapplicable requirement in Table 5.1 [WAC 173-401-625]."

that do not recognize either "Off-permit Changes" or "Changes Not Requiring Permit Revisions".

- (Section 5.19 & 5.20) – Clarify that new addresses provided by the EPA or Ecology are also acceptable.

II. Addressing Tank Vapors

Hanford has 177 underground storage tanks that hold a total of 56 million gallons of high-level nuclear waste and toxic chemical waste. These tanks are organized into eighteen areas, known as "Tank Farms," and managed primarily by DOE contractor Washington River Protection Solutions (WRPS). WRPS currently holds the Tank Operations Contract (TOC), which includes "operations and construction activities necessary to store, retrieve and treat Hanford tank waste, store and dispose of treated waste, and begin to close the Tank Farm waste management areas to protect the Columbia River."[13] The Department of Energy plans to remove and treat the radioactive and hazardous waste stored in Hanford's tanks over the next several decades at Hanford's Waste Treatment Plant – a facility still under design and construction, and in any event, years away from operation.

Efforts to identify and characterize toxic chemical vapors, as well as to stop these vapors from escaping and protect workers, have been inadequate. Workers in and near Hanford's 177 aging high-level waste tanks have periodically reported serious illnesses and injuries connected with powerful odors for decades, but the tank farms are currently categorized as "insignificant emissions units" in the AOP. According to the Hanford Tank Vapor Assessment Report,[14] which was released in October 2014 by the Savannah River National Laboratory (SRNL), both the number of air pollutants and their concentration have been underreported. Without better monitoring practices and an accurate inventory of tank farm emissions, it is not possible to identify the regulatory and pollution control requirements that are applicable under the CAA. Yet, Ecology is obliged, under the CAA [40 C.F.R. 70.6 (a)(1)], to incorporate all applicable requirements, including those connected to all hazardous and toxic air pollutants (HAPSs and TAPs), into the AOP.

There may be some confusion about where such requirements and monitoring would apply, and who they are intended or required to protect. Ecology must ensure that the requirements of this AOP protect everyone, including those inside of the property line. Fortunately, in CAA Title V permits the emission limits, associated monitoring, reporting, and recordkeeping requirements apply at the individual emissions unit, rather than only at the source's property boundaries,[15] and many of its protections apply to all "persons,"[16] rather than only the (offsite) "public." Hanford employees do not stop being "persons" after arriving at work, and Ecology has the authority and responsibility under the CAA to protect them from dangerous emissions.

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[13] WRPS and DOE Tank Farm Contract accessible at http://www.hanford.gov/?page=721.

[14] SRNL-RP-2014-00791

[15] See, for example, WAC 173-400-040 (2), which applies the 20% opacity requirement at the implicated emissions unit, rather than the boundary of the property.

[16] The CAA does not define "person" with reference to the site boundary [42 U.S.C. 7602 (e)], and recognizes as part of its definition of criminal activity placing a "person," without reference to whether they are beyond the site boundary, in imminent danger [42 U.S.C. 7413].

Toxic Vapor Exposures at Hanford's Tank Farms

The history of vapor exposures at Hanford goes back decades and hundreds, and likely thousands of workers have been exposed to toxic vapors. Some workers have suffered permanent long-term disability as a result of brain damage, loss of lung capacity, and other substantial impairments. NIOSH[17], the DOE[18], and various expert panels have all filed reports on worker exposure to toxic vapors that assert Hanford's Industrial Hygiene Program has been ineffective in protecting workers from toxic vapor exposures. Recently, a report prepared by a panel of experts led by the Savannah River National Laboratory issued findings relative to the vapor exposure issue, and to make recommendations. That report, issued on October 30, 2014, detailed numerous failings in the current programs and processes designed to protect worker health and safety relative toxic vapor exposures, The conclusion of that report, and earlier reports, is direct and simple: Current practices leave workers in and around the Tank Farms at immediate risk for serious harm to their health.

Hundreds of employees work in and around the Hanford Tank Farms on a daily basis and around the clock. Pipefitters, construction workers, electricians, millwrights, nuclear chemical operators, health physics technicians, and others comprise the bulk of workers who routinely encounter potentially toxic vapors with inadequate or non-existent protective equipment. These toxic vapors are in the headspace of the tanks and seep out during atmospheric conditions such as a temperature and pressure inversion; during any type of waste disturbing activity such as pumping waste from leaking tanks; when inserting cameras or equipment into tanks; and other times through pipes, vents, filters…etc. Tanks must vent to the atmosphere to prevent pressure buildup and possible explosion or tank rupture. DOE and WRPS continue to deploy ineffective strategies to protect workers from exposure to toxic chemicals capable of causing acute and chronic health effects, including brain damage, lung diseases, and cancers. Meanwhile, tank farm workers continue to experience symptoms and illnesses resulting from toxic vapor exposure.

To date, over thirty studies and reports have documented the problem of vapors in Hanford's waste tanks. Over 1800 chemicals are suspected to be in the vapors contained within Hanford's tank headspaces, any number of which can and do escape through tank equipment.[19] DOE and WRPS are on notice of the presence of these chemicals in the tanks and their potential to cause imminent and substantial endangerment to health and the environment. DOE maintains

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[17] NIOSH Health Hazard Evaluation Report. HETA #2004-0145-2941. CH2M Hill Hanford Hroup, Inc. and US DOE, ORP, Richland WA. July 2004. http://www.hanfordchallenge.org/wp-content/uploads/2010/06/2004-July-NIOSH-Health-Hazard-Evaluation-Report.pdf

[18] Office of Independent Oversight and Performance Assurance Office of Security and Safety Performance Assurance U. S. Department of Energy Investigation of Worker Vapor Exposure and Occupational Medicine Program Allegations at the Hanford Site. April 2004. (DOE OA Report). http://www.hanfordchallenge.org/wp-content/uploads/2010/06/2004-May-HSS-Investigation-of-Worker-Vapor-Exposure.pdf

[19] See the CH2MHill 2006 Industrial Hygiene Chemical Vapor Technical Basis Report, Document RPP-22491 (Tech Basis Report), at Page 33. See also Attachment 4 Tables of "Chemicals Need Further Evaluation" from the Tech Basis Report.

a list of 59 known "Chemicals of Potential Concern" for which it is supposed to regularly monitor and protect workers from exposure.[20] The toxic chemicals found in the tanks, many of which are recognized carcinogens, include ammonia, nitrous oxide, mercury, hydrocarbons, ketones, aldehydes, furans, phthalates, nitriles, amines, nitrosamines, and many more are known to be in the tanks, and have been released into the atmosphere at rates well above occupational exposure limits.[21] The recently-released Savannah River National Laboratory report commissioned by WRPS states that even this list of potentially harmful chemicals is incomplete and unreliable. These chemicals are commonly linked to the symptoms workers experience.

Currently, DOE and WRPS conduct very few field tests for most of the chemicals on the COPC list, and most workers are not personally monitored for exposure. Therefore, there is no real-time information for predicting, protecting against, or providing proper care for exposures.

Two known and controversial hazardous chemicals found in Hanford's tanks are Nitrosodimethylamine (NDMA) and Dimethyl Mercury. These chemicals are known to cause many of the symptoms which workers have experienced and their occupational exposure limits are miniscule, indicating that there is practically no safe exposure to these and many of the other toxic chemicals that emanate from Hanford's tanks.[22] N-Nitrosodimethylamine is regulated by OSHA as one of thirteen Appendix B Regulated Carcinogens. [23] OSHA requires exposures of workers to these 13 chemicals to be controlled through the required use of engineering controls, work practices, and personal protective equipment, including respirators.[24] OSHA has no regulatory authority at Hanford and DOE and WRPS do not follow this same protocol.[25] WRPS and DOE do not adequately sample for or protect workers from exposure to these chemicals, or the other 59 or so identified "chemicals of potential concern." Furthermore, WRPS does not attempt to protect workers from the synergistic effects of exposure to this dangerous mix of toxic vapors. Engineered controls at vapor release points or putting workers on supplied air are the obvious and recommended ways to effectively protect Tank Farm workers. However, currently there are no technologies deployed for capturing and treating the toxic vapors, nor is supplied air required in most cases at Hanford.

Internal memoranda generated by Department of Ecology personnel in 2014 indicate that Hanford is not in compliance with Clean Air Act standards set for either mercury or NDMA. One memo, dated September 27, 2014, indicates that the Acceptable Source Impact Levels

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[20] See Attachment 5, 2008 Chemical of Potential Concern List, Meacham 2006. Meacham, J. E., Honeyman, J.0., Anderson, T. J., Zabel, M. L., Huckaby, J. L. May 2006. Industrial Hygiene Chemical Vapor Technical Basis. RPP-RPT-22491 Rev 1, CH2MHILL Hanford Group & Pacific Northwest National Laboratory (PNNL), Richland, WA.

[21] See Attachment 6, "Hanford tank farms air monitoring results, 2005 – 2009" available at http://s3.documentcloud.org/documents/1202697/copc-above-50-oel.pdf and NIOSH list of known occupational carcinogens available at http://www.cdc.gov/niosh/topics/cancer/npotocca html.

[22] See CDC NIOSH International Chemical Safety Cards for Dimethyl Mercury and Nitrosodimethylamine Available at http://www.cdc.gov/niosh/ipcsneng/neng1304.html and http://www.cdc.gov/niosh/ipcsneng/neng0525.html.

[23] http://www.cdc.gov/niosh/npg/nengapdxb.html

[24] *Id.*

[25] Occupational Safety and Health Act, 29 U.S.C. 653, sec 4(b).

(ASIL) had been exceeded for mercury by 111% of its ASIL and 1159% of the ASIL for NDMA.[26] Assuming that the model for the point of compliance was "the public", which in Hanford's case would be miles away from the tank farms (such as Route 243), exceedance of these standards is surprising. Even more worrisome, however, is the dose that humans closer to the emission sources must be encountering.

Workers exposed to the tank vapors have suffered serious long-term health effects including brain damage, lung disease, nervous system disorders, and cancer. Short-term effects include nosebleeds, profuse sweating, persistent headaches, tearing eyes, burning skin and lungs, coughing, sore throats, eye problems, dizziness, nausea, memory loss, difficulty breathing and increased heart rates. Some workers are on long-term disability resulting from chemical vapor exposure at Hanford, with illnesses ranging from toxic encephalopathy, neurological damage, nerve damage, and lung disease—others are still fighting for their claims to be recognized.[27] A Hanford contractor, the Pacific Northwest National Laboratory (PNNL) concluded that the risk of contracting cancer from exposure to these chemical vapors could be as high as 1.6 in 10.[28]

Although numerous studies have been conducted, there remains a lack of adequate information about the contents of the tanks. This, combined with the tanks' unpredictable behavior makes workers' breathing environment uncharacterized and not subject to characterization. In such circumstances, utilizing technologies that capture and treat the toxic vapors (such as chemical scrubbers) and mandatory use of personal protective equipment should be required.[29] DOE concluded in a 2004 report, "Until a protection strategy is defined and supported by an effective industrial hygiene program, a conservative approach to the use of personal protective equipment is warranted."[30] In 2004, a toxicologist who assessed this situation also concluded:

> Both human health risk assessments and the human exposure 'study' show the same results; that tank vapors are extremely hazardous to humans. This leads to the conclusion that tank workers should be protected from exposure to the tank vapors. There is no scientific reason to believe that further risk assessments and studies would yield different results, or different conclusions… Cartridge-type respirators do not supply fresh air to wearer, but filter toxins out of the air before it is breathed. However, there are no individual respirator cartridges that filters all toxins present in the tank vapors. Any one type of respirator cartridge will only

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[26] Memo, WA State Department of Ecology, from Kadlec, M. to Gent, P., "Re: TOC-ENV-NOT-2014-4107 Toxic Air Pollutants Identified from AN, AW and AY/AZ Tank Farms," September 17, 2014. (attached for convenience).

[27] A. D. Maughan, J.G. Droppo, K.J. Castleton, Pnnl, *Health Risk Assessment for Short-And Long-Term Worker Inhalation Exposure to Vapor-Phase Chemicals From The Single-Shell Tank 241-C-103*, Draft (Mar. 1997) (1997 C-103 Vapor Health Risk Assessment). Available at http://s3.documentcloud.org/documents/1159468/1997-pnnl-draft-c-103-vapor-exposures-summary.pdf

[28] *Id*.

[29] *Knowing Endangerment*, at 5.

[30] *DOE OA Report*, at 7.

> filter a handful of chemicals, and then only for a relatively short period of time…Humans cannot breathe tank vapors and remain healthy.[31]

Recent vapor exposure incidents indicate that an effective program is not in place. Sufficiently protective equipment is not required or used in all cases. Vapors from the hazardous waste continue to go uncharacterized and personal exposures continue to go unmonitored leaving workers without reliable information on their potential for exposure.

During 2014 alone, at least 56 individuals have received medical attention for symptoms relating to exposure to toxic vapors. These symptoms include nosebleeds, metallic tastes, headaches, coughing, sore throats, nausea, and increased heart rates. Other workers have developed chronic obstructive pulmonary disease, decreased lung capacity, toxic encephalopathy, and cancer as a result of earlier exposures to toxic vapors. Hanford's health service provider has documented many of these effects.[32] Those incidents include an October 2014 event when five Hanford workers received medical checks for possible exposure to chemical vapors from tank farms.

> "Four Hanford employees were working between the AW and AP Tank Farms Thursday, when an odor consistent with chemical vapors was smelled. One of the employees had symptoms, and all four were given medical evaluations. In addition, a worker who smelled an odor outside the C Tank Farm on Wednesday developed symptoms overnight. The worker reported the symptoms Thursday and received a medical evaluation."[33]

King 5 News documented a number of these Tank Farm Vapor Exposure incidents in the past year.[34] Some examples of incidents where workers experienced serious symptoms associated with tank vapor exposure in March of 2014 alone include:

> March 19 - Two WRPS workers inhaled a release of unknown chemicals the AY-AZ tank area. Those employees returned to work but continue to receive medical care for persistent symptoms such as coughing, difficulty breathing, headaches and nosebleeds. Both workers are suffering effects of breathing in the vapors: headache, chest pain, difficulty breathing, nose bleeds and sore throats. One employee has coughed up blood.

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[31] Tim Jarvis, *Health Risks to Workers Exposed to Toxic Tank Vapors at Hanford's High-Level Waste Tanks*, 2004. Available at http://s3.documentcloud.org/documents/1150145/2004-jarvis-report.pdf.

[32] See Hanford Environmental Health Foundation, *Report on Toxics Effects of Headspace Chemicals,* 2004. Available at http://www.hanfordchallenge.org/wp-content/uploads/2010/06/Toxic-Effects-of-Tank-Headspace-Chemicals.pdf.

[33] More Hanford workers checked for vapor exposure, Tri-City Herald, October 3, 2014 at http://www.tri-cityherald.com/2014/10/02/3183248_more-hanford-workers-checked-for.html?rh=1#storylink=cpy.

[34] See King5 News coverage of 2014 vapor exposures at http://www.king5.com/news/investigators/Hanford-workers-affected-by-suspected-chemical-vapors-now-at-40-267577121.html

March 25 - Four more WRPS workers also working in the AY-AZ area inhaled fumes that made them sick.

March 25 - Two workers with expertise in investigating chemical releases went into the area to attempt to find the source when they too became ill. KING 5 has found they were not wearing protective gear such as respirators. The area was evacuated after the incident.

March 25 - Three more WRPS employees breathed in fumes approximately eight miles away in the S-SX tank area. It is not known what they inhaled, but two were transported to the hospital and one to the Hanford medical clinic.

March 26 – Three workers fell ill in yet another location at the Hanford site, at what's called the T tank farm, about a quarter mile from the S-SX area. Sources told the reporter 17 people were working on a video inspection when they were suddenly sickened by the release of vapors. Two were transported to the hospital and have been released yet sources say they continue to suffer from symptoms such as nausea and rapid heartbeat.

March 26 – Three non-WRPS workers report symptoms of vapor exposure. All were transported to the onsite medical facility and have been cleared to return to work.

March 27 – One WRPS employee got sick from vapor exposure in the AY farm area.

Workers in the Tank Farms are not adequately protected from these toxic vapors. When workers experience symptoms such as loss of consciousness or even dizziness and difficulty breathing the risk of other harms and incidents in the Tank Farms increases as well. Workers are not always required to wear supplied air during all possible exposure scenarios and there are many technological prevention measures that could be in place and are not. If protective measures were established and followed, workers would face a significantly lower risk of detrimental exposure.

Furthermore, the vapors and particulates released from Hanford's tanks have and may continue to endanger health and the environment downwind of the tank farms which are simply enclosed by chain link fences. There are public tours, guests, regulators, additional contractors and workers at other areas of the Hanford site who often go close to and downwind of the Tank Farms. As recently as October 1, a worker who smelled an odor outside the C Tank Farm developed symptoms overnight. The worker reported the symptoms the next day and received a medical evaluation.[35] The downwind environment and the health of other individuals also face imminent and substantial endangerment from the activities and waste management described herein. WRPS and DOE must act to control the release of toxic vapors emanating from Hanford's hazardous waste tanks and protect not only its employees from imminent and substantial endangerment of exposure to toxic vapors, but also the health of members of the public and collocated workers.

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[35] More Hanford workers checked for vapor exposure, Tri-City Herald, October 3, 2014 at http://www.tri-cityherald.com/2014/10/02/3183248_more-hanford-workers-checked-for.html?rh=1#storylink=cpy.

Ecology and the EPA have the authority, under 40 C.F.R. 70.7 (f)(1)(iii)[36] & (iv),[37] to reopen the AOP, given the uncertainty regarding the variety and concentration of past and current tank vapor emissions. Hanford Challenge urges both agencies to exercise this authority, and make the strongest possible actions to protect human health and the environment from tank vapors mandatory under the AOP. Despite decades of recommendations by Hanford Challenge and others, as well as the devastating health effects they have had for many of those exposed, very little has been done by the U.S. Department of Energy and its contractors to address this issue. We therefore believe that action on tank vapors must be legally required and enforced aggressively. To the extent possible under the CAA, Ecology should incorporate the recommendations Hanford Tank Vapor Assessment Report into the AOP.

Hanford Challenge urges Ecology to:

- Reopen the Hanford AOP.
- Provide a schedule of compliance regarding adequate monitoring of tank vapors and for the identification and control of unaccounted for HAPs and TAPs, including those associated with transient peaks. These schedules are required under 40 C.F.R. 70.6(c)(3) and WAC 173-401-630 (3). Six-month progress reports are also required under 40 C.F.R. 70.6 (c)(4) and WAC 173-401-630 (4).
- Revise emission limits, monitoring, sampling, reporting, and recordkeeping requirements to reflect the findings and recommendations of the SRNL report.
- Provide a full and accurate inventory of regulated air pollutants, from both point sources and fugitive emissions, that could be expected to be emitted by the tanks in a manner consistent with SRNL's recommendations.
- Re-evaluate the categorization of the tank farms as "insignificant emissions units." Because tank vapors have not been adequately characterized, it is not possible to know what federal standard may be applicable. WAC 173-401-530 (2)(a) makes it clear that "no emissions unit or activity subject to a federally enforceable applicable requirement shall qualify as an insignificant emissions unit or activity." Additionally, radionuclides are regulated without a *de minimis* under 40 C.F.R. 61 subpart H, which is a federally enforceable requirement. Therefore no emission unit subject to 40 C.F.R. 61 subpart H can be "insignificant," including the tank farms, and should be included in Attachment 1 rather than Attachment 2, which is based on state law (NERA). Attachment 1, Section 1.2, pg. 11, lines 9-11[38] should therefore be deleted.
- Ensure that all of these requirements are subject to public review, as required by 40 C.F.R. 70.7 (h) and WAC 173-401-800.

III. Other Comments

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[36] "The permitting authority or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit" [40 C.F.R. 70.7 (f)(1)(iii)].

[37] "The Administrator or the permitting authority determines that the permit must be revised or revoked to assure compliance with the applicable requirements" [40 C.F.R. 70.7 (f)(1)(iv)].

[38] "All emission units not identified in Section 1.4 Discharge Points that are subject to 40 CFR 61, Subpart H in Attachment 2, Health License, have been determined to represent insignificant sources of non-radioactive regulated air pollutants."

- Attachment 1, Table 1.4 should include conditions from BCAA Administrative Order (AO) of Correction, No. 20030006, for control of fugitive dust from the Marshaling Yard.
- Include Dust Control Plan 24590-WTP-GPP-SENV-015, Revision 1 in the public review plan
- In License FF-01 (Attachment 2), the sum of allowable potentials-to-emit exceeds 10 mrem/year. Ecology should track and report the total potential radionuclide emissions allowed from individual emissions units specified in Attachment 2, Enclosure 1 (Emission Unit Specific License). It should also include potential radionuclide emissions from emissions unit regulated under the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA).
- The Statement of Basis for Standard Terms and General Conditions, Renewal 2, Revision B contains an error (page iv, line 1). It states "Health regulates radioactive air emissions under the authority of RCW 70.92," but RCW 70.92 does not authorize any air pollution regulations.
- Provide the public with all of the information used in the permitting process, including the addition of six new emission units, the removal of nine emission units, and the replacement of twenty eight Notice of Construction orders of approval from the Draft Statement of Basis for Attachment 2, Table of Changes from FF-01 12-10-14 (pgs. 23-32). This is required under 40 C.F.R. 70.7 (h)(2). The EPA, in Sierra Club v. Johnson,[39] interpreted 40 C.F.R. 70.7 (h)(2) such that the use of any information in the permitting process makes it "relevant" to the permit decision, and should thus be available to the public. Public review should be restarted so that this information can be taken into account by commenters.
- Revisions to the AOP should also either include the Columbia River as a conduit for the emission of airborne radionuclides, or the legal and factual reasons for its exclusion should be presented to the public. Uranium from the soil and groundwater of Hanford's 300 area is leeching into the Columbia River,[40] and uranium decays into (among other things) radon, which is a dangerous radioactive gas. As previously mentioned, the regulation of radon emissions has been improperly omitted from the AOP, and must be incorporated into the permit. This uranium and radon contamination is a result of previous Hanford operations, and so creates exposures beyond natural background radiation levels. It is therefore required under the CAA

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[39] 436 F.3d 1269, 1284, (11th Cir. 2006)

[40] See: G. W. Patton and R. L. Dirkes, *Summary of Radiological Monitoring of Columbia and Snake River Sediment, 1988 Through 2004*, Pacific Northwest National Laboratories, PNNL-16990, Oct. 2007. (Available at: http://www.pnl.gov/main/publications/external/technical_reports/PNNL-16990.pdf) & U.S. Dept. of Energy, Richland Operations Office, *Hanford Site Environmental Report for Calendar Year 2011*, DOE/RL-2011-119, Rev. 0, Sept. 2012. (Available at http://msa.hanford.gov/files.cfm/2011_DOE-RL_2011-119_HanfordSiteEnviroReport4CY2011.pdf)

that it be regulated as an HAP in this AOP.

Submitted by:

_____ May 8. 2015_

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Date

EXHIBIT F

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF U.S. DEPARTMENT OF ENERGY-HANFORD OPERATIONS, BENTON COUNTY, WASHINGTON PERMIT NUMBERS 00-05-006, RENEWAL 2, AND 00-05-006, RENEWAL 2, REVISION A ISSUED BY THE WASHINGTON DEPARTMENT OF ECOLOGY	)	PETITION NUMBERS X-2014-01 AND X-2013-01 ORDER RESPONDING TO THE PETITIONER'S REQUESTS THAT THE ADMINISTRATOR OBJECT TO THE ISSUANCE OF STATE OPERATING PERMITS

ORDER GRANTING IN PART AND DENYING IN PART TWO PETITIONS FOR OBJECTION TO PERMITS

This Order responds to two related petitions submitted to the U.S. Environmental Protection Agency (EPA) by Bill Green of Richland, Washington (Petitioner) pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7661d(b)(2). The petitions submitted by the Petitioner on April 23, 2013 (2013 Petition), and April 21, 2014 (2014 Petition), request that the EPA object to the title V operating permit (Permit No. 00-05-006, Renewal 2 and Permit No. 00-05-006, Renewal 2, Revision A)[1] issued by the Washington State Department of Ecology (Ecology)

[1]As explained in more detail below, Renewal 2, Revision A is a complete reissuance of the Renewal 2 version of the permit and is currently in effect as the title V operating permit for the Hanford Site. For purposes of this Order, the EPA will refer to the permits as "the Hanford Title V Permit" unless the discussion requires a reference to a specific version of the permit. Additionally, while the 2013 Petition and the 2014 Petition relate to different versions of the Hanford Title V Permit, due to the significant overlap in the issues raised in the two petitions and the similarity of the relevant permit conditions in the two versions of the Hanford Title V Permit, the EPA is responding to both petitions in this Order.

to the U.S. Department of Energy (DOE) for the Hanford Site in Richland, Washington (Hanford Title V Permit). The Hanford Title V Permit was issued pursuant to title V of the CAA, CAA §§ 501-507, 42 U.S.C. §§ 7661-7661f (title V), and Washington Administrative Code (W.A.C.) Chapter (Ch.) 173-401. *See also* 40 C.F.R. part 70 (part 70). This operating permit is also referred to as a title V permit or a part 70 permit.

I. INTRODUCTION

This Order responds to all claims raised in the 2013 Petition and the 2014 Petition (collectively, the Hanford Title V Petitions). The claims are described in detail in Section IV of this Order. In summary, the issues raised are that: (1) the structure of the Hanford Title V Permit does not provide Ecology the authority to issue a permit that assures compliance with all applicable requirements, in particular, 40 C.F.R. Part 61, Subpart H (Subpart H) relating to radionuclide air emissions (radionuclides); (2) the structure of the Hanford Title V Permit does not provide Ecology with authority to enforce the portions of the Hanford Title V Permit relating to Subpart H; (3) Ecology did not comply with the requirements for public participation in issuing the Hanford Title V Permit; (4) the permit issuance procedures for the Hanford Title V Permit prevent access to judicial review; (5) the statement of basis for the Hanford Title V Permit related to radionuclides is inadequate; and (6) the Hanford Title V Permit does not include all applicable CAA § 112 requirements for radionuclides. Although the Petitioner raised some claims only in the 2013 Petition or in the 2014 Petition, due to significant overlap in the issues raised in the two petitions and the similarity of the relevant permit conditions in the two versions of the Hanford Title V Permit, the EPA is responding to both petitions in this Order.

Based on a review of the Hanford Title V Petitions and other relevant materials, including the Hanford Title V Permit, the permit records and relevant statutory and regulatory authorities, and as explained more fully below, I grant the Petitioner's request in part and deny in part for the reasons set forth in this Order.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(l) of the CAA, 42 U.S.C. § 766la(d)(l), requires each state to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA. The EPA granted interim approval of the title V operating permit program submitted by the State of Washington and its local air agencies effective December 9, 1994. 59 *Fed. Reg.* 55813 (Nov. 9, 1994); *see also 60 Fed. Reg.* 62992 (Dec. 8, 1995) (final interim approval after remand on unrelated issue). The EPA promulgated final full approval of Washington's title V operating permit program effective September 12, 2001, 66 *Fed. Reg.* 42439 (August 13, 2001), and an update to that final approval effective January 2, 2003, 67 *Fed. Reg.* 71479 (December 2, 2002). *See* 40 C.F.R. part 70, Appendix A. The regulations comprising the EPA-approved program in Washington are found in W.A.C. Ch. 171-401.

All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA. CAA §§ 502(a) and 504(a),

42 U.S.C. §§ 7661a(a) and 7661c(a). The title V operating permit program generally does not impose new substantive air quality control requirements, but does require permits to contain adequate monitoring, recordkeeping, reporting and other requirements to assure sources' compliance with applicable requirements. 57 *Fed. Reg.* 32250, 32251 (July 21, 1992). One purpose of the title V program is to "enable the source, States, the EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements." *Id.* Thus, the title V operating permit program is a vehicle for ensuring that air quality control requirements are appropriately applied to facility emission units and for assuring compliance with such requirements.

B. Regulation of Radionuclides in Washington

Both Ecology and the Washington State Department of Health (Health) have regulatory authority for "radioactive air emissions"[2] in Washington. The Washington Attorney General opinion accompanying Ecology's initial title V program submittal explains that Ecology's authority for radioactive air emissions is under Revised Code of Washington (R.C.W.) Ch. 70.94, the Washington Clean Air Act, and Health's authority is under R.C.W. Ch. 70.98, the Nuclear Energy and Radiation Act (NERA). *Attorney General's Opinion for the Washington State Department of Ecology*, dated October 27, 1993, at 4 (Attorney General Opinion).[3] The Attorney General Opinion further explains that, with respect to the Hanford Site, Health will issue a license addressing radioactive air emissions, and the license will be incorporated as an applicable requirement into the title V operating permit issued by Ecology. *Id*. The Attorney General Opinion also states that the title V operating permit for the Hanford Site will be required, issued, and enforced pursuant to the authorities set forth in R.C.W. Ch. 70.94 and its implementing regulations, including specifically, W.A.C. Ch. 173-401, Ecology's regulation implementing the EPA-approved title V program in Washington.

In December 1993, Ecology and Health revised their existing Memorandum of Understanding regarding regulation of radioactive air emissions at the Hanford Site as part of the title V program approval process to clarify the respective roles of Ecology and Health in the issuance and administration of title V operating permits and performing new source review. The Memorandum of Understanding, which was updated most recently in 2007 in only minor respects not relevant here, states that R.C.W. Ch. 70.98 and W.A.C. Ch. 246-247, both administered by Health, establish radioactive air emissions requirements, which are "'applicable requirements' under Ecology's W.A.C. 173-400-200" and that all air emissions at the Hanford Site, including radioactive air emissions, will be covered under a title V permit. *Memorandum of Understanding between Department of Ecology and the Department of Health Related to the Respective Roles and Responsibilities of the Two Agencies in Coordinating Activities Concerning Hanford Site Radioactive Air Emissions,* dated June 1, 2007, at 2 (MOU). The MOU further provides that DOE is required to submit two copies of its title V permit application, one to Health for the licensing of radioactive air emissions, and one to Ecology for the permitting of

[2] The Attorney General Opinion uses the term "radioactive air emissions," which is not used or defined in either R.C.W. Ch. 70.94 or R.C.W. Ch. 70.98; nevertheless, we understand the term includes radionuclides based on the context in which the Attorney General Opinion applies.

[3] Title V operating permits are referred to as "air operating permits" in Washington. The term "title V permit" or "title V operating permit" is used in this Order for consistency.

nonradioactive air emissions. Thereafter, the MOU provides that Health will issue a radioactive air emissions license, which will be incorporated into DOE's title V permit as an applicable requirement. The MOU states that a title V permit will be issued by Ecology with Health as a signatory reviewer and issuer of the radioactive air emissions license portion of the permit. MOU, at 2, 4. The MOU makes clear, although Health is primarily responsible for the regulation of radioactive air emissions at the Hanford Site, that responsibility does not alter in any way existing statutory authorities of Health or Ecology. *Id.,* at 4.

With respect to the title V permit issuance process, the MOU provides that Health will handle all radioactive air emissions license procedures and Ecology will handle all title V operating permit procedures and requirements. *Id.,* at 7. It further provides that the agencies will hold joint hearings, will jointly assure proper notice of public hearings, and will jointly prepare responses to public comments, but that Ecology is responsible for submitting notices, comments, and the proposed permit to the EPA. *Id.,* at 7. Ecology's procedures for issuing title V permits include provisions for public notice, a 30-day public comment period, opportunity for public hearing and the opportunity for judicial review in state court. *See* W.A.C. 173-401-735; W.A.C. 173-400-800; Attorney General Opinion, at 14, 20-21. As a matter of state law, a NERA license is not subject to a public comment process or the clear right of judicial review at the state level. *See* Letter from Stuart Clark, Washington Department of Ecology, and Gary Robertson, Washington Department of Health, to Bill Green, dated July 16, 2010, at 4-5 (Ecology/Health July 2010 Letter).

With respect to enforcement authority, the MOU states that both Ecology and Health have identical enforcement authorities under R.C.W. 70.94.422. MOU, at 6. This is confirmed by the Attorney General Opinion. Attorney General Opinion, at 16-17. R.C.W. 70.94.422(1) was enacted in 1993, at the same time state of Washington amended the Washington Clean Air Act to provide Ecology with authority to implement the federal title V operating permit program, and gives Health all of Ecology's enforcement powers provided in R.C.W. 70.94.332, 70.94.425, 70.94.430, 70.94.431(1) through (7) and 70.94.435 with respect to radioactive air emissions.[4] Attorney General Opinion, at 16-17. Under the MOU, Health is assigned the primary responsibility for inspections and enforcement actions that involve only radioactive air emissions, and Ecology has responsibility for inspections and enforcement actions that involve only non-radioactive air emissions. MOU, at 6. Although the MOU identifies the process by which such enforcement authorities will be exercised in a coordinated manner, R.C.W. 70.94.422(1), the MOU and the Attorney General Opinion make clear that both Ecology and Health retain their respective enforcement authorities. *See* R.C.W. 70.94.422(1) ("This section does not preclude the department of ecology from exercising its authority under this chapter."); MOU, at 6; Attorney General Opinion, at 16-17.

Consistent with the requirements of 40 C.F.R. part 70, Ecology's definition of "applicable requirement" includes specifically identified requirements of the CAA, including any standard or other requirement under section 112 of the CAA. *See* W.A.C. 173-401-200(4)(a). Ecology has adopted by reference all standards in 40 C.F.R. Part 61, including Subpart H, *see* W.A.C. 173-

[4] These identified provisions authorize Ecology to assess civil and criminal penalties of up to $10,000 per violation per day, seek restraining orders and injunctions, and seek other enforcement remedies, including those required by title V and part 70.

400-075(1), which are standards adopted under section 112 of the CAA. Ecology's definition of "applicable requirement" also includes other requirements of state law, such as NERA and its implementing regulations. *See* W.A.C. 173-401-200(4)(d). As discussed above, the Attorney General Opinion states that the NERA license issued by Health to DOE is an "applicable requirement" under state law. *See* Attorney General Opinion, at 4.

Health has also adopted by reference the 40 C.F.R. Part 61 standards that regulate radionuclides[5] (Radionuclide NESHAPs), including Subpart H. *See* W.A.C. 246-247-035. In 2006, the EPA granted partial approval of Health's request for delegation of authority to implement and enforce the Radionuclide NESHAPs. 71 *Fed. Reg.* 32276 (June 5, 2006) (final approval).[6]

The possibility that a state air permitting authority might rely on the expertise and resources of other state agencies to meet requirements necessary for EPA approval of the state title V operating permit program with respect to sources of radionuclides was specifically acknowledged by the EPA in the early years of the title V program. In guidance issued soon after the promulgation of part 70, the EPA specifically addressed whether the EPA expected all state radionuclide program activities to be carried out by the state air program. *See Memorandum from John S. Seitz, EPA Office of Air Quality Planning and Standards, and Margo Oge, Director, EPA Office of Radiation and Indoor Air, to 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, at 2 (Radionuclide NESHAP/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 [implementing Part 70 permits at sources subject to the Radionuclide NESHAPs]. Such joint efforts would have to be sufficiently described so that EPA and the public can understand how the job will be done." *Id*. The Radionuclide NESHAP/Title V Guidance includes as an attachment 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.

C. Review of Issues in a Petition

State and local permitting authorities issue title V permits pursuant to the EPA-approved title V programs. Under CAA § 505(a), 42 U.S.C. § 766ld(a) and the relevant implementing regulations found at 40 C.F.R. § 70.8(a), states are required to submit each proposed title V operating permit to the EPA for review. Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the permit if the EPA determines that the permit is not in compliance with applicable requirements of the Act. CAA § 505(b)(1), 42 U.S.C. § 7661d(b)(1); *see also* 40 C.F.R. § 70.8(c) (providing that the EPA will object if the EPA determines that a permit is not in compliance with applicable requirements or requirements under 40 C.F.R. part 70). If the EPA does not object to a permit on its own initiative,

[5] 40 C.F.R. Part 61, Subparts B, H, I, K, Q, R, T and W.

[6] The EPA granted Health partial rather than full delegation. Although Health has the authority required by 40 C.F.R. §§ 70.11(a)(3)(ii) and 63.91(d)(3)(i) to recover criminal penalties for knowing violations, Health 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 C.F.R. §§ 70.11(a)(3)(iii) and 63.91(d)(3)(i). *See* 71 *Fed. Reg.* 32276.

§505(b)(2) of the Act and 40 C.F.R. § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of the EPA's 45-day review period, to object to the permit.

The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period). CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). In response to such a petition, the Act requires the Administrator to issue an objection if a petitioner demonstrates to the Administrator that a permit is not in compliance with the requirements of the Act. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1); *see also New York Public Interest Research Group, Inc. (NYPIRG) v. Whitman,* 321 F.3d 316, 333 n.11 (2nd Cir. 2003). Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA. *MacClarence v. EPA,* 596 F.3d 1123, 1130-33 (9th Cir. 2010); *Sierra Club v. Johnson,* 541 F.3d 1257, 1266-67 (11th Cir. 2008); *Citizens Against Ruining the Environment v. EPA,* 535 F.3d 670, 677-78 (7th Cir. 2008); *WildEarth Guardians v. EPA*, 728 F.3d 1075, 1081-82 (10th Cir. 2013); *Sierra Club v. EPA,* 557 F.3d 401, 406 (6th Cir. 2009) (discussing the burden of proof in title V petitions); *see also NYPIRG,* 321 F.3d at 333 n.11. In evaluating a petitioner's claims, the EPA considers, as appropriate, the adequacy of the permitting authority's rationale in the permitting record, including the response to comments (RTC).

The petitioner's demonstration burden is a critical component of CAA § 505(b)(2). As courts have recognized, CAA § 505(b)(2) contains both a "discretionary component," to determine whether a petition demonstrates to the Administrator that a permit is not in compliance with the requirements of the Act, and a nondiscretionary duty to object where such a demonstration is made. *NYPIRG*, 321 F.3d at 333; *Sierra Club v. Johnson*, 541 F.3d at 1265-66 ("[I]t is undeniable [CAA § 505(b)(2)] also contains a discretionary component: it requires the Administrator to make a judgment whether a petition demonstrates a permit does not comply with clean air requirements."). Courts have also made clear that the Administrator is only obligated to grant a petition to object under CAA § 505(b)(2) if the Administrator determines that the petitioners have demonstrated that the permit is not in compliance with requirements of the Act. *See, e.g., Citizens Against Ruining the Environment*, 535 F.3d at 667 (stating § 505(b)(2) "clearly obligates the Administrator to (1) determine whether the petition demonstrates noncompliance and (2) object *if* such a demonstration is made") (emphasis added); *NYPIRG*, 321 F.3d at 334 ("§ 505(b)[2] of the CAA provides a step-by-step procedure by which objections to draft permits may be raised and directs the EPA to grant or deny them, *depending on* whether non-compliance has been demonstrated.") (emphasis added); *Sierra Club v. Johnson*, 541 F.3d at 1265 ("Congress's use of the word 'shall' … plainly mandates an objection *whenever* a petitioner demonstrates noncompliance.") (emphasis added). When courts review the EPA's interpretation of the ambiguous term "demonstrates" and its determination as to whether the demonstration has been made, they have applied a deferential standard of review. *See, e.g., Sierra Club v. Johnson*, 541 F.3d at 1265-66; *Citizens Against Ruining the Environment*, 535 F.3d at 678; *MacClarence*, 596 F.3d at 1130-31. A more detailed discussion of the petitioner demonstration burden can be found in *In the Matter of Consolidated Environmental Management, Inc. – Nucor Steel Louisiana*, Order on Petition Nos. VI-2011-06 and VI-2012-07 (June 19, 2013) (*Nucor II Order*), at 4-7.

The EPA has looked at a number of criteria in determining whether the petitioner has demonstrated noncompliance with the Act. *See generally Nucor II Order*, at 7. For example, one such criterion is whether the petitioner has addressed the state or local permitting authority's decision and reasoning. The EPA expects the petitioner to address the permitting authority's final decision, and the permitting authority's final reasoning (including the RTC), where these documents were available during the timeframe for filing the petition. *See MacClarence*, 596 F.3d at 1132-33; *see also, e.g., In the Matter of Noranda Alumina, LLC*, Order on Petition No. VI-2011-04 (December 14, 2012), at 20-21 (denying title V petition issue where petitioners did not respond to state's explanation in response to comments or explain why the state erred or the permit was deficient); *In the Matter of Kentucky Syngas, LLC*, Order on Petition No. IV-2010-9 (June 22, 2012) (*2012 Kentucky Syngas Order*) at 41 (denying title V petition issue where petitioners did not acknowledge or reply to state's response to comments or provide a particularized rationale for why the state erred or the permit was deficient). Another factor the EPA has examined is whether a petitioner has provided the relevant analyses and citations to support its claims. If a petitioner does not, the EPA is left to work out the basis for the petitioner's objection, contrary to Congress' express allocation of the burden of demonstration to the petitioner in CAA § 505(b)(2). *See MacClarence*, 596 F.3d at 1131 ("[T]he Administrator's requirement that [a title V petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and persuasive."); *In the Matter of Murphy Oil USA, Inc.*, Order on Petition No. VI-2011-02 (Sept. 21, 2011), at 12 (denying a title V petition claim where petitioners did not cite any specific applicable requirement that lacked required monitoring). Relatedly, the EPA has pointed out in numerous orders that, in particular cases, general assertions or allegations did not meet the demonstration standard. *See, e.g., In the Matter of Luminant Generation Co. – Sandow 5 Generating Plant*, Order on Petition No. VI-2011-05 (Jan. 15, 2013), at 9; *In the Matter of BP Exploration (Alaska) Inc., Gathering Center #1*, Order on Petition No. VII-2004-02 (Apr. 20, 2007), at 8; *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004-10 (Mar. 15, 2005), at 12, 24. Also, if the petitioner did not address a key element of a particular issue, the petition should be denied. *See, e.g., In the Matter of Public Service Company of Colorado, dba Xcel Energy, Pawnee Station,* Order on Petition No. VIII-2010-XX (June 30, 2011), at 7–10; and *In the Matter of Georgia Pacific Consumer Products LP Plant,* Order on Petition No. V-2011-1 (July 23, 2012), at 6-7, 10–11, 13–14.

III. BACKGROUND

A. The Hanford Site

The Hanford Site occupies approximately 560 square miles in south central Washington, just north of the confluence of the Snake and Yakima Rivers with the Columbia River. The Hanford Site was acquired by the federal government in 1943 and for many years was dedicated primarily to the production of plutonium for national defense and the management of the resulting waste. With the shutdown of the production facilities in the 1970s and 1980s, missions were redirected to decommissioning and site cleanup, and diversified to include research and development in the areas of energy, waste management and environmental restoration. The Hanford Site is a source of radionuclides and is a major stationary source subject to the requirements of title V of the CAA (42 U.S.C. §§ 7602 and 7661) and the EPA-approved title V program for Washington, codified at W.A.C. Ch. 173-401.

B. Hanford Site Title V Permitting History

The first title V permit for the Hanford Site was issued by Ecology in 2001, and was first renewed in 2006. Relevant for purposes of these petitions, DOE submitted an application for the second renewal of the title V permit for the Hanford Site to Ecology and Health, which Ecology announced as complete on September 10, 2011. *Washington Department of Ecology Permit Register*, Vol. 12, No. 18 (September 10, 2011). Health issued Radioactive Air Emissions License FF-01 to DOE for the Hanford Site on February 23, 2012 (NERA License).

Ecology held an initial public comment period on draft Permit No. 00-05-006, Renewal 2 from June 4, 2012, to August 3, 2012. 2013 Petition, Ex. 3, at 1. Ecology reopened the public comment period from December 3, 2012, to January 14, 2013, after acknowledging that the permit application materials were not available during the initial public comment period, but public notice of the reopened public comment period was not published until December 10, 2012. *Id.* at 3-4. Because the reopened public comment period was less than 30 days, Ecology announced that it was extending the reopened public comment period on the draft permit from January 14, 2013, to January 25, 2013. *Id*. at 2. The Petitioner submitted comments on draft Permit No. 00-05-006, Renewal 2, which includes the NERA License, during each of these public comment periods. DOE also submitted comments on draft Permit No. 00-05-006, Renewal 2.

On February 14, 2013, Ecology submitted the proposed Permit No. 00-05-006, Renewal 2 to the EPA for the EPA's 45-day review period, which ended on March 31, 2013. Ecology issued the final permit on April 1, 2013 (Renewal 2 Permit), which would expire on March 31, 2018. As with the previous title V permits for the Hanford Site, the Hanford Title V Permit consisted of a section with standard terms and conditions, and three attachments: "Attachment 1 contains the State of Washington Department of Ecology (Ecology) permit terms and conditions. Attachment 2 contains the State of Washington Department of Health (Health) Radioactive Air Emissions License (FF-01) as permit terms and conditions. Attachment 3 contains the Benton Clean Air Agency (BCAA) permit terms and conditions applicable to the regulations of open burning and asbestos." Most of the requirements of Subpart H that are included in the Renewal 2 Permit as well as most other requirements in the permit regulating radionuclides at the Hanford Site are contained in Attachment 2. Some additional Subpart H requirements are contained in the Standard Terms and Conditions portion of the Renewal 2 Permit (for example, Conditions 5.6, 5.10, 5.11 and 5.12, concerning title V reporting requirements related to Subpart H). On April 23, 2013, the Petitioner submitted a petition to the EPA (the 2013 Petition) requesting that the EPA object to the Renewal 2 Permit.

In May 2013, Ecology announced that it was reopening the public comment period on the entire Renewal 2 Permit from June 30, 2013, through August 2, 2013. In the public notices related to that reopening, Ecology stated that "We are holding another public 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." 2014 RTC, Hanford Air Operating Permit, June 30 – August 2, 2013, November 17 – December 20, 2013, Appendix A. Health revised the NERA License on

August 30, 2013.[7] Ecology then held a public comment period on proposed changes to the Renewal 2 Permit from November 17 through December 20, 2013. *Id*. Ecology explained that the proposed changes were "to incorporate new information into the permit," in particular, updating the permit to address several notices of construction that had been issued by Ecology for the Hanford Site and replacing the previous NERA License (issued on February 23, 2012) with the revised NERA License (issued on August 30, 2013) as Attachment 2 to the Hanford Title V Permit. *Id*. The Petitioner commented during both of these public comment periods, and DOE also submitted comments. Ecology submitted to the EPA the proposed permit for what became Permit No. 00-05-006, Renewal 2, Revision A for the EPA's 45-day review period on February 13, 2014, which ended on March 30, 2014. Ecology issued the final permit on May 1, 2014 (Renewal 2, Revision A Permit), which would still expire on March 31, 2018.

Again, as with the previous title V permits for the Hanford Site, the Hanford Title V Permit currently in effect consists of a section with standard terms and conditions, and three attachments. Attachment 2 is the NERA License that was applicable to the Hanford Site when the Hanford Title V permit was issued and most of the Subpart H requirements included in the permit, as well as most other requirements in the permit regulating radionuclides at the Hanford Site, are contained in Attachment 2. Some additional Subpart H requirements are contained in the main body of the permit (for example, Conditions 5.6, 5.10, 5.11 and 5.12, concerning title V reporting requirements related to Subpart H). On April 21, 2014, the Petitioner submitted a petition (the 2014 Petition), requesting that the EPA to object to the Renewal 2, Revision A Permit.

C. Timeliness of the Petitions

Pursuant to the CAA, if the EPA does not object during its 45-day review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to object. CAA § 505(b)(2); 42 U.S.C. § 7661d(b)(2). Thus, any petition seeking the EPA's objection to the Renewal 2 Permit was due on or before May 31, 2013, and any petition seeking the EPA's objection to the Renewal 2, Revision A Permit was due on or before May 30, 2014. The 2013 Petition was dated April 23, 2013, and the 2014 Petition was dated April 21, 2014. The EPA therefore finds the Petitioner timely filed both petitions.

D. Previous EPA Correspondence with the Petitioner

The EPA has previously responded in writing to the Petitioner on several issues that overlap with the issues raised in the Hanford Title V Petitions.

First, in a letter dated July 20, 2009, the Petitioner questioned whether Washington's title V program met the title V and 40 C.F.R. part 70 requirements for judicial review of final permit actions and for public comment, affected state review and the EPA review with respect to title V permits issued by Ecology and local air authorities in Washington for sources of radionuclides. The Petitioner noted that for each of the four sources of radionuclides subject to title V permits in

[7] This version of the NERA License has the same issuance and effective date (February 23, 2012) as the previous version, but states that it is "DATED at Richland, Washington the 30th day of August 2013," followed by "Approved by:" and a signature.

Washington, the requirements for radionuclides were contained in a NERA license issued by Health that was then incorporated into the title V permit by Ecology or the local title V permitting authority as an applicable requirement. The Petitioner stated that NERA licenses are enforceable only by Health, that Ecology and local title V permitting authorities in Washington lack authority over such licenses, and identified two specific concerns with this approach. First, the Petitioner alleged that, because a NERA license is not subject to the same requirements for judicial review as title V permits in Washington, Washington's title V program did not comply with the requirements of 40 C.F.R. § 70.4(b)(3)(x) and (xii) for judicial review. Second, the Petitioner stated that title V permitting authorities in Washington do not have jurisdiction for title V operating permit conditions contained in the NERA license portion of the title V permit and that Washington title V permitting authorities therefore lacked authority to address public comments. Finally, the Petitioner asserted that neither NERA nor its implementing regulations require an opportunity for public comment, the EPA review, or affected state review for NERA licenses, which is required for title V operating permits pursuant to 40 C.F.R. §§ 70.7(h) and 70.8(b).

The EPA responded in a letter dated September 29, 2009. *See* Letter from Michelle L. Pirzadeh, Acting Regional Administrator, Region 10, to Bill Green, dated September 29, 2009 (EPA's September 2009 Letter). In that letter, the EPA stated that, to the extent these license requirements are "applicable requirements" as defined in 40 C.F.R. § 70.2, Ecology is required to include the requirements in the title V permit for a subject source, but that the underlying applicable requirements themselves are not subject to the judicial review, public participation and the EPA and affected state review requirements of title V and 40 C.F.R. part 70. *Id*., at 1-2. The EPA also stated that the requirements of title V do not apply to the establishment of or challenge to applicable requirements established under separate statutory or regulatory authority. *Id*., at 2.

Similar issues were raised by the Petitioner in a letter to the EPA titled "Administrative Procedure Act Petition: Concerning Repeal of Portions of Appendix A of 40 C.F.R. Part 70," dated July 1, 2011. In that letter, the Petitioner requested the EPA to exercise its rulemaking authority to repeal the authorization of Ecology and the Puget Sound Clean Air Authority (PSCAA), a local title V permitting authority in Washington, to carry out the title V operating permits program with respect to permits containing the Radionuclide NESHAPs as applicable requirements.[8] The Petitioner asserted that the Washington Clean Air Act, R.C.W. Ch. 70.94, grants only Health the authority to create and enforce title V applicable requirements regulating radioactive air emissions and that Health is not a title V permitting authority and thus cannot enforce the CAA. The Petitioner also asserted that no title V permitting authority in Washington can enforce any title V requirements created by Health. Thus, the Petitioner asserts that applicable requirements created by Health escape any CAA and 40 C.F.R. part 70 permit issuance procedures, including requirements for public participation and the ability to obtain judicial review in state court.

In a response dated October 11, 2012, the EPA concluded that the issues raised in the Petitioner's letter were not grounds for repealing the EPA's approval of Washington's title V program. *See*

[8] The letter also requested the EPA to repeal Health's delegation of the Radionuclide NESHAPs (40 C.F.R. Part 61, Subparts B, H, I, K, Q, R, T and W). The EPA denied this request.

Letter from Dennis McLerran, Regional Administrator, Region 10, to Bill Green, dated October 11, 2012 (EPA's October 2012 Letter). The letter explains that Ecology has incorporated the Radionuclide NESHAPs by reference into its regulations and pointed to Washington statutes and regulations, as well as the Attorney General Opinion and MOU, that make clear that Ecology and PSCAA have authority to implement and enforce the Radionuclide NESHAPs and include such requirements in title V permits, if applicable. The letter further explained that the requirements of title V and part 70, including requirements for public participation and judicial review, do not apply as a matter of federal law when Health issues a license under NERA and its implementing regulations.

IV. EPA DETERMINATIONS ON THE ISSUES RAISED BY THE PETITIONER

Claim 1. Petitioner Claims that the Structure of the Hanford Title V Permit Does Not Provide Ecology the Authority to Issue a Permit that Assures Compliance with All Applicable Requirements, in Particular, Subpart H

This section responds to the claims in Section II.B-3 on pages 16-20 of the 2013 Petition and Section 3.2 and 3.3 on pages 17-25 of the 2014 Petition. We view these claims as related and are responding to them together.

Petitioner's Claim. The Petitioner claims that Ecology, the title V permitting authority for DOE's Hanford Site, does not have the required authority to issue a title V permit that meets all title V requirements controlling emissions of radionuclides at the Hanford Site as required by CAA § 502(b)(5)(A) and 40 C.F.R. §§ 70.1(b), 70.3(c), 70. 6(a) and 70.7(a). 2013 Petition, at 17; 2014 Petition, at 22. The Petitioner acknowledges that Ecology does have authority under state law to regulate radionuclides,[9] has adopted Subpart H by reference in its regulations (W.A.C. 173-400-075), and has authority to enforce Subpart H at the Hanford Site. The Petitioner claims, however, that by choosing not to adopt Subpart H in the Hanford Title V Permit and to instead include the Subpart H requirements in the NERA license as Attachment 2 to the Hanford Title V Permit, Ecology cannot subject Attachment 2 to any requirement of 40 C.F.R. part 70 because Ecology lacks the legal ability to act on requirements developed pursuant to NERA. 2013 Petition, at 11, 13-15; 2014 Petition, at 10-12, 15-16, 20. The Petitioner characterizes this permit structure as "inappropriately transfer[ing] regulation of radionuclides under Subpart H from Part 70 to W.A.C. 246-247 and enforcement of terms and conditions implementing requirements of Subpart H from a permitting authority to Health, an agency that is not a permitting authority." 2014 Petition, at 19-20. The Petitioner also asserts that: (1) Health is the agency that identified terms and conditions in Attachment 2 as "state-only," but only Ecology has authority under title V to make this designation (2013 Petition, at 25; 2014 Petition, at 14-15, 26-27, 30); (2) that Attachment 2 is not a rule promulgated by the EPA or part of the Washington State Implementation Plan and therefore not included in the federal definition of applicable requirement in 40 C.F.R. § 70.2 (2014 Petition, at 7-8) and is also not an applicable requirement under Washington's title V program; and (3) that "any standard or other requirement controlling emissions of hazardous air pollutants, including radionuclides, is subject to inclusion in permits

[9] The Hanford Title V Petitions refer to both "radionuclides" and "radioactive air emissions." Subpart H Radionuclide NESHAPs apply to radionuclide emissions. *See* 40 C.F.R. § 61.91. This Order uses the term radionuclides in discussing the Petitioner's claims as they pertain to Subpart H and other Radionuclide NESHAPs.

issued by a permitting authority" pursuant to title V and part 70 (2013 Petition, at 11; 2014 Petition, at 5).

EPA's Response. For the reasons stated below, I deny the Petitioner's request for an objection to the Hanford Title V Permit on these claims.

The Petitioner has not demonstrated that the structure of the Hanford Title V Permit deprives Ecology of the authority to issue a title V permit to DOE for the Hanford Site containing all federal applicable requirements, including Subpart H, and all federally-enforceable requirements controlling emissions of radionuclides as required by CAA § 502(b)(5) (A) and 40 C.F.R. §§ 70.1(b), 70.3(c), 70. (6)(a) and 70.7(a). These provisions require permitting authorities to have authority to issue permits that include emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements; that permitting authorities have authority to issue permits that provide for compliance with all applicable requirements; that permits for a major source include all applicable requirements for all relevant emission units in the major source; and that each subject source have a permit that assures compliance with all applicable requirements.

The Petitioner is correct that only Health has authority to carry out the requirements of NERA under R.C.W. Ch. 70.98 and W.A.C. Ch. 246-247 and that the NERA License was issued by Health to DOE under that authority. As discussed in the EPA's October 2012 Letter, however, a review of Washington's statutes, regulations and the Washington Attorney General Opinion make clear that Ecology also has certain authorities with respect to radionuclides. Specifically, Ecology has adopted the Radionuclide NESHAPs by reference into its regulations at W.A.C. 173-400-075(1). Furthermore, Ecology has authority, and in fact is required, under R.C.W. 70.94.161(10)(a), W.A.C. 173-401-200(4)(a)(iv) and W.A.C. 173-400-600(1)(a), to include in the Hanford Title V Permit all requirements of Subpart H that apply to the Hanford Site. *See also* Washington Attorney General Opinion, at 4 ("Ecology and local air authorities are also charged with regulatory authority over these same sources pursuant to Ch. 70.94 R.C.W.").

As the Petitioner notes, Ecology has chosen to meet most of its title V obligations with respect to radionuclides at the Hanford Site by incorporating the NERA License issued by Health into the Hanford Title V Permit. The Petitioner acknowledges that Subpart H requirements applicable to the Hanford Site are included in Attachment 2.[10] The Hanford Title V Permit states that "Attachment 2 contains the State of Washington Department of Health (Health) Radioactive Air Emissions License (FF-01) <u>as</u> permit terms and conditions." Permit No. 00-05-006, Renewal 2, Standard Terms and Conditions, at 1; Permit No. 00-05-006, Renewal 2, Revision A, Standard Terms and Conditions, at iii (emphasis added). This language clearly indicates that Ecology is, in issuing the Hanford Title V Permit, adopting the terms and conditions of the Health License—including the Subpart H requirements in Attachment 2—as terms and conditions of the Hanford Title V Permit. Similarly, although Health has, in the first instance in issuing the NERA License, identified certain conditions in the NERA License as "state only," Ecology has, by including the

[10] The Petitioner states on several occasions that all of the Subpart H requirements are in Attachment 2 of the Hanford Title V Permit. *See, e.g.*, 2013 Petition, at 12. In fact, several conditions relating to Subpart H are included in the main body of the permit. *See* Standard Terms and Conditions, Conditions 5.6, 5.10, 5.11 and 5.12.

NERA License in the Hanford Title V Permit "as permit terms and conditions," adopted Health's designation as its (Ecology's) designation of which title V permit conditions it considers to be "state only."[11]

The Petitioner's reliance on language in R.C.W. 70.98 and W.A.C. Ch. 246-247 stating that implementation and enforcement of NERA and its implementing regulations rests with Health ignores the fact that, once incorporated into the Hanford Title V Permit, the permit terms and conditions of the NERA License are terms and conditions of the Hanford Title V Permit. As a result, Ecology's authority with respect to such permit terms and conditions derives from R.C.W. 70.94 and its implementing regulations, including W.A.C. Ch. 173-401. Indeed, the Washington Attorney General Opinion, describing the specific situation in this case (a license issued by Health, but included in a title V permit issued by Ecology), states expressly that:

> The operating permit [issued by Ecology for the Hanford Site] will include components addressing both radioactive (from Health's license) and non-radioactive air emissions. The operating permit will be required, issued, and enforced pursuant to the authorities set forth in 70.94 Ch. R.C.W. [] and its implementing regulations, including specifically Ch. 173-401 W.A.C.…

Attorney General Opinion, at 4.

Additionally, the EPA recognizes that at the time the Petitioner filed the Hanford Title V Petitions, W.A.C. 246-247-030(14) stated that "'License' means a radioactive air emissions license, either issued by the department or incorporated by the department as an applicable portion of an air operating permit issued by the department of ecology or a local air pollution control agency, with requirements and limitations listed therein to which the licensed or permitted party must comply." However, Health subsequently revised this regulation "to accurately reflect the Department of Health actions and to clarify related actions by the Department of Ecology and the local air pollution control authorities." Health further stated that "While the radioactive air emissions license is always issued by the Department of Health, incorporation of the license into the air operating permit is done by the Department of Ecology or the local air pollution control authorities under their authority." *See Proposed Rulemaking for Radiation Protection – Air Emissions, W.A.C. 246-247-030 Definitions*. W.A.C. 246-247-

[11] As discussed in response to Claim 3 below, to the extent Ecology receives public comments on title V permits using this permit structure regarding whether certain requirements in Attachment 2 are appropriately characterized as "state-only" for purposes of the federal title V program, Ecology has an obligation, prior to issuing the title V permit, to respond to significant comments by explaining the basis for its determination that the requirement is not "required under the Act or under any of its applicable requirements." *See* 40 C.F.R. § 70.6(b); W.A.C. 173-401-625(2). If, after considering the comments, Ecology concludes that Attachment 2 incorrectly characterizes a certain requirement as "state-only," Ecology must ensure that the final title V permit appropriately characterizes that requirement as federally enforceable prior to issuing the final title V permit. To the extent this first requires a revision to the NERA License, Ecology must delay issuance of the final title V permit until the NERA License is revised consistent with title V deadlines for permit issuance. *See, e.g.*, 40 C.F.R. § 70.7(a)(2) (providing that a permitting authority must "take final action on each permit application (including a request for permit modification or renewal) within 18 months, or such lesser time approved by the Administrator, after receiving a complete application").

030(14) currently states that "The license will be incorporated as an applicable requirement in the air operating permit issued by the department of ecology or a local air pollution control authority when the department of ecology or a local air pollution control authority issues an air operating permit." Accordingly, while the prior language may have been ambiguous, Health's clarifications are consistent with other statutory and regulatory language and the Washington Attorney General Opinion clearly indicating that the title V permit for the Hanford Site is issued by Ecology and that the NERA License is incorporated into the title V permit by Ecology. In short, the Petitioner has not demonstrated that the structure of the Hanford Title V Permit deprives Ecology of the authority to issue a title V permit to DOE for the Hanford Site containing all federal applicable requirements, including Subpart H, and all federally-enforceable requirements controlling emissions of radionuclides.

With respect to the Petitioner's claim that the NERA License issued by Health for the Hanford Site is not an "applicable requirement,"[12] the EPA acknowledges that the EPA's October 2012 Letter to the Petitioner included language on this issue that could have been misconstrued. The EPA did explain in the letter that many provisions in NERA licenses issued by Health and included in title V permits for radionuclides sources are established as a matter of state law and not subject to the requirements of part 70. *See* EPA's October 2012 Letter, at 6, n. 4. Several statements in the letter, however, used the term "applicable requirement" in connection with discussing licenses issued by Health under NERA without indicating whether the EPA was using that term to describe federal "applicable requirements" or state-only "applicable requirements."[13] The EPA is clarifying here that we do not consider a license issued by Health—or requirements of R.C.W. Ch. 70.98 or the regulations issued thereunder that do not meet the definition of "applicable requirement" in 40 C.F.R. § 70.2—to be "applicable requirements" for purposes of Washington's EPA-approved title V program. In contrast, the Radionuclide NESHAPs, including Subpart H, which are adopted in both Ecology's regulations at W.A.C. 173-400-075 and Health's regulations at W.A.C. 246-247-035, are "applicable requirements" under the EPA-approved title V program for Washington because they are standards or other requirements under CAA § 112. *See* 40 C.F.R. § 70.2 (EPA's definition of applicable requirement).[14] Thus, the fact

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[12] Although the Petitioner now contends that the NERA License is not an applicable requirement under state or federal law, the Petitioner's July 29, 2009, letter to the EPA stated that "As required by W.A.C. 246-247-010(5), -060, -060(1), and -060(2)(c), these licenses are incorporated into the [title V permit] as [title V permit]-*applicable requirements*." July 29, 2009, letter at 2 (emphasis added).

[13] The EPA October 2012 letter stated that "Radionuclide regulatory requirements are established by [Health] 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" (at 4); "Licenses issued by [Health] for radionuclide emissions, which incorporate the Radionuclide NESHAPs, are incorporated into the part 70 permits, where applicable, as applicable requirements in air operating permits" (at 5); "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 EPA and the license requirements promulgated by Ecology" (at 6); "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 [Health] regulating radionuclide emissions and containing the requirements of the Radionuclide NESHAPs" (at 6).

[14] The Petitioner contends that a license issued by Health under NERA is also not an "applicable requirement" within the meaning of R.C.W. 70.94.161(10)(d) and W.A.C. 173-401-200(4)(d) because those provisions identify as applicable requirements only the NERA statute itself, R.C.W. Ch. 70.98, "and rules adopted thereunder." The Petitioner also points to the definition of "license" in W.A.C. 246-247-030(14), which, at the time the Petitioner

that a NERA license is not a federal applicable requirement does not demonstrate that the structure of the Hanford Title V Permit deprives Ecology of the authority to issue a title V permit to DOE for the Hanford Site containing all federal applicable requirements, including Subpart H.

With respect to the Petitioner's contention that any federal standard or other requirement controlling emissions of hazardous air pollutants, including radionuclides, is subject to inclusion in permits issued by a permitting authority pursuant to title V and part 70 (2013 Petition, at 11; 2014 Petition, at 5), the Petitioner has not met his demonstration burden on this issue. The only explanation the Petitioner provides for this assertion is in his 2013 Petition, when he points to CAA § 116. That section provides that, except as provided in statutes preempting certain state regulation of mobile sources regulated under title II of the CAA:

> nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 7411 or section 7412 of this title, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section.

The Petitioner contends that the CAA and Washington state regulations require both the federal requirement and the state requirement to be included in a title V permit when both apply, stating that "EPA has interpreted CAA § 116 to require a Part 70 permit include both the federal requirement and the state requirement, when both apply, regardless of whether one is more stringent than the other" (2013 Petition, at 25). In support of this assertion, the Petitioner points to a statement in the EPA's partial delegation of authority to Health to implement and enforce the Radionuclide NESHAPs, which stated, "However, if both a State or local regulation and a Federal regulation apply to the same sources, both must be complied with, regardless of whether one is more stringent than the other, pursuant to the requirements of section 116 of the CAA." *See* 71 *Fed. Reg.* 32276, 32278 (June 5, 2006). Nothing in CAA § 116 or in the EPA's partial

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submitted the Hanford Title V Petitions, defined a NERA license as an "applicable portion" of an air operating permit, not as an applicable requirement. We need not address this issue because of our conclusion that a NERA license is not an "applicable requirement" within the meaning of the EPA-approved title V permitting program for Washington. We note, however, that W.A.C. 246-247-030(14) has since been amended to clearly state that a NERA license is an "applicable requirement" under state law to be included in Washington title V permits, as applicable. In addition, both the Attorney General Letter (at 4) and the MOU (at 13) have long interpreted a NERA license to be an "applicable requirement" as a matter of state law under R.C.W. 70.94.161(10)(d) and W.A.C. 173-401-200(4)(d), presumably because a NERA license is issued under R.C.W. Ch. 70.98 and rules adopted thereunder. In any event, whether or not a NERA license is an "applicable requirement" under state law does not change the conclusion we reached in the EPA September 2009 and October 2012 letters, namely, that the public participation, judicial review and other requirements of title V and part 70 do not apply as a matter of federal law to Health when issuing a license pursuant to R.C.W. Ch. 70.98 and W.A.C. Ch. 246-247. Title V and part 70 requirements do apply, of course, to issues relating to whether Ecology has included all requirements of Subpart H, and any other "applicable requirements," as defined in 40 C.F.R. § 70.2, in the Hanford Title V Permits.

delegation of the Radionuclide NESHAPs to Health in any way suggests that the CAA requires that "state-only" requirements be included in a title V permit. Similarly, the EPA's statement in the partial delegation was in no way intended to suggest that both a federal and a "state-only" state regulation must, as a matter of federal law, be complied with. Rather, the EPA was only pointing out that, as provided in and subject to CAA § 116, nothing in the CAA precludes states or local agencies from adopting and enforcing their own standards and requirements regulating air pollution.

For the foregoing reasons, the EPA denies the Hanford Title V Petitions as to Claim 1.

Claim 2. Petitioner Claims that the Structure of the Hanford Title V Permit Does Not Provide Ecology with Authority to Enforce the Portions of the Hanford Title V Permit Relating to Subpart H

This section responds to the claims in Section II.B-2 on pages 11-16 of the 2013 Petition and Section 3.1 on pages 13-16 of the 2014 Petition. We view these claims as related and are responding to them together.

Petitioner's Claim. The Petitioner claims that Ecology does not have authority to enforce all federally-enforceable requirements in the Hanford Title V Permit controlling emissions of radionuclides as required by CAA § 502(b)(5)(E) and 40 C.F.R. § 70.11(a). The Petitioner claims that by choosing not to adopt Subpart H by reference in the Hanford Title V Permit and instead choosing to address Subpart H requirements by including the NERA License as Attachment 2 to the permit, Ecology has effectively moved enforcement of Subpart H to a state regulation that cannot be enforced by Ecology, as the title V permitting authority, or the public. 2013 Petition, at 11, 13-15; 2014 Petition, at 10-12, 15-16, 20. This is because, the Petitioner asserts, only Health has authority under state law to enforce requirements under NERA, citing to R.C.W. 70.98.050(1), W.A.C. 246-247-002(1)(a), W.A.C. 246-247-030(14) and W.A.C. 246-247-060. 2013 Petition, at 12-13; 2014 Petition, at 4, 10, 15-16. The Petitioner also contends that, although an intergovernmental agreement can assure that an issued title V permit contains all applicable requirements, it cannot grant statutory enforcement authority to an administrative agency, as suggested by Region 10 in its October 11, 2012, letter or by the EPA in guidance (citing to Radionuclide NESHAP/Title V Guidance). 2013 Petition, at 15, n. 24.

EPA's Response. For the reasons stated below, I deny the Petitioner's request for an objection to the Hanford Title V Permit on these claims.

The Petitioner has not demonstrated that Ecology lacks authority to enforce all federally-enforceable requirements in the Hanford Title V Permit controlling emissions of radionuclides as required by CAA § 502(b)(5)(E) and 40 C.F.R. § 70.11(a). Those provisions require that title V permitting authorities have authority to enforce permits, permit fee requirements and the requirement to get a permit, including civil and criminal penalties and injunctive relief.

As discussed above in response to Claim 1, both Ecology and Health have regulatory authority for radioactive air emissions in Washington. The Petitioner is correct that the Health License was issued in the first instance by Health under NERA and that only Health has authority to carry out the requirements of NERA under R.C.W. Ch. 70.98 and W.A.C. Ch. 246-247. By including the

NERA License as an attachment to the Hanford Title V Permits, however, Ecology has issued the terms and conditions of the NERA License as terms and conditions of the Hanford Title V Permit.

As discussed in both the EPA's September 2010 Letter and the EPA's October 2012 Letter, Washington's statutes and regulations provide Ecology with authority to enforce all requirements of the title V permits it issues. Both versions of the Hanford Title V Permit state that they are issued under the authority of R.C.W. Ch. 70.94. Ecology has authority to seek criminal and civil penalties against any person who violates any provision of R.C.W. Ch. 70.94. *See* R.C.W. 70.94.430 (criminal penalty authority); R.C.W. 70.94.431 (civil penalty authority). In addition, in granting to Health all of Ecology's enforcement authorities in R.C.W. 70.94.422, the Washington Legislature made clear that granting such enforcement authority to Health "does not preclude the department of ecology from exercising its authority under this chapter [R.C.W. Ch. 70.94]." *See* R.C.W. 70.94.422(1). These statutory provisions were submitted by Ecology to the EPA as part of its title V program.

The Attorney General Opinion specifically confirms Ecology's authority to enforce provisions of a NERA license issued by Health when included in a title V permit, as Ecology has done in issuing the Hanford Title V Permit that is the subject of these petitions. In discussing Ecology's enforcement authority specifically with respect to the Hanford Site, the letter states:

> In 1993, the State Legislature granted the Washington State Department of Health the enforcement powers listed above with respect to emissions of radioactive air emissions. See R.C.W. 70.94.422(1). As explained in Section I above, Ecology and Health have developed an MOU whereby each agency will have primary responsibility for development of a component of the operating permit. Health's component is identified as a "license" per Ch. 70.98 R.C.W. This license will be incorporated as an applicable requirement into the operating permit issued by Ecology. Each agency will retain enforcement authorities, although the MOU identifies the process through which such authorities will be exercised in a coordinated manner.

Attorney General Opinion, at 17-18.

The MOU also makes clear that both Ecology and Health have enforcement authority with respect to radioactive air emissions from the Hanford Site, stating "Both Ecology and Health have identical enforcement authority under Chapter 70.94 R.C.W…." MOU, at 6. The MOU then states that Health will assume primary responsibility for inspection and enforcement actions that involve only radioactive air emissions, but makes clear that Ecology retains its enforcement authority and may exercise this authority consistent with the MOU under extenuating circumstances. MOU, at 6-7. Ecology and Health more recently confirmed this joint authority to enforce, in particular, the radionuclide provisions of the title V permit issued by Ecology to DOE for the Hanford Site in a letter to the Petitioner dated July 16, 2010. *See* Ecology/Health July 2010 Letter, at 3. In responding to comments raising concerns regarding Ecology's authority to enforce the Hanford Title V Permit, Ecology referred to the Ecology/Health July 2010 Letter, as well as the EPA's October 2012 Letter. 2013 RTC, #s 75 and 77; 2014 RTC, #s 3-4 and 11.

The Petitioner acknowledges that Ecology may have authority to regulate radionuclides, but contends that several other provisions of state law "mute" that authority. The statutory and regulatory provisions the Petitioner relies on to support this contention, however, are NERA and its implementing regulations. Both NERA and its implementing regulations do provide that Health has "sole" responsibility for carrying out NERA and "responsibility" for enforcement of NERA licenses. *See, e.g.,* R.C.W. 70.98.50(1); W.A.C. 246-247-002(1)(a); W.A.C. 246-247-060. As discussed above, however, when Ecology includes the NERA License as an attachment to the Hanford Title V Permits, it is also a requirement of a title V permit issued by Ecology under R.C.W. Ch. 70.94. Therefore, Ecology also has enforcement authority under R.C.W. Ch. 70.94.

Moreover, Ecology's authority does not stem from the MOU or the EPA's Radionuclide NESHAP/Title V Guidance, as the Petitioner contends. Rather, such authority stems from the fact that the NERA License becomes part of a title V permit when included as an attachment to that title V permit, and, as such, is issued under R.C.W. 70.94, and thus subject to Ecology's enforcement authority.

For the foregoing reasons, the EPA denies the Hanford Title V Petitions as to Claim 2.

Claim 3. Public Participation Claims

Claim 3A responds to the claims in Section II.B-1 on pages 3-9 of the 2013 Petition. Claim 3B responds to the claims in Section II.B-4 on pages 20-29 of the 2013 Petition and Section 3.4 on pages 25-31 of the 2014 Petition. We view these claims as closely related, and we are responding to them as Claims 3A and 3B.

Claim 3A. Petitioner Claims that Public Participation for the Hanford Title V Permit was Inadequate

Petitioner's Claim. The Petitioner claims that public participation for the Hanford Title V Permit was inadequate because Ecology did not comply with W.A.C. 173-401-800 and 40 C.F.R. § 70.7(h) during the Renewal 2 Permit public participation process. Specifically, the Petitioner asserts that Ecology did not provide: 1) adequate notice to the affected public; 2) a minimum of 30-days for public comment; and 3) all required materials "contained in the permit application, draft permit, and relevant supporting material." 2013 Petition, at 4.

EPA's Response. For the reasons stated below, I deny the Petitioner's request for an objection to the Hanford Title V Permit on these claims.

As noted by the Petitioner, Ecology opened the draft Renewal 2 Permit, for public comment on three separate occasions. 2013 Petition, at 4. The first comment period occurred between June 4 and August 3, 2012, but was deemed deficient by Ecology because certain permit application materials were not available during this period. Ecology opened a second period from December 10, 2012, to January 4, 2013, and extended this period from January 14 to January 25, 2013. Within each period, the Petitioner submitted written comments to Ecology for a total of 43 pages of comments.

Due to concerns relating to public participation associated with the Renewal 2 Permit, Ecology "invited public comment on the . . . Renewal 2, Revision A" Permit from June 30 to August 2,

2013. 2014 RTC, 2. During this period, Ecology made "[t]he permit, supporting documents, the previous draft permit, and the Response to Comments for the draft permit" available for review. 2014 RTC, Appendix A. In fact, Ecology explained that "[t]o remove any confusion and to encourage public comments, we are providing another review of the *entire permit* and supporting materials." 2014 RTC, Appendix A (italics added). Ecology held another public comment period for the Renewal 2, Revision A Permit, between November 17 and December 20, 2013. *Id.* During both periods, the Petitioner again submitted extensive written comments.

Ecology's decision to re-open the Renewal 2 Permit in all respects and reissue it as the Renewal 2, Revision A Permit, is relevant to the Petitioner's claims concerning public participation. However, the Petitioner does not consider or take any position on the effect of Ecology's decision to re-open and reissue the permit; nor does the Petitioner raise these claims in his 2014 Petition. As a result, the Petitioner did not demonstrate that Ecology did not comply with the procedural requirements for public participation when it issued the Hanford Title V Permit. Nevertheless, we believe this issue is now moot due to the subsequent public comment periods provided for the Renewal 2, Revision A Permit. Because Ecology did not limit the scope of comments that could be submitted on the Renewal 2, Revision A Permit, the Petitioner had two additional opportunities to submit comments on any issues for which he believed he had an insufficient opportunity to do so on the Renewal 2 Permit. *See LGE Trimble II*, Order on Petition No. IV-2008-3 (Aug. 12, 2009), at 12. In fact, we note that the Petitioner took advantage of every opportunity for public participation and submitted numerous comments. Thus, to the extent a new or extended comment period may have been warranted, it has already been provided.[15]

The Petitioner also did not demonstrate that the unavailability of information during the public comment period deprived the public of the opportunity to meaningfully participate during the permitting process.[16] To guide this analysis under title V, the EPA generally looks to whether the petitioner has demonstrated "that the alleged flaws resulted in, or may have resulted in, a deficiency in the permit's content." *In re Sirmos Division of Bromante Corp.*, Order on Petition No. II-2002-03 (May 24, 2004), at 6. "Without such a showing, it may be difficult to conclude that the ability to comment on the information would have been meaningful." *2012 Kentucky Syngas* Order, at 8. Here, the Petitioner fails to identify what information was missing and also fails to show how that unavailability has resulted in, or may have resulted in, a deficiency in the

[15] We also observe that the Petitioner cites to an order of the Pollution Control Hearings Board in which he characterizes the order as "re-opening [the Renewal 2 Permit] for public review" and "render[ing] issues regarding public review [with respect to the Renewal 2 Permit] as moot." 2014 Petition, at 3, citing *Corrected Order on Motions for Summary Judgment and Request for Dismissal*, PCHB No. 13-055 (July 9, 2013).

[16] To the extent that the Petitioner claims that there was no public comment opportunity on the Subpart H requirements in the Hanford Title V Permit because the NERA License was issued without an opportunity for public comment prior to the public comment period on the Hanford Title V Permit, the Petitioner and DOE in fact submitted extensive comments on Attachment 2 (the NERA License) during the public comment periods for both the Renewal 2 Permit and the Renewal 2, Revision A Permit. As discussed above in response to Claim 1 and below in response to Claim 3B, however, title V and part 70 do not provide an opportunity for public comment on the underlying federal applicable requirements themselves (here, Subpart H) or "state-only" portions of Attachment 2. On the other hand, title V and part 70 do provide an opportunity for public comment during the title V issuance process on whether federal applicable requirements included in Attachment 2 meet the requirements of title V and part 70. Accordingly, whether a requirement is appropriately characterized as federally enforceable or "state only" is an issue for which the title V permitting authority must provide an opportunity for public comment.

permit. Accordingly, the Petitioner's claim with respect to the unavailability of information is also denied for his failure to demonstrate this claim.

For the foregoing reasons, the EPA denies the Hanford Title V Petitions as to Claim 3A.

Claim 3B. Petitioner Claims that Ecology Did Not Adequately Respond to Public Comments Regarding Subpart H

Petitioner's Claim. The Petitioner claims that Ecology did not provide an opportunity for public comment because Ecology does not and cannot revise Attachment 2 in response to public comments. Specifically, the Petitioner points to several comments submitted to Ecology during the Renewal 2, Revision A Permit public comment process that relate to Subpart H, ranging from "missing or mis-identified control equipment to isotopes incorrectly copied from the [permit] application to correction of typographical errors." 2014 Petition, at 28 (internal citations omitted). Similarly, during the Renewal 2 Permit public comment process, Ecology received public comments stating, for example, that Ecology had incorrectly identified certain provisions regulating radionuclides as "state-only." 2013 Petition, at 23. Nevertheless, the Petitioner argues, Ecology rejected all comments on Attachment 2 by generally explaining that Attachment 2 cannot be changed using the title V public comment process. *See* 2014 Petition, at 28; 2013 Petition, at 23.

EPA's Response. For the reasons provided below, I grant the Petitioner's request to object to the Hanford Title V Permit on the basis that Ecology's record is inadequate with respect to addressing Subpart H in the Hanford Title V Permit.

Ecology's record on whether the Hanford Title V Permit properly addressed all federal applicable requirements is inadequate. In particular, the administrative record for the permit, which includes Ecology's response to comment documents, does not adequately explain the rationale for including certain isotopes listed in the "Radionuclides Requiring Measurement" table of Attachment 2 for emission units 735, 736, 855 and 856. *See* 2014 RTC, #54-57. Similarly, Ecology did not address whether "all additional radioactive air emissions licensing activities . . . are identified and captured in an updated [NERA License] for issuance with the final AOP [air operating permit]." 2013 RTC, #50; see also *id.*, #54 and #63 (identifying closed emission units).

Ensuring compliance with all federal applicable requirements is an essential component of the title V operating permit program. It is not disputed that Subpart H is a federal applicable requirement. However, in responding to multiple comments that the Petitioner identifies, Ecology's RTC document does not provide any analysis to demonstrate whether the Hanford Title V Permit sufficiently addresses Subpart H. Instead, Ecology stated that the title V permit cannot be revised in response to these particular public comments. Specifically, in its RTC document, Ecology states:

> "Attachment # 2 is included in the [title V permit] as an applicable requirement. As an applicable requirement, corrections to the underlying applicable requirements need to be made using the applicable process for that underlying requirement." and

> "The underlying requirements to the Hanford [title V permit] . . . have been finalized prior to revision of the [title V permit] and cannot be changed using the [title V permit] comment resolution process. Corrections to the underlying requirements need to be made using the applicable process for that underlying requirement."

2014 Petition, at 28; 2014 RTC, #s 36 and 48-58. These responses do not address whether Attachment 2 includes the appropriate permit terms and conditions pertaining to the federal applicable requirements of Subpart H. Accordingly, it is not clear from the administrative record that Ecology (in partnership with Health) adequately addressed all federal applicable requirements in the Hanford Title V Permit. For these reasons, I grant the Petitioner's claims and direct Ecology to supplement its record and response to address these concerns, and, if necessary, make any appropriate changes to the Hanford Title V Permit. *See In re Mettiki Coal*, Order on Petition No. III-2013-1 (September 26, 2014), at 5-9; *In re EME Homer City*, Order on Petition No. III-2012-06, III-2012-07; III-2013-02 (July 30, 2014), at 41-42.

We note that in reviewing the record, including Ecology's RTC document, we observed that there may be additional issues that were raised in public comments that may concern whether the permit includes terms and conditions addressing federal applicable requirements. As we have recognized, it is a general principle of administrative law that an inherent component of any meaningful opportunity for public comment is a response by the permitting authority to significant comments. *See, e.g.*, *In re Onyx Environmental Services*, Order on Petition V-2005-1 (February 1, 2006), at 7, citing *Home Box Office v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977) ("the opportunity to comment is meaningless unless the agency responds to significant points raised by the public."). A significant comment in this context is one that concerns whether the title V permit includes terms and conditions addressing federal applicable requirements, including monitoring and related recordkeeping and reporting requirements. In reviewing a petition to object to a title V permit because of an alleged inadequate response to a significant comment, the EPA considers whether the petitioner has demonstrated that the permitting authority's response resulted in, or may have resulted in, a deficiency in the content of the permit. *See, e.g.*, *In re Cash Creek* II, Order on Petition IV-2010-4, at 9, 21-22 (June 22, 2012). While we are not determining whether each of these comments is significant, we note that there may have been significant comments for which Ecology did not address a federal applicable requirement and that such failure may have resulted in a flaw in the permit. Comments relating to the radionuclide elements of Attachment 2 may be significant because they may pertain to whether Subpart H has been properly addressed in the Hanford Title V Permit. Accordingly, we expect that Ecology would respond to such significant comments as part of the permit record as Ecology responds to this objection.

As a general matter, as discussed above in response to Claims 1 and 2, Washington statutes and regulations authorize Ecology to issue and enforce Subpart H contained in Attachment 2. As the title V permitting authority, Ecology is required to ensure that Subpart H is adequately addressed in the Hanford Title V Permit. We recognize that in responding to comments on Attachment 2, Ecology cited to the EPA's October 2012 Letter and the Ecology/Health July 2010 Letter as the bases for its inability to address changes to Attachment 2. Ecology's citation to these letters as a full response to these comments, particularly as they may pertain to Subpart H, suggests a misinterpretation of a permitting authority's obligations in the title V permit issuance process.

Washington has identified R.C.W. Ch. 70.98, NERA and the regulations adopted thereunder, as an "applicable requirement" under its title V operating permit program. *See* W.A.C. 173-401-200(4)(d); *see also* R.C.W. 70.94.161(10)(d) (stating that "every requirement in an operating permit shall be based upon the most stringent of the following requirements," and including R.C.W. Ch. 70.94 and the rules adopted thereunder). The two letters relied on by Ecology in its response to comment on the Hanford Title V Permit make the point that there is no requirement under title V or part 70 that Ecology or Health provide an opportunity for public comment on a license issued under R.C.W. Ch. 70.98 and W.A.C. Ch. 246-247, which Ecology has determined is required to be included in the title V permit for Hanford as a matter of state law. *See* W.A.C. 246-247-002(6). The EPA continues to agree with this conclusion.

Ecology's response, however, is inconsistent with the fact that Subpart H is defined as a federal applicable requirement under part 70 (*see* 40 C.F.R. § 70.2) and under Ecology's title V operating permits program (*see* R.C.W. 70.94.161(10)(a) and W.A.C. 173-401-200(4)(a)(iv)). Title V and the part 70 regulations, as well as Ecology's title V regulations, do require a public comment opportunity on how Subpart H is addressed for a particular source in a particular title V permit. In other words, while the underlying requirements of Subpart H are not subject to public comment under title V, the application of Subpart H to a particular source is. This question was not addressed by the letters referred to by Ecology, and Ecology's reliance on these letters to respond to comments on the application of Subpart H to the Hanford Site in the Hanford Title V Permit is misplaced.

There are several ways Ecology can address the CAA requirements regulating radionuclides (specifically Subpart H) under its existing statutory and regulatory scheme consistent with the public participation requirements of title V of the CAA and Ecology's title V operating permit program. For example, Ecology could attach an addendum to the Hanford Title V Permit to correct any omissions or errors – if any – contained in the license with respect to Subpart H, since Ecology also has authority to enforce the NESHAP. Health could also defer final issuance of the NERA license until Ecology completes a public participation process on a draft title V permit for the Hanford Site that includes a draft NERA license as an attachment to the title V permit so that any public comments on the draft title V permit that relate to how Subpart H is addressed in the license and as an attachment to the title V permit can be addressed by Ecology (with assistance from Health) in responding to comments on the draft title V permit. Alternatively, if the NERA license is final when Ecology includes the license as an attachment to the draft title V permit that is put out for public comment, Ecology could work with Health in responding to the substance of any comments that relate to how Subpart H is addressed in the title V permit (including the license as an attachment). To the extent a public comment raises an issue that requires a revision to the license before issuance of a title V permit that meets the requirements of the CAA and Ecology's title V program with respect to Subpart H, and Ecology believes it does not have authority to make those revisions in the title V permit itself, Ecology could defer issuance of the title V permit until the license is revised and can be included as an attachment to the final title V permit. Under this latter option, however, Ecology would also need to be mindful of the timeframes for permit issuance under title V of the CAA and Ecology's title V operating permits program. The EPA observes that there may be other ways that Ecology and Health could collaborate to adapt the licensing and permitting processes to ensure that Hanford Title V Permit is revised as necessary in response to any significant comments on federal

applicable requirements.[17]

For the foregoing reasons, the EPA grants the Hanford Title V Petitions as to Claim 3B.

Claim 4. Petitioner Claims that Permit Issuance Procedures Prevent Access to Judicial Review

This section responds to the claims in Section II.B-5 on pages 29-35 of the 2013 Petition.

Petitioner's Claim. The Petitioner claims that the procedures by which the provisions of the Renewal 2 Permit relating to radionuclide air emissions were issued did not recognize the right of a public commenter to seek judicial review in state court as required by the CAA and federal title V regulations. According to the Petitioner, this is because the key terms of Subpart H for the Hanford Site are contained in Attachment 2 to the Renewal 2 Permit, which is the NERA License that was issued by Health. The Petitioner claims that the NERA License that was included as Attachment 2 was issued without the opportunity for public comment more than a year before Ecology issued the remainder of the Renewal 2 Permit in 2013. Because public comments are a prerequisite to judicial review in state court in Washington, the Petitioner contends, the provisions of Attachment 2 are not subject to judicial review in state court. The Petitioner also claims that because the NERA License was issued by Health and not Ecology, it is beyond the jurisdiction of the Pollution Control Hearing Board (PCHB), the quasi-judicial body that is the exclusive means of administrative appeal for title V permits in Washington and also not subject to appeal in state court because appeal to the PCHB is a prerequisite to judicial review in Washington. 2013 Petition, at 32-34.

EPA's Response. For the reasons stated below, I deny the Petitioner's request for an objection to the Hanford Title V Permit on this claim.

The Petitioner did not demonstrate that the procedures by which the Renewal 2 Permit was issued prevented the opportunity for the public to seek judicial review in state court as required by the CAA and the title V regulations. As the Petitioner notes in his 2013 Petition, the title V program requires an opportunity for judicial review in state court of the final permit action by the applicant, any person who participated in the public comment process pursuant to the CAA and 40 C.F.R. § 70.7(h), or any other person who could obtain judicial review of such action under state law. *See* 40 C.F.R. § 70.4(b)(3)(x); *see also* CAA § 502(b)(6), 42 U.S.C. § 7661a(b)(6). The Attorney General Opinion explains that the Washington Clean Air Act and its implementing regulations make the judicial review procedures of R.C.W. Ch. 43.21B applicable to appeals of title V permits in Washington. *See* R.C.W. § 70.94.161(8); W.A.C. 173-401-735(1); Attorney General Opinion, at 20-21. A title V permit in Washington can be appealed to the PCHB, an independent quasi-judicial board, and the right of appeal is available to anyone who commented

[17] As explained in the *Nucor II Order*, a new proposed permit in response to an objection will not always need to include new permit terms and conditions; for example, when the EPA has issued a title V objection on the ground that the permit record does not adequately support the permitting decision, it may be acceptable for the permitting authority to respond only by providing additional rationale to support its permitting decision. *In re Consolidated Environmental Management, Inc. – Nucor Steal Louisiana*, Order on Petition No. VI-2011-06 and VI-2012-07 (June 19, 2013), p. 14, at n. 10. The EPA also explained its view that a state's response to an EPA objection triggers a new EPA review and petition opportunity. *Id.* at 14-15.

on the draft title V permit. R.C.W. 42,21B.110(1)(d); W.A.C. 173-401-735(1) and (2); Attorney General Opinion at 21. Decisions of the PCHB are reviewable in superior court in Washington. *See* R.C.W. 43.21B.180; Attorney General Opinion, at 23.

The Petitioner contends that the structure of the Renewal 2 Permit, which incorporates the NERA License as Attachment 2, takes away the right to judicial review because there was no public comment opportunity on the NERA License and the PCHB does not have authority to hear appeals concerning NERA licenses in any event. As discussed above in connection with Claims 1 and 2, however, Ecology included Attachment 2 "as permit terms and conditions" of the Renewal 2 Permit, making the terms of the NERA License also terms and conditions of the title V permit issued by Ecology. The Attorney General confirmed that the title V permit issued to DOE for the Hanford Site "will be required, issued, and enforced pursuant to the authorities set forth in Ch. 70.94 R.C.W. and its implementing regulations, including specifically Ch. 173-401 W.A.C." The Petitioner in fact participated in the public participation process for the Renewal 2 Permit and commented on terms and conditions in Attachment 2, which were included as permit terms and conditions of the Renewal 2 Permit. The Petitioner neither shows that he sought and was denied the opportunity for judicial review on the Renewal 2 Permit, nor has the Petitioner demonstrated that Washington's laws preclude an opportunity for judicial review on the Renewal 2 Permit. It is important to note that the Petitioner's comments on the Renewal 2 Permit relating to judicial review made only general statements that Attachment 2 was issued under NERA and thus not subject to judicial review in state court. Therefore, Ecology's responses to those comments—stating that the requirement for judicial review of title V permits in section 502(b)(6) of the CAA does not require judicial review of the underlying permits, licenses, or orders that constitute applicable requirements included in a title V permit—is not incorrect. Indeed, Ecology goes on to correctly respond that "Judicial review of an air operating permit is limited to review of the [title V permit] and whether or not it includes all requirements and otherwise meets the requirements of Title V." 2013 RTC at 4-5.

Consistent with the discussion in response to Claim 3, however, Ecology must provide an opportunity for judicial review on any claims that a title V permit issued by Ecology that includes a NERA license as an attachment as a means of addressing federal applicable requirements fails to comply with the requirements of title V and part 70.[18] On this point, the EPA agrees with the Petitioner when he states that "Terms and conditions contained in Permit Attachment 2 (License FF-01) implementing the requirements of 40 C.F.R. Part 61, Subpart H

[18] The EPA is aware of a PCHB decision issued on summary judgment of an appeal by the Petitioner of a previous title V permit issued by Ecology to DOE for the Hanford Site that also included a NERA license as Attachment 2 of that title V permit. *Green v. State of Washington Department of Ecology, and United States Department of Energy*, PCHB No. 07-012, Summary Judgment Order (August 22, 2007) (2007 PCHB Order). In that Order, the PCHB stated that "To the extent Mr. Green challenges prior requirements imposed by Health in issuing the License [which the PCHB found had been incorporated by Ecology into the title V Permit for the Hanford Site], such challenges are outside the scope of the [title V] air operating permit program and beyond the jurisdiction of this Board." *Id*., at 13. The EPA does not disagree with that conclusion as stated, and, indeed, the EPA has previously advised the Petitioner on previous occasions that neither title V nor the part 70 implementing regulations require an opportunity for judicial review of a license issued by Health under its own authority. EPA's September 2009 Letter, at 2; EPA's October 2012 Letter, at 6. But, as stated above, Ecology must provide an opportunity for judicial review to the extent a claim relates to whether the portion of a NERA license incorporated into a title V permit and implementing federal applicable requirements meets the requirements of title V and part 70.

are subject to the full requirements of the CAA including the requirements for judicial review in state court." 2013 Petition, at 33. The Petitioner has not demonstrated, however, that he either has been denied the right to seek judicial review or would be precluded from seeking the right to seek judicial review on such claims.

For the foregoing reasons, the EPA denies the Hanford Title V Petitions as to Claim 4.[19]

Claim 5. Petitioner Claims that Ecology's Statement of Basis was Inadequate Related to Its Authority to Regulate Radionuclides in the Hanford Title V Permit

This section responds to the claims in Section II.B-6 on pages 35-40 of the 2013 Petition and Section 3.5 on pages 31-35 of the 2014 Petition. We view these claims as related and are responding to them together.

Petitioner's Claim. The Petitioner claims that Ecology did not provide the legal and factual basis for regulating radionuclides at the Hanford Site pursuant to NERA rather than under the state's approved title V program and the federal title V regulations. 2013 Petition, at 37-39; 2014 Petition, at 33-34. The Petitioner also claims that Ecology did not respond to specific comments the Petitioner raised during the public comment period asserting the same alleged deficiency (that Ecology did not provide the legal and factual basis for regulating radionuclides pursuant to NERA rather than under title V). 2013 Petition, at 38-39; 2014 Petition, at 33-34. In support of this claim, the Petitioner asserts that all radionuclide terms and conditions reside in Attachment 2 of the Hanford Title V Permit, the NERA License that was issued by Health, and only Health is authorized to enforce NERA and its regulations; that Ecology has no authority under NERA and therefore cannot enforce the terms and conditions of Attachment 2; and that Ecology's response to comments does not address the specific concern of a statement of basis deficiency raised by the Petitioner in his public comments. 2013 Petition, at 37-39; 2014 Petition, at 32-34.

EPA's Response. For the reasons stated below, I deny the Petitioner's request for an objection to the Hanford Title V Permit on these claims.

Part 70 requires that the permitting authority provide a statement of basis that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory and regulatory provisions. 40 C.F.R. § 70.7(a)(5). Washington's title V program also has this requirement. *See* W.A.C. 173-401-700(8). The draft Hanford Title V Permit was accompanied by a statement of basis for the main body of the permit and then also a statement of basis for each of the three attachments, including Attachment 2, which is the NERA License.

In reviewing a petition to object to a title V permit because of an alleged failure of the permitting authority to meet a procedural requirement, such as accompanying a permit by a statement of basis meeting the requirements of 40 C.F.R. § 70.7(a)(5), the EPA considers whether the petitioner has demonstrated that the permitting authority's failure resulted in, or may have resulted in, a deficiency in the content of the permit. *See In re Onyx Environmental Services,* Order on Petition No. V-2005-1 (February 1, 2006), at 14. In this case, the Petitioner commented

[19] The Petitioner's claims that a NERA license is not a federal or state "applicable requirement" is addressed in response to Claim 1 above.

during the public comment period that Ecology did not provide the legal and factual basis for regulating radionuclides at the Hanford Site pursuant to NERA rather than under the state's approved title V program and the federal title V regulations. Ecology responded by referring to previous correspondence from the EPA and Ecology to the Petitioner in which both agencies stated that the NERA License was not subject to the public participation and judicial review provisions applicable to title V permits and that Ecology had authority to enforce requirements in a NERA license issued by Health that were included in a title V operating permit issued by Ecology. 2013 RTC, #s 111, 117 and 133; 2014 RTC, #s 10 and 19. The Petitioner also claims that Ecology's response did not adequately address his comments relating to the adequacy of the statement of basis for the Hanford Title V Permit.

As discussed in response to Claims 1 and 2 above, we do not agree that Ecology issued the provisions of the Hanford Title V Permit regulating radionuclides under the authority of NERA. Instead, as discussed above, although the NERA License was issued in the first instance by Health, by including the NERA License as Attachment 2 to the Hanford Title V Permit, Ecology issued the terms and conditions of the NERA License under the authority of R.C.W. 70.94 and Washington's title V permit regulations, W.A.C. Ch. 173-401. In any event, the Petitioner has not demonstrated how Ecology's failure to better explain in the statement of basis the legal and factual basis for addressing requirements for radionuclides under Subpart H in Attachment 2 to the Hanford Title V Permit or Ecology's responses to comments relating to the allegedly inadequate statement of basis resulted in a flaw in the Hanford Title V Permit.

For the foregoing reasons, the EPA denies the Hanford Title V Petitions as to Claim 5.

Claim 6. Petitioner Claims that the Permit Does Not Include Applicable Clean Air Act Requirements for Radionuclides

This section responds to the claims in Sections 3.6 and 3.7 on pages 35-46 of the 2014 Petition. We view these claims as related and are responding to them together.

Petitioner's Claim. The Petitioner claims that a title V permit must contain federally-enforceable limitations for every hazardous air pollutant (HAP) listed in CAA § 112(b)(1) that the source emits and that, because neither the EPA nor Ecology have established a specific emission limit for radon emissions emanating from the Hanford Site, the EPA or Ecology was required to establish a case-by-case emission limit for such emissions under CAA § 112(j) in the Hanford Title V Permit that would be equivalent to the limit that would apply to radon emissions from the Hanford Site had an emission limit been timely promulgated. 2014 Petition, at 35. The Petitioner further contends that Ecology did not establish a case-by-case limit in the Hanford Title V Permit under CAA § 112(j), and also did not explain its reasons for not doing so in the statement of basis and response to comments. *Id*., at 37-39.

The Petitioner also asserts that the Columbia River should be regulated in the Hanford Title V Permit because it is a diffuse and fugitive source of radionuclides attributable to the Hanford Site and Subpart H regulates diffuse sources such as evaporation ponds, breathing of buildings and contaminated soils, citing to a Memorandum of Understanding between the EPA and DOE

(EPA-DOE MOU) in support of his claim.[20] *Id*., at 43-44. The Petitioner also cites to the definitions of "emission unit," "fugitive emissions," and "potential to emit" in 40 C.F.R. § 70.2, as well as the provisions of 40 C.F.R. §§ 70.3(d)[21] and 70.6(b)(1), in support of his claim that any "potential to emit" fugitive radionuclides attributable to the Hanford Site must be included in the Hanford Title V Permit, along with monitoring, recordkeeping and reporting to assure compliance with such requirements. *Id*., at 41, 43. Alternately, the Petitioner claims that Ecology was required to provide the legal and factual basis for not regulating the Columbia River under Subpart H and CAA § 112(j)(5) in the statement of basis or response to comments. *Id*., at 45.

EPA's Response. For the reasons stated below, I deny the Petitioner's request for an objection to the Hanford Title V Permit on this claim.

As an initial matter, the EPA does not agree, as the Petitioner asserts, that a title V permit must contain federally-enforceable limitations for every HAP that a title V source emits, even if the HAP is not addressed by regulation. Instead, title V and part 70 require that a title V permit must contain all federal "applicable requirements," as that term is defined in 40 C.F.R. § 70.2, that apply to the source's emissions of HAPs. *See, e.g.*, 42 U.S.C. § 7661a(5)(A) ("A requirement that a permitting authority have adequate authority to…issue permits and assure compliance by all sources required to have a permit under this subchapter with each applicable standard, regulation or requirement under this chapter;"); 40 C.F.R. §§ 70.1(b) ("All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements."); 70.6(a)(1) (a permit must include "Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance."); *see also* W.A.C. 173-401-100(2); W.A.C. 173-401-605(1). Contrary to the Petitioner's assertion, the definition of "potential to emit" in 40 C.F.R. § 70.2, coupled with the requirement in 40 C.F.R. § 70.7(b)(1) that "All terms and conditions in a part 70 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act," does not impose a requirement that all HAPs emitted by a source are subject to a federally-enforceable emission limitation. The phrase "including any provisions designed to limit a source's potential to emit" refers to provisions designed to limit potential to emit that meet the definition of a federal "applicable requirement" or are otherwise established in accordance with title V and part 70.

We also disagree that CAA § 112(j)(5) requires Ecology to establish a case-by-case emission limit for radon emissions from the Hanford Site. Section 112(j) applies to "categories or subcategories of sources *initially listed* for regulation" pursuant to CAA § 112(c). *See* 42 U.S.C. § 7412(e)(1) (emphasis added); see also 42 U.S.C. § 7412(j)(2) (applying section 112(j) "[i]n the event that the Administrator fails to promulgate a standard for a category or subcategory of major sources by the date established pursuant to subsection (e)(1) and (3)"). In accordance with

[20] "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 C.F.R Part 61 Including Subparts H, I, O & T," signed on September 29, 1994, by Mary D. Nichols, EPA Assistant Administrator for Air and Radiation, and on April 5, 1995, by Tara J. O'Toole, DOE Assistant Secretary for Environment, Safety and Health, at § 5.

[21] The Petitioner cited to 40 C.F.R. § 70.4(d), but the language he quotes is in 40 C.F.R. § 70.3(d).

CAA § 112(c), the EPA promulgated an "initial" list of sources for regulation in 1992 but specifically excluded sources emitting radionuclides on several grounds, including that the EPA had already promulgated NESHAPs for sources of radionuclides (including radon).[22] *See* 57 *Fed. Reg.* 32576, 31585, 31586 (July 16, 1992).[23] Accordingly, there is no requirement for a case-by-case determination for radon emission limits from the Hanford Site under CAA § 112(j) in the Hanford Title V Permit.

With regard to the Petitioner's claim that the Columbia River should be regulated as a source of radionuclides in the Hanford Title V Permit, the Petitioner has not demonstrated that the permit unlawfully "overlooks the Columbia River as a source of diffuse and fugitive emissions of radionuclides" that must be regulated under the Hanford Title V Permit. By its terms, Subpart H applies to operations at DOE "facilities," which is defined as "all buildings, structures and operations on one contiguous site." 40 C.F.R. § 61.91(b). The Columbia River is not a building, structure or operation and thus not part of the DOE facilities subject to Subpart H. Moreover, the Hanford Site is regulated as a "major source" under the title V program. "Major source" is defined in the Part 70 regulations in part as "any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control (or persons under common control))…." 40 C.F.R. § 70.2; *see also* W.A.C. 173-401-200(34). "Stationary source," in turn, is defined as building, structure, facility or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act." 40 C.F.R. § 70.2; *see also* W.A.C. 173-401-200(19). The Petitioner has not demonstrated that the Columbia River is a stationary source under common control with DOE and we see no reason to conclude that it is part of the title V major source subject to the title V permit for the Hanford Site.[24] [25]

With respect to the Petitioner's claims that neither the statement of basis nor the response to comments adequately addresses the alleged failure of the Hanford Title V Permit to establish a CAA § 112(j) standard for radon or to address the Columbia River as a diffuse and fugitive source of radionuclides from the Hanford Site, the Petitioner has not demonstrated that any alleged failure to more fully address these issues resulted or may have resulted in a flaw in the Hanford Title V Permit. As discussed above, in reviewing a petition to object to a title V permit because of an alleged failure of the permitting authority to meet a procedural requirement, such as accompanying a permit by a statement of basis meeting the requirements of 40 C.F.R. §

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[22] *See* 54 *Fed. Reg*. 51654 (Dec. 15, 1989); 40 C.F.R. Part 61, Subpart H (NESHAP for non-radon radionuclides from DOE facilities); 40 C.F.R. Part 61, Subpart Q (NESHAP for radon from DOE facilities).

[23] To the extent that the Petitioner challenges the initial listing of sources under CAA § 112(c) or the substance of Subparts H and Q, these challenges are untimely and outside the scope of title V in any event.

[24] To the extent the Petitioner alleges that Ecology was required to establish an emission limit for radionuclides (including radon) from the Columbia River under CAA § 112(j)(5), as discussed above, there is no obligation to establish case-by-case limits under that section because sources of radionuclides, including radon, were not listed under CAA § 112(c) and the EPA therefore was not required to promulgate emission standards under CAA § 112(d) for sources of radionuclides as a source category.

[25] Other actions are underway at the Hanford Site to protect the Columbia River from contaminated groundwater pursuant to regulatory authority under the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act and the Atomic Energy Act. *See, e.g.*, Hanford Site Groundwater Monitoring Report for 2013, DOE/RL-2014-32, Revision 0, August 2014, Executive Summary, Introduction, *available at* http://higrv hanford.gov/Hanford_Reports/Hanford_GW_Report/index.html#.

70.7(a)(5), the EPA considers whether the petitioner has demonstrated that the permitting authority's failure resulted in, or may have resulted in, a deficiency in the content of the permit. *See In re Onyx Environmental Services,* Order on Petition No. V-2005-1 (February 1, 2006), at 14.[26]

For the foregoing reasons, the EPA denies the Hanford Title V Petitions as to Claim 6.

V. CONCLUSION

For the reasons set forth above and pursuant to CAA § 505(b)(2), W.A.C. Ch. 173-401and 40 C.F.R. § 70.8(d), I hereby grant in part and deny in part the Hanford Title V Petitions as to the claims described herein.

Dated: MAY 29 2015

Gina McCarthy,
Administrator.

[26] The Petitioner's contention that Ecology does not have the authority required by CAA § 502(b)(5)(A) and (E) to issue and enforce a permit that assures compliance with all applicable standards, regulations and requirements of title V is addressed in response to Claims 1 and 2 above.

EXHIBIT G

DEPARTMENT OF
ECOLOGY
State of Washington

Response to Comments

Hanford Air Operating Permit Renewal

June 4 – August 3, 2012

December 3, 2012 – January 4, 2013

January 14 – January 25, 2013

Summary of a public comment period and responses to comments

June 2013
Publication no. 13-05-010

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Response to Public Comments

Hanford Air Operating Permit Renewal

June 4 – August 3, 2012

December 3, 2012 – January 4, 2013

January 14 – January 25, 2013

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Nuclear Waste Program
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Introduction

The Washington State Department of Ecology Nuclear Waste Program (NWP) regulates air pollution sources. In particular, it is the overall permitting authority for the Hanford Air Operating Permit (AOP). State regulations limit the term of an AOP to five years. Since Hanford's cleanup mission exceeds this time, Hanford's AOP must be renewed every five years. The federal *Clean Air Act* considers a renewal as a new permit.

When a new permit or a significant change to an existing permit is proposed, or as in this case NWP is renewing a permit, we hold a public comment period to allow the public to review the change and provide formal feedback.

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 3 – August 4, 2012; December 3, 2012 – January 4, 2013; and January 14 – 25, 2013
Permit:	*Hanford Air Operating Permit*
Original issuance date:	June 2001
Permit effective date:	April 1, 2013

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

Reasons for Issuing the Permit

The permit is for the U.S. Department of Energy (USDOE) Hanford Site in southeastern Washington. Here, USDOE is cleaning up wastes resulting from making plutonium for the nation's nuclear arsenal.

The permit ensures air emissions from Hanford stay within safe limits to protect the public and the environment. Three agencies contribute the underlying permits to the AOP. 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.

Public Involvement Actions

NWP encouraged public comment on the Hanford Air Operating Permit during a 60-day public comment period held June 4 through August 3, 2012. We reopened the comment period for another 30 days from December 3, 2012 to January 4, 2013, because we did not have all the application materials available on our website during the first comment period. We extended the comment period for another 14 days in January (January 14–25, 2013) because the online permit register was published after the start of the reopened comment period.

NWP mailed the public notice announcing the comment period to 2,166 members of the public, and emailed it to the 938 people on the Hanford-Info email list. Copies of the public notice were displayed in the lobby of the Nuclear Waste Program building.

NWP placed a public announcement legal classified advertisement in the *Tri-City Herald* on June 4, 2012, and again on December 3, 2012, and January 13, 2013.

NWP notified regional stakeholders via the public involvement calendar on the NWP website, which is discussed at quarterly meetings with the Hanford Advisory Board public involvement committee. The comment period was also posted 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:

- Transmittal letter.
- Standard Terms and General Conditions.
- Statement of Basis for standard terms and general conditions.
- Ecology permitting decisions.
- Statement of Basis for Ecology permitting decisions.
- Department of Health permitting decisions.
- Statement of Basis for Department of Health permitting decisions.
- Benton Clean Air Agency permitting decisions.
- Statement of Basis for Benton Clean Air Agency permitting decisions.

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 Hanford Education & Outreach Facebook page.

Response to Comments

Ecology accepted comments on the AOP during the following date ranges:

- June 4, 2012 – August 3, 2012.
- December 3, 2012 – January 4, 2013.
- January 14, 2013 – January 25, 2013.

This section lists and responds to all the comments we received during the public comment period in accordance with RCW 34.05.325(6)(a)(iii).

Comment Number	Date	Source	Document Location	Comment	Response
1	7/28/2012	US Department of Energy Comment USDOE-01	General/Editorial	The draft Hanford Site Air Operating Permit (AOP) contains numerous formatting (e.g. extra pages/spaces, pagination issues, broken internal formatting codes, etc.) and typographical errors in the various permit sections that detract from the overall quality of the document and should be corrected before Ecology issues the final permit. Recommendation: Perform a thorough technical editing review of the complete, final Hanford Site AOP prior to issuance	Ecology agrees and will perform a technical review.
2	7/28/2012	US Department of Energy Comment USDOE-02	Standard Terms &General Conditions (STGC), Table of Contents, page 7 of 57	The individual Attachment 2 sections listed in the Table of Contents do not match the actual sections contained within the FF-01 license issued by DOH that is included in Attachment 2 of the AOP. Recommendation: Revise the STGC Table of Contents to accurately reflect the contents of the FF-01 license in Attachment 2 of the AOP.	Ecology agrees and will revise the STGC Table of Contents.
3	7/28/2012	US Department of Energy Comment USDOE-03	STGC, Section 2.0, page 10 of 57	The draft permit language includes a reference to the 748 Building on Jadwin Ave as an example of a structure in the 700 Area. The 748 building no longer exists and the text referencing it should be deleted. Recommendation: Revise the proposed permit language as follows: *700 Area in Richland, i.e., 825, ~~748,~~ and 712 Buildings on Jadwin Avenue.*	Ecology agrees. Permit language has been revised as recommended.
4	7/28/2012	US Department of Energy Comment USDOE-04	STGC, Section 2.0, page 11 of 57	The draft permit language does not include any reference to the "The Pacific Northwest National Laboratory Site" in the example list of facilities that are excluded from the Hanford Site AOP during this renewal. Given the general perception by the public that PNNL is part of the Hanford Site, the exclusion of PNNL should be explicitly identified to ensure clarity. Recommendation: Revise the proposed permit language to include a bullet showing that PNNL is excluded from the AOP as follows: *Pacific Northwest National Laboratory Site*	Ecology agrees. Ecology will add language to more accurately describe the situation.
5	7/28/2012	US Department of Energy Comment USDOE-05	STGC, Section 5.2, Page 15 of 57	The draft permit language related to "authorized representatives" of the regulatory agencies and who is allowed access for inspections appears to suggest that authorized representatives could be someone other than a member of Ecology, Health or BCAA. The text should be revised to clarify that it is "authorized representatives of Ecology, Health and BCAA" that must be allowed access. Recommendation: Revise the proposed permit language to read as follows: *"…the permittee shall allow an authorized representative of Ecology, Health, or BCAA~~, or an authorized representative~~ to perform the following:"*	Ecology agrees. Permit language has been revised to: "…the permittee shall allow authorized representatives of Ecology, Health, BCAA, and US EPA to perform the following:"

Comment Number	Date	Source	Document Location	Comment	Response
6	7/28/2012	US Department of Energy Comment USDOE-06	STGC, Section 5.3, page 16 of 57	The draft permit language in the 2nd paragraph in this section is unnecessary. The cited regulation is defining what parameters Ecology must include in its AOP program. It is not intended to be a requirement that applies directly to an individual permittee. The 1st paragraph in this section is the appropriate language that applies to the permittee and is sufficient by itself to require payment of the appropriate fees. Recommendation: Revise the proposed permit language to eliminate the 2nd paragraph of STGC Section 5.3 as follows: ~~*The State AOP program shall require that the owner (or operator) of Part 70 sources pay annual fees that are sufficient to cover the permit program costs and shall ensure that any fee required by this section will be used solely for permit program costs. [40 CFR 70.9(a)]*~~	Ecology agrees. Permit language has been revised as recommended.
7	7/28/2012	US Department of Energy Comment USDOE-07	STGC, Section 5.6.3, page 20 of 57	The draft permit language needs to be revised to clarify that submittal of the annual NESHAPs Report satisfies all AOP reporting requirements for the listed cited information elements, not just for one of the semiannual reporting requirements. Recommendation: Revise the proposed permit language to read as follows: *Submittal of the information required in Section 5.11 Annual NESHAPs Report will meet the ~~one of the two~~ semiannual reporting requirements of diffuse and fugitive…*	Ecology agrees. Permit language has been revised as recommended.
8	7/28/2012	US Department of Energy Comment USDOE-08	STGC, Section 5.9a, page 22 of 57	The draft permit language inappropriately lists Table 1.5 of Attachment 1 among the sources to be included in annual emissions inventory report. The proposed revised Table 1.5 is for newly regulated <500 hp internal combustion engines with compliance dates that are still in the future and which are later than the first time the Annual Emission Inventory Report will be due after the renewed AOP becomes effective. Reference to Table 1.5 should be deleted with respect to sources that must be included in this report until the applicable requirements for these engines are defined at a later date (as Ecology commits to do in its footnote for Table 1.5) and added to the AOP. Recommendation: Revise the proposed permit language to read as follows: *…for emission unit composites, as requested and listed in the permit Attachment 1, Tables 1.3, and 1.4, ~~and 1.5,~~ and…*	Ecology agrees. Permit language has been revised as recommended.

Comment Number	Date	Source	Document Location	Comment	Response
9	7/28/2012	US Department of Energy Comment USDOE-09	STGC, Section 5.17, page 28 of 57	The draft permit language in parentheses at the end of the 1st paragraph of this section seems to imply (primarily with use of the word "historically") that facility emissions prior to 2012 potentially impact a facility's reporting requirements by directing the permittee to WAC 173-441-030(5). This citation is for facilities that exceed the reporting threshold at some point in 2012 or beyond, and then subsequently fall below the threshold. The draft permit language needs to be revised to more clearly communicate that point. Recommendation: Revise the proposed permit language as follows: *Beginning with 2012 emissions, if the permittee emits 10,000 metric tons of GHGs or more per calendar year, as defined under WAC 173-441-020(1)(g), reporting of GHG to Ecology is mandatory. (Note: WAC 173-441-030(5) details reporting requirements for facilities which ~~historically~~ exceed the threshold in 2012 or later years, but subsequently ~~currently~~ have lower annual CO_2e emissions).*	Ecology agrees. Permit language has been revised as recommended.
10	7/28/2012	US Department of Energy Comment USDOE-10	STGC, Section 5.17, page 28 of 57	Although it can be implied from the draft permit language in the 1st paragraph, it is not explicitly clear that all requirements summarized in subsequent paragraphs are only required if the facility is subject to GHG reporting. Additional permit language is needed to clarify that point. Recommendation: Insert additional permit language between the 1st and 2nd paragraphs in this section clarifying that the permittee is only subject to the subsequent listed GHG reporting program requirements if GHG emissions exceed the reporting threshold.	Ecology agrees. Permit language has been revised as recommended.
11	7/28/2012	US Department of Energy Comment USDOE-11	STGC, Section 5.17, page 29 of 57	The draft permit language in the 1st sentence of the last paragraph of this section is inappropriate to include in the AOP since it applies to Ecology's ability to determine appropriate reporting fees, but is not a requirement that applies directly to the permittee. Recommendation: Delete the 1st sentence of the draft permit language in this paragraph as follows: *~~All costs of activities associated with administering the reporting program, as described in RCW 70.94.151(2), are fee eligible.~~ Permittee must…*	Ecology agrees. Permit language has been revised as recommended.
12	7/28/2012	US Department of Energy Comment USDOE-12	STGC, Section 5.17.2, page 29 of 57	Use of the term "trigger" in the parenthetical text of this section does not convey the correct intent/purpose of this requirement. Revise the draft permit language to more clearly state that the permittee is expected to exceed the Ecology GHG reporting threshold of 10,000 metrics tons (which will then logically "trigger" the requirement to submit a GHG report by the October 31 deadline). Recommendation: Revise the draft permit language to read as follows: *…submit a report to Ecology no later than **October 31st** of each calendar year for GHG emissions in the previous calendar year if GHG emissions were equal to or more than the 10,000 metric tons threshold. (Note: Permittee is anticipated to exceed ~~trigger~~ this threshold ~~report deadline~~.)*	Section 5.17.2 has been revised to read: Facilities which are not anticipated to be required to report GHG emissions to the EPA under 40 C.F.R. Part 98 must submit a report to Ecology, no later than **October 31st** of each calendar year, for GHG emissions in the previous calendar year if GHG emissions were equal to or greater than the 10,000 metric tons threshold. Permittee is expected to exceed this threshold and will be required to submit a GHG report by the October 31 deadline.

Comment Number	Date	Source	Document Location	Comment	Response
13	7/28/2012	US Department of Energy Comment USDOE-13	STGC, Section 5.24, page 35 of 57	The draft permit language does not clearly state that not all non-road engines are subject to WAC 173-400-035. There are a number of types/categories of non-road engines identified in the applicability language of WAC 17-400-035(1) that are excluded from being subject to the requirements of that rule (e.g. non-road engines less than 500 hp, and self-propelled engines). The permit language needs to be revised to clarify this point. Recommendation: Revise the draft permit language to read as follows: *Prior to installation or operation of a nonroad engine, as defined in WAC 173-400-030(56), the permittee shall meet the requirements of WAC 173-400-035, as applicable. If the nonroad engine…*	Ecology agrees. Permit language has been revised as recommended.
14	7/28/2012	US Department of Energy Comment USDOE-14	STGC, Statement of Basis (SOB), Background, page 2 of 50	The 2nd sentence in the 1st paragraph at the top of the page needs to be revised to be technically accurate and consistent with the approach displayed in the 1st sentence immediately preceding. Renewal 1 of the AOP was actually issued on 12/29/2006 for a 5 year period from January 1, 2007 through December 31, 2011. Recommendation: Revised the proposed SOB language to read as follows: *Renewal 1 was issued on December 29, 2006 covering the 5-year operating period from January 1, 2007 to December 31, 2011.*	Ecology agrees. Permit language has been revised as recommended.
15	7/28/2012	US Department of Energy Comment USDOE-15	STGC, SOB, Background, page 2 of 50	The last paragraph on this page inaccurately states that the effective period of this AOP renewal would extend to December 31, 2018. It should be December 31, 2017. Recommendation: Revise the proposed SOB language to read as follows: *The effective period of the 2013 AOP renewal (renewal 2) covers the five-year period from January 1, 2013 to December 31, 2017~~8~~.*	Ecology offers the following explanation. Permit language will be revised to reflect the actual issue date and the five year period of validity.
16	7/28/2012	US Department of Energy Comment USDOE-16	STGC SOB, Section 2.0, page 8 of 50	The lettering scheme for the sub-items of criteria #2 is missing a sub-item "f", making it appear as if there is missing information in the SOB. Recommendation: Revise the proposed SOB language to correct the lettering scheme for the sub-items of criteria #2 by either inserting the missing element (if applicable) or "re-lettering".	Ecology agrees. The list has been reformatted

Comment Number	Date	Source	Document Location	Comment	Response
17	7/28/2012	US Department of Energy Comment USDOE-17	STGC SOB, Section 2.0, page 10 of 50	The last sentence of the proposed language under the bullet "Energy Northwest Facilities" is contrary to the position previously taken by Ecology (as reflected in the current AOP STGC SOB) that facilities leased from Energy Northwest by RL contractors <u>would</u> be considered under common control of RL and potentially subject to inclusion in the AOP, as appropriate depending on the source. No clarification or information is provided to explain the basis for this change. Recommendation: Provide clarification of the basis for Ecology's change in position on this issue. If the text in the proposed SOB is in error, revise the language to reflect Ecology's current position on this issue	Ecology offers the following explanation. It was not Ecology's intent to make any changes to the section in question. The language has been revised to: "Energy Northwest is a commercial producer of electrical power. It does not supply any direct DOE related services, and is not under the 'common control' of DOE. This category includes Bonneville Power Administration (BPA). Facilities leased from Energy Northwest, by DOE/RL contractors supporting DOE/RL work, would be considered to be under the common control of DOE."
18	7/28/2012	US Department of Energy Comment USDOE-18	STGC SOB, Section 2.0, page 11 of 50	Inclusion of a paragraph on the Environmental and Molecular Sciences Laboratory (EMSL) is no longer necessary now that a reference to EMSL has been removed from the corresponding section in the STGC portion of the AOP. Instead, a paragraph for the "Pacific Northwest National Laboratory Site" (of which EMSL is a part) should be included in its place consistent with earlier comment USDOE-04. Recommendation: Revise the proposed SOB language to reflect the replacement of EMSL with the more generic reference to the PNNL site as follows and revise the subsequent descriptive paragraph to reflect PNNL, not just EMSL. *~~Environmental and Molecular Science Laboratory~~* *Pacific Northwest National Laboratory Site*	Ecology offers the following explanation. SOB language has been revised as follows: "The Environmental and Molecular Sciences Laboratory (EMSL) is part of the Pacific Northwest National Laboratory operated by Battelle Memorial Institute in Richland, Washington. As previously discussed, PNNL is not included in the AOP. "
19	7/28/2012	US Department of Energy Comment USDOE-19	STGC SOB, Section 4.0, pages 14 and 15 of 50	Several years have passed since Ecology and the Hanford Site developed the CERCLA transition process outlined in this section of the SOB to ensure better consistency among site contractors. In the interests of continuing to identify opportunities to streamline/improve site regulatory processes, this would seem to be the right time to re-examine the outlined process to determine whether past experience indicates changes are appropriate or necessary. Recommendation: Meet with responsible DOE and Hanford Site contractor staff to review the described CERCLA transition and determine if changes are appropriate to ensure the process is implemented in a consistent and standardized fashion. Revise the proposed SOB language, as appropriate, based on the results of those discussions.	Ecology offers the following explanation. Ecology would be happy to meet with responsible DOE and Hanford Site contractor staff to identify opportunities to streamline/improve site regulatory processes. However, Ecology is not able to make that kind of a change at this point in the permit renewal cycle. Ecology would be happy to take up these issues after the timely issuance of this current AOP renewal and include resulting changes, if any, in future revisions to the AOP.

Comment Number	Date	Source	Document Location	Comment	Response
20	7/28/2012	US Department of Energy Comment USDOE-20	STGC SOB, Section 4.0, pages 15 of 50	The paragraph at the bottom of the page describing STGC subsection 4.1.2 contains references to a 2005 supplemental report on insignificant emission units (IEUs) that was submitted as part of the last AOP renewal effort. This information was updated (with continued references to the 2005 report, as applicable) as part of the current AOP renewal application (DOE/RL-2011-27, Section 2.4). It would seem more appropriate for the SOB language to reflect the most current information that was relied upon to issue the latest AOP renewal. Recommendation: Revise the proposed SOB language to reflect the information in the most current AO renewal application that Ecology relied upon in the development of this AOP renewal.	Ecology agrees Suggestion has been incorporated into the document.
21	7/28/2012	US Department of Energy Comment USDOE-21	STGC SOB, Section 4.0, pages 16 of 50	The paragraph describing STGC subsection 4.10 contains a reference to "Appendix D of this Basis". There is no Appendix D included with this proposed SOB. It appears that the correct reference should be to "Appendix B". Recommendation: Revise the proposed SOB language, as appropriate, to reference the correct location of the description of the AOP modification process and permit change determination key	Ecology agrees Text has been revised to read: "Subsection 4.10 of the AOP describes the conditions for a permit modification. The AOP modification process and permit change determination key is documented in Appendix B of this Basis."
22	7/28/2012	US Department of Energy Comment USDOE-22	STGC SOB, Section 4.0, pages 18 of 50	The last paragraph of the text describing STGC subsection 5.8 contains an incorrect reference to "Section 4.15." It appears the correct reference should be to "Section 5.15." Recommendation: Revise the proposed SOB language, as appropriate, to reference the correct STGC section related to emission units that are closed and considered irrelevant.	Ecology agrees The reference has been corrected to reference Section 5.15.
23	7/28/2012	US Department of Energy Comment USDOE-23	STGC SOB, Section 4.0, pages 18 of 50	The 1st paragraph of the text describing STGC subsection 5.17 contains language that would benefit from revisions to better clarify that the Hanford Site GHG PTE is not just from stationary combustion sources. Recommendation: Revise the proposed SOB language to read as follows: *The rule applies to certain facilities, including those which emit 25,000 MT CO_2e or more per year in combined emissions from applicable sources, including ~~all~~ stationary fuel combustion sources.*	Ecology agrees Subject text has been changed to: "The rule applies to certain facilities, including those which emit 25,000 MT CO_2e or more per year in combined emissions from all applicable sources, including stationary fuel combustion sources."

Comment Number	Date	Source	Document Location	Comment	Response
24	7/28/2012	US Department of Energy Comment USDOE-24	STGC SOB, Section 4.0, pages 19 of 50	The 2nd paragraph of the text describing STGC subsection 5.18 inaccurately states the intended time period this AOP renewal will cover. The language would also benefit from some additional clarification regarding the deadline for submittal of the next renewal application. Recommendation: Revise the proposed SOB language to read as follows: *This AOP renewal (renewal 2) will cover the 5 year period from January 2013 to December 2018~~7~~. The next application will be submitted by DOE no later than 6 months ~~from~~ prior to the AOP expiration date.*	Ecology offers the following explanation. Please see response to Comment 15. Language will be revised, but will meet actual dates when they occur.
25	7/28/2012	US Department of Energy Comment USDOE-25	STGC SOB, Section 8.0 Appendix A	The table "Ecology, Obsolete, Completed or Closed NOC Approvals, Terms and Conditions or Emission Units" appears to be incomplete. There may be additional missing information, but at a minimum, there are numerous 200 and 300 Area diesel engines/generators and boilers, as well as other emission units such as the 283-W water treatment plant or the 291-Z-1stack that have been removed from the AOP as part of this renewal process and need to be included in this table. Recommendation: Review/verify Ecology records, including the information presented in the Hanford Site AOP Renewal Application (DOE/RL-2011-27) and supplemental (DOE/RL-2012-04), to develop a complete list of emission units and approval orders for inclusion in this section and revise the proposed SOB language, as appropriate.	Ecology offers the following explanation. Ecology made the decision to include only the units that have become obsolete, completed or closed since the issuance of the first renewal. The text at the start of Appendix A has been changed to: "This Appendix includes emission units that have become obsolete, been completed, or have closed since the last AOP renewal."
26	7/28/2012	US Department of Energy Comment USDOE-26	STGC SOB, Section 9.0 Appendix B	Each of the example AOP modification or notification forms in this section includes a "For Hanford Use Only" box at the bottom of the form. These boxes, which were originally intended to facilitate permit configuration control management, are no longer used by the Hanford Site contractors and should be removed from the example forms. Recommendation: Revise each of the example AOP modification or notification forms in STGC SOB Appendix B to delete the "For Hanford Use Only" section at the bottom of the forms.	Ecology offers the following explanation. Ecology has no objection to the proposed change and has made the modification requested. It should be noted the forms are unique to the Hanford AOP are currently only used at Hanford.

Comment Number	Date	Source	Document Location	Comment	Response
27	7/28/2012	US Department of Energy Comment USDOE-27	Attachment 1, Table 1.1 (and related entries in other locations such as Table 1.4)	A review of facility information discovered that the emission unit ID numbers listed in this AOP table for the diesel engines at the Waste Encapsulation and Storage Facility (WESF) [200E E-225BC 001 and 200E E-225BG 001] are not accurate presented and need to be corrected. Recommendation: Revise the draft permit language to reflect the correct identifying numbers for the WESF diesel engines as follows: ~~200E-225BC 001~~ 200E-225DG-1 ~~200E-225BG 001~~ 200E-225BG-GEN-1	Ecology offers the following explanation. The identification of the emission units is contained in Attachment 1of the Air Operating Permit (AOP). Attachment 1 of the AOP contains the State of Washington Department of Ecology permit terms and conditions. The terms and conditions in Attachment 1 of the AOP are underlying requirements for the AOP that come from individual Approval Orders that cannot be changed as part of the AOP comment process. To change the underlying requirement in Attachment 1 of the AOP, the formal modification process must be followed for the requested change. Please see Exhibit A, bottom of page 5 and start of page 6.
28	7/28/2012	US Department of Energy Comment USDOE-28	Attachment 1, Table 1.1 (and related entries in other locations such as Table 1.4)	Diesel engine 400E-4250 001, G-3 was removed from service in September 2006 and the diesel has been removed from the fuel tank. This engine source should be removed from the AOP. Recommendation: Revise the draft permit language to remove the 400 E-4250 001, G-3 diesel engine source from the AOP and add it to the table in the STGC SOB, Appendix A.	Ecology offers the following explanation. Please see response to Comment # 27.
29	7/28/2012	US Department of Energy Comment USDOE-29	Attachment 1, Table 1.1	The multiple emission unit entries in Table 1.1 for NOC approval order DE05NWP-001 make it confusing to find their corresponding emission unit requirements in Table 1.6. The emission unit names in Table 1.1 and Discharge Points in Table 1.6 do not match. Recommendation: Combine the separate emission unit entries in Table 1.1 related to NOC approval order DE05NWP-001 into one entry under the same Discharge Point name from Table 1.6 and list all the affected emission units to ensure better correlation between the two tables. A redline/strikeout version of these specific proposed changes is attached at the back of these comments for Ecology's convenience.	Ecology offers the follow explanation. Ecology plans to significantly change the format of Attachment 1 at the next revision of the AOP. This requested change will be incorporated in that revision and addressed at that time.
30	7/28/2012	US Department of Energy Comment USDOE-30	Attachment 1, Table 1.1	The multiple emission unit entries in Table 1.1 for NOC approval order DE11NWP-001 make it confusing to find their corresponding emission unit requirements in Table 1.6. The emission unit names in Table 1.1 and Discharge Points in Table 1.6 do not match. Recommendation: Combine the separate emission unit entries in Table 1.1 related to NOC approval order DE11NWP-001 into one entry under the same Discharge Point name from Table 1.6 and list all the affected emission units to ensure better correlation between the two tables. A redline/strikeout version of these specific proposed changes is attached at the back of these comments for Ecology's convenience.	Ecology offers the following explanation. Please see response to Comment 29.

Comment Number	Date	Source	Document Location	Comment	Response
31	7/28/2012	US Department of Energy Comment USDOE-31	Attachment 1, Table 1.1	The entry for emission unit 200E P296A042-001 contains an inaccurate NOC approval order reference in the Description column that needs to be corrected. Recommendation: Revise the draft permit language in the Table 1.1 entry for 200E P296A042-001 to read as follows: *NOC: 94-07-~~01~~*	Ecology agrees. Permit language has been revised as recommended.
32	7/28/2012	US Department of Energy Comment USDOE-32	Attachment 1, Table 1.2, Table 1.3, Table 1.4, Table 1.6 and Table 1.7	With the proposed elimination in the draft renewal permit of the previous AOP Attachment 1 Section 2.4 (RACT) and renumbering of subsequent sections, there are a significant number of references throughout these five AOP tables that are now inaccurate and need to be updated to reflect the new section numbers. Recommendation: Revise the draft permit language in these five tables to correctly reflect the new section numbering caused by the elimination of the previous Attachment 1 Section 2.4.	Ecology offers the following explanation. "Section 2.4 Reserved" has been added in Attachment 1 and any numerical discrepancies have been corrected.
33	7/28/2012	US Department of Energy Comment USDOE-33	Attachment 1, Table 1.4	The stated periodic opacity monitoring frequency for these diesel engines of "At least once per calendar quarter if operated" does not clarify if this requirement applies in situations where the engine is only briefly started for a few minutes at less than full load for maintenance or testing purposes. The requirement should not apply in these circumstances since it will unnecessarily increase actual emissions to the environment and potentially shorten the service life of the engine, just for the purposes of completing the visible emissions survey. Recommendation: Revise the draft permit language for this requirement to read as follows: *At least once per calendar quarter if operated at full load or for more than 30 minutes at less than full load*	Ecology agrees. Permit language has been revised as recommended.
34	7/28/2012	US Department of Energy Comment USDOE-34	Attachment 1, Table 1.5	To avoid potential confusion, the entry for the first 241-BX engine (31 HP) needs to have a parenthetical qualifier to better define its location and distinguish it from the subsequent "241-BX (MO-152)" entry. Recommendation: Revise the draft permit language in Table 1.5 for the first 241-BX engine to read as follows: *241-BX (MO-297)*	Ecology agrees. Permit language has been revised as recommended.
35	7/28/2012	US Department of Energy Comment USDOE-35	Attachment 1, Table 1.5	To avoid potential confusion, the entry for the first 241-SY engine (152 HP) needs to have a parenthetical qualifier to better define its location and distinguish it from the subsequent "241-SY (Change Trailer)" entry. Recommendation: Revise the draft permit language in Table 1.5 for the first 241-SY engine to read as follows: *241-SY (MO-2173)*	Ecology agrees. Permit language has been revised as recommended.

<table>
<tr><th>Comment Number</th><th>Date</th><th>Source</th><th>Document Location</th><th>Comment</th><th>Response</th></tr>
<tr><td>36</td><td>7/28/2012</td><td>US Department of Energy

Comment USDOE-36</td><td>Attachment 1, Table 1.5</td><td>There is a typographical error in the table entry for the 31.5 HP “241-SY (Change Trailer)” engine. It is incorrectly shown as “24-SY (Change Trailer)”.

Recommendation: Revise the draft permit language in Table 1.5 to correct the typographical error and read as follows:
241-SY (Change Trailer)</td><td>Ecology agrees.

Permit language has been revised as recommended.</td></tr>
<tr><td>37</td><td>7/28/2012</td><td>US Department of Energy

Comment USDOE-37</td><td>Attachment 1, Table 1.5</td><td>Three additional newly regulated stationary source internal combustion engines of less than 500 HP have been identified that were inadvertently omitted from the Hanford Site AOP Renewal Application (including the supplemental application document), and should be added to Table 1.5. Two of the engines (282-B and 282-BA) are associated with site deep wells and one (225BC) is an air compressor located at WESF.

Recommendation: Revise the draft permit language in Table 1.5 to include the following additional internal combustion engines:
<table>
<tr><td>Location</td><td>HP</td><td>Usage</td><td>Regulation</td></tr>
<tr><td>282-B</td><td>80</td><td>Non-Emergency</td><td>40 CFR 63, Subpart ZZZZ</td></tr>
<tr><td>282-BA</td><td>190</td><td>Non-Emergency</td><td>40 CFR 63, Subpart ZZZZ</td></tr>
<tr><td>225BC</td><td>200</td><td>Emergency Backup</td><td>40 CFR 63, Subpart ZZZZ</td></tr>
</table></td><td>Ecology agrees.

Permit language has been revised as recommended.</td></tr>
<tr><td>38</td><td>7/28/2012</td><td>US Department of Energy

Comment USDOE-38</td><td>Attachment 1, Table 1.6, page ATT 1-33,</td><td>The approval date for approval order NOC 94-07 Rev. 3 in the header portion for Discharge Point P-296042-001 is incorrectly listed as 5/6/2008. It should be 5/7/2008.

Recommendation: Revise the draft permit language to reflect the correct approval date for NOC 94-07 Rev. 3 as follows:
NOC 94-07 (8/29/1994), Rev 1 (12/22/1997), Rev 2 (10/25/1999), and Rev 3 (5/~~6~~7/2008)</td><td>Ecology agrees.

Permit language has been revised as recommended.</td></tr>
<tr><td>39</td><td>7/28/2012</td><td>US Department of Energy

Comment USDOE-39</td><td>Attachment 1, Table 1.6, page ATT 1-39</td><td>The first condition for Discharge Point P-WTP-001 at the top of this page contains incomplete references to 40 CFR 60, Appendix A in two places (in the “Condition” and “Test Method” sections) that need to be corrected.

Recommendation: Revise the draft permit language to read as follows in the two identified locations:
EPA Reference Method 9 of 40 CFR 60, Appendix A</td><td>Ecology agrees.

Permit language has been revised as recommended.</td></tr>
</table>

Comment Number	Date	Source	Document Location	Comment	Response
40	7/28/2012	US Department of Energy Comment USDOE-40	Attachment 1, Table 1.6, page ATT 1-50	For consistency with the previous comment USDOE-29, additional parenthetical text needs to be added to the current name for Discharge Point "Ventilation Systems for 241-AN and 241-AW Tank Farms" to reflect each individual emission unit covered by this NOC approval order and ensure full correlation with the revised permit language in Table 1.1. Recommendation: Revise the draft permit language as follows to include the individual emissions units covered by approval order DE05NWP-001 as part of the Discharge Point name: *Ventilation Systems for 241-AN and 241-AW Tank Farms (P-296A044-001, P-296A045-001, P-296A046-001, P-296A047-001)*	Ecology offers the following explanation. The discharge point names are not used by Ecology for these units in the underlying Approval Order. • Using a discharge point name that is not used by Ecology creates an administrative burden and the potential to create an enforcement trap for the site. • Please see response to Comment # 27 in regards to changing underlying requirements.
41	7/28/2012	US Department of Energy Comment USDOE-41	Attachment 1, Table 1.6, page ATT 1-68	For consistency with the previous comment USDOE-30, additional parenthetical text needs to be added to the current name for Discharge Point "241-AP, 241-SY, and 241-AY/AZ Ventilation" to reflect each individual emission unit covered by this NOC approval order and ensure full correlation with the revised permit language in Table 1.1. Recommendation: Revise the draft permit language as follows to include the individual emissions units covered by approval order DE11NWP-001 as part of the Discharge Point name: *241-AP, 241-SY, and 241-AY/AZ Ventilation System (P-296AP-001, P-296SY-001, P-296A042-001)*	Ecology offers the following explanation. Please see response to Comment # 27, 29, and 40.
42	7/28/2012	US Department of Energy Comment USDOE-42	Attachment 1, Table 1.6, pages 1-68 through ATT 1-72	The proposed draft permit language and conditions included for Discharge Point "241-AP, 241-SY, and 241-AY/AZ Ventilation System (P-296AP-001, P-296SY-001, P-296A042-001)" do not completely and accurately match the actual approval conditions in the referenced approval order DE11NWP-001. The AOP approval conditions need to more exactly match the requirements of the approval order to minimize the potential for confusion during the annual AOP compliance certification process. Recommendation: Revise the draft permit language for this Discharge Point to more closely match the applicable requirements language from approval order DE11NWP-001. A redline/strikeout version of these specific proposed changes is attached at the back of these comments for Ecology's convenience.	Ecology agrees. Ecology incorporated the recommended changes which directly reflected the underlying NOC Approval Order DE11NWP-001 requirements.
43	7/28/2012	US Department of Energy Comment USDOE-43	Attachment 1 SOB, General	This section of the draft AOP is missing footers and appropriate pagination. Recommendation: Revise the Attachment 1SOB to include appropriate footers and pagination for future reference.	Ecology agrees. Permit language has been revised as recommended.

Comment Number	Date	Source	Document Location	Comment	Response
44	7/28/2012	US Department of Energy Comment USDOE-44	Attachment 1 SOB, Sections 2.0 through 2.9	The introductory text at the beginning of Section 2.0 contains a reference to subsection 2.4 (RACT) that no longer exists in the draft permit language. This portion of the Attachment 1 SOB needs to be revised throughout to reflect the elimination of the previous subsection 2.4 and the subsequent renumbering of previous subsections 2.5 through 2.9. Recommendation: Revise the proposed SOB language to delete subsection 2.4 (RACT) and renumber the subsequent subsections. Revise the proposed language to delete any additional references elsewhere in the SOB to the previous subsection 2.4, and revise the proposed SOB language to reflect the renumbering of previous subsections 2.5 through 2.9.	Ecology offers the following explanation. Please see response to Comment # 32
45	7/28/2012	US Department of Energy Comment USDOE-45	Attachment 1 SOB, Sections 2.7, 2.8 and 2.9	Each of these subsections includes proposed language indicating that the corresponding monitoring provisions apply to Attachment 1, Table 1.5. While this is true in the current AOP, it is not yet accurate for the AOP renewal as drafted since the current engine sources in the draft permit Table 1.5 will not have any applicable requirements until the compliance date(s) in 2013 are reached. This situation needs to be reflected in the SOB language. Recommendation: Revise the proposed SOB language to clearly reflect that the monitoring provisions of subsections 2.7, 2.8 and 2.9 will not apply to the new Table 1.5 until such time as Ecology incorporates applicable requirements for engines less than 500 hp when the 2013 compliance dates in 40 CFR 63 Subpart ZZZZ are reached.	Ecology agrees. Added the following text to section 2.7, 2.8, and 2.9: "It will also apply to Table 1.5 after the 2013 compliance dates in 40 CFR 63 Subpart ZZZZ."
46	7/28/2012	US Department of Energy Comment USDOE-46	Attachment 1 SOB, Section 3.1.5	Since the 331C emission unit has been closed and removed from the AOP, this section containing details of MODEL 6 should also be deleted. Recommendation: Revise the proposed SOB language to delete MODEL 6 "Emissions from 331C Gas Cylinder Management Process". As a side note, it is not recommended that subsequent sections be renumbered since there are numerous references throughout Attachment 1 to these other MODELs.	Ecology agrees. Text was changed as recommended. Section 3.1.5 is now marked as 'reserved'.
47	7/28/2012	US Department of Energy Comment USDOE-47	Attachment 1 SOB, Appendix A	Appendix A summarizes discussion regarding IEUs from the original AOP application (DOE/RL-95-07). Although this was the original source/basis for much of the current strategy and approach for IEUs in the Hanford Site AOP, this SOB should also reflect the information from the current AOP Renewal Application (DOE/RL-2011-27) that Ecology relied upon for issuance of this renewal. Recommendation: Review Section 2.4 of DOE/RL-2011-27 and revise the proposed language in the SOB to incorporate any changes based on that review, as appropriate.	Ecology agrees. Permit language has been revised as recommended.

Comment Number	Date	Source	Document Location	Comment	Response
48	7/28/2012	US Department of Energy Comment USDOE-48	Attachment 1 SOB, Appendices B and C	The IEU information presented in the proposed language of this SOB is taken directly from the current SOB, which was based on the previous AOP renewal effort. The current AOP Renewal Application contains updated information on the various types of IEUs present on the Hanford Site that should be reflected in the SOB. Recommendation: Revise the proposed SOB language in Appendices B and C to reflect the updated IEU information provided in the current AOP Renewal Application (DOE/RL-2011-27). It may be appropriate to delete Appendix C based on that information.	Ecology agrees. Permit language has been revised as recommended.
49	7/28/2012	US Department of Energy Comment USDOE-49	Attachment 2, Radioactive Air Emissions License, #FF-01 (FF-01), General Conditions, Section 1.3	The title of this section "Prohibitive Activities" does not convey the intended meaning that is most appropriate for the requirements contained in the section. A more appropriate title would be "Prohibited Activities". Recommendation: Revise the title of FF-01 Section 1.3 from "Prohibitive Activities" to "Prohibited Activities". This will also require the Table of Contents to be updated, as well as trigger a global FF-01 change from "prohibitive" to "prohibited" wherever else it is used.	Ecology offers the following explanation. 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 modification and renewal of the AOP and cannot be incorporated into the renewed AOP. Corrections to 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." Proposals for changes are tracked and will be included, where appropriate, in the underlying requirements and included by reference in the next change to the Hanford AOP (either a revision or renewal) that occurs. For instance, the FF-01 license is an underlying requirement directly incorporated into this AOP. This proposed change will be addressed at the next revision of the FF-01 license. The next updated version of FF-01 is not scheduled to occur until after issuance of the AOP Renewal # 2. The revised FF-01 license is tentatively scheduled to be completed by the end of 2013.

Comment Number	Date	Source	Document Location	Comment	Response
50	7/28/2012	US Department of Energy Comment USDOE-50	FF-01, General	A number of additional revisions to the FF-01 license have been approved/issued by DOH since the 2/23/2012 version that was included in the AOP public comment draft was issued. Prior to final issuance of the AOP renewal, an updated version of the FF-01 needs to be issued and incorporated into the AOP. Recommendation: Verify all additional radioactive air emissions licensing activities issued/performed since DOH issued the renewed FF-01 on 2/23/2012 are identified and captured in an updated FF-01 for issuance with the final AOP.	Ecology offers the following explanation. Please see response to Comment # 49.
51	7/28/2012	US Department of Energy Comment USDOE-51	FF-01, Emission Unit (EU) 53, 296-P-22	The original revisions requested to the Operational Status as part of the Renewal Application have not been incorporated into the FF-01 License. Recommendation: Revise the Operational Status language for EU53 to read as follows: *The emission unit operates ~~continuously~~ intermittently.*	Ecology offers the following explanation. Please see response to Comment # 49.
52	7/28/2012	US Department of Energy Comment USDOE-52	FF-01, EU58, 296-P-44	Typographical errors in the Operational Status language need to be corrected. Recommendation: Revise text to read "241-SY-112" instead of "241-S-102". Revise text in 2nd to last sentence to read "…planned for further use at …"	Ecology offers the following explanation. Please see response to Comment # 49.
53	7/28/2012	US Department of Energy Comment USDOE-53	FF-01, EU59, 296-S-25	Typographical errors in the Operational Status language need to be corrected. Recommendation: Revise text in the first sentence to include appropriate capitalization as follows: "…241-SY A Train….	Ecology offers the following explanation. Please see response to Comment # 49.
54	7/28/2012	US Department of Energy Comment USDOE-54	FF-01, EU141, 296-A-21	EU141 has been closed and should be removed from the FF-01. A report of closure for EU141 (DOE letter 12-ECD-0014) was transmitted to DOH on 6/6/2012. Recommendation: Revise the FF-01 License to remove EU141 and update the Health SOB to add it to the list of obsolete emission units.	Ecology offers the following explanation. Please see response to Comment # 49.
55	7/28/2012	US Department of Energy Comment USDOE-55	FF-01, EU204, 296-A-40	Typographical error in the Average Stack Exhaust Velocity information needs to be corrected. Recommendation: Revise the Average Stack Exhaust Velocity information to read "11.50 m/second" instead of "11.51 m/second".	Ecology offers the following explanation. The Stack Exhaust Velocity is listed as 37.75 ft/sec which converts to 11.5062 m/sec and rounds to 11.51 m/sec. No change is necessary.

Comment Number	Date	Source	Document Location	Comment	Response
56	7/28/2012	US Department of Energy Comment USDOE-56	FF-01, EU486, 200 Area Diffuse/Fugitive	The listed regulatory citations under Monitoring Requirements are not consistent with the identified Abatement Technology requirement of "BARCT" Recommendation: Revise the text to refer to "WAC 246-247-075[3]" instead of "WAC 246-247-075[2]" Revise the text to read "40 CFR 61, Appendix B, Method 114(3)"	Ecology offers the following explanation. EU486, 200 Area Diffuse/Fugitive emissions unit has multiple sources listed with a potential to emit of greater than 0.1 mrem/yr. The listed regulatory citations are correct.
57	7/28/2012	US Department of Energy Comment USDOE-57	FF-01, EU713, 244-CR Vault Passive Filter A	This emission unit has a radial filter as abatement technology instead of a G-1 filter. However, Conditions 2 and 4 of NOC ID 853 (AIR 12-332) associated with this EU continue to include requirements specific only to a G-1 HEPA filter, which are no longer applicable. Recommendation: Delete the inapplicable Conditions 2 and 4 from NOC ID 853 or revise the conditions to reflect requirements appropriate for a radial filter (such as something similar to the "Alternative Approval" language included in NOC ID 825 (AIR 12-307) for EU1334.	Ecology offers the following explanation. Please see response to Comment # 49
58	7/28/2012	US Department of Energy Comment USDOE-58	FF-01, EU735 (296-A-44) and EU736 (296-A-45)	An identified "Radionuclide Requiring Measurement" has been omitted from the FF-01 License. Recommendation: Revise the text to add Cm-244 to the list as a "Radionuclide Requiring Measurement".	Ecology offers the following explanation. Please see response to Comment # 49
59	7/28/2012	US Department of Energy Comment USDOE-59	FF-01, EU713, 244-CR Vault Passive Filter A FF-01, EU738, 244-A Primary HEPA FF-01, EU740, 244-BX Primary Filter FF-01, EU742, 244-S Primary HEPA FF-01, EU744, 244-TX Primary HEPA FF-01, EU751, 241-AZ-301	The original revisions requested to the Abatement Technology requirements for passive breather filters as part of the Renewal Application have not been incorporated into the FF-01 License. Recommendation: Revise the text to read "ALARACT" instead of "BARCT" and remove the WAC 246-247-040(3) citation.	Ecology offers the following explanation. The listed regulatory citations are correct. Filters were installed as the result of a BARCT demonstration submitted by DOE

Comment Number	Date	Source	Document Location	Comment	Response
60	7/28/2012	US Department of Energy Comment USDOE-60	FF-01, EU855 (296-A-46) and EU856 (296-A-47)	Typographical error in the Stack Diameter information needs to be corrected. Recommendation: Revise the Stack Diameter information to read “0.25 m” instead of “0.26 m”.	Ecology offers the following explanation. The stack diameter of 0.84 feet converts to 0.256032 meters and rounds to 0.26 meters. No change is necessary.
61	7/28/2012	US Department of Energy Comment USDOE-61	FF-01, EU910, 241-ER-311	This emission unit has a radial filter as abatement technology instead of a G-1 filter. However, Conditions 4 and 5 of NOC ID 850 (AIR 12-329) associated with this EU continue to include requirements specific only to a G-1 HEPA filter, which are no longer applicable. Recommendation: Delete the inapplicable Conditions 4 and 5 from NOC ID 850 or revise the conditions to reflect requirements appropriate for a radial filter (such as something similar to the “Alternative Approval” language included in NOC ID 825 (AIR 12-307) for EU1334.	Ecology offers the following explanation. Please see response to Comment # 49
62	7/28/2012	US Department of Energy Comment USDOE-62	FF-01, EU894, 241-UX-302A FF-01, EU910, 241-ER-311 FF-01, EU912, 244-A Annulus HEPA FF-01, EU922, 244-BX Annulus HEPA FF-01, EU949, 244-S Annulus HEPA FF-01, EU969, 244-TX Annulus HEPA FF-01, EU1129, 241-U-301B FF-01, EU1130, 241-AZ-154	The original revisions requested to the Abatement Technology requirements for passive breather filters as part of the Renewal Application have not been incorporated into the FF-01 License. Recommendation: Revise the text to read “ALARACT” instead of “BARCT” and remove the WAC 246-247-040(3) citation.	Ecology offers the following explanation. The listed regulatory citations are correct. Filters were installed as the result of a BARCT demonstration submitted by DOE
63	7/28/2012	US Department of Energy Comment USDOE-63	FF-01, EU1180, EP-331-02	EU1180 has been closed and no longer exist. It should be removed from the FF-01, along with its approval letter AIR 11-302 and NOC ID 787. Recommendation: Revise the FF-01 License to remove EU1180 and update the Health SOB to add it to the list of obsolete emission units.	Ecology offers the following explanation. Please see response to Comment # 49.

Comment Number	Date	Source	Document Location	Comment	Response
64	7/28/2012	US Department of Energy Comment USDOE-64	FF-01, EU1231, 241-EW-151	Typographical errors in the Operational Status language need to be corrected. Recommendation: Revise the Operational Status text to read as follows: *"…under the appropriate regulations and/or permits for the activity being performed~~.~~ ~~A~~and the emission units associated with the activity. The emission unit is a passive breather filter ventilation that operates~~d~~ continuously.*	Ecology offers the following explanation. Please see response to Comment # 49.
65	7/28/2012	US Department of Energy Comment USDOE-65	FF-01, EU1232 241-S-302	The original revisions requested to the Abatement Technology and Monitoring Requirements sections for passive breather filters as part of the Renewal Application have not been incorporated into the FF-01 License. Recommendation: Revise the text in the Abatement Technology section to reflect that the Required # HEPA filter units is *"1"*. Revise the Sampling Frequency requirement to read "Every 365 days".	Ecology offers the following explanation. Please see response to Comment # 49.
66	7/28/2012	US Department of Energy Comment USDOE-66	FF-01, EU1249, 241-S-102 Inlet Filter	Multiple text entries within the Abatement Technology and Monitoring Requirements sections are inconsistent with those includes for other passive breather filter emission units. Recommendation: Revise the Abatement Technology requirement to read "ALARACT" instead of "BARCT" and remove the WAC 246-247-040(3) citation. Add the text "40 CFR 61, Appendix B, Method 114" to the Monitoring and Testing Requirements section. Revise the text in the Sampling Frequency section to read "Every 365 days" instead of "1 per year".	Ecology offers the following explanation. The listed regulatory citations are correct. Filters were installed as the result of a BARCT demonstration submitted by DOE. Please see response to Comment # 49 in regards to revising the text.
67	7/28/2012	US Department of Energy Comment USDOE-67	FF-01, EU751, 241-AZ-301	This emission unit has a radial filter as abatement technology instead of a G-1 filter. However, Condition 4 of NOC ID 855 (AIR 12-334) associated with this EU continues to include a requirement specific only to a G-1 HEPA filter, which is no longer applicable. An Off-Permit Change Notice requesting deletion of this NOC Condition was hand-delivered and stamped "received" by DOH on 3/21/2012. Recommendation: Incorporate the proposed Off-Permit Change Notice and delete the inapplicable Condition 4 from NOC ID 855.	Ecology offers the following explanation. Please see response to Comment # 49.

Comment Number	Date	Source	Document Location	Comment	Response
68	7/28/2012	US Department of Energy Comment USDOE-68	FF-01, EU1289, Decon Trailer 200 East (Int. Power Exhaust) FF-01, EU1290, Decon Trailer 200 West (Int. Power Exhaust) FF-01, EU1291, Decon Trailer 200E (Collection Tank Vent) FF-01, EU1292, Decon Trailer 200W (Collection Tank Vent)	The original revisions requested to the Abatement Technology requirements for passive breather filters as part of the Renewal Application have not been incorporated into the FF-01 License. Recommendation: Revise the text to read "ALARACT" instead of "BARCT" and remove the WAC 246-247-040(3) citation.	Ecology offers the following explanation. The listed regulatory citations are correct. The emission units were new construction and were required to meet BARCT.
69	7/28/2012	US Department of Energy Comment USDOE-69	FF-01, EU738, 244-A Primary FF-01, EU740, 244-BX Primary FF-01, EU742, 244-S Primary FF-01, EU744, 244-TX Primary FF-01, EU912, 244-A Annulus FF-01, EU922, 244-BX Annulus FF-01, EU959, 244-S Annulus FF-01, EU969, 244-TX Annulus	These emission units each have a radial filter as abatement technology instead of a G-1 filter. However, Condition 4 of NOC ID 859 (AIR 12-338) associated with this EU continues to include a requirement specific only to a G-1 HEPA filter, which is no longer applicable. Recommendation: Delete the inapplicable Condition 4 from NOC ID 859 or revise the condition to reflect a requirement appropriate for a radial filter (such as something similar to the "Alternative Approval" language included in NOC ID 825 (AIR 12-307) for EU1334.	Ecology offers the following explanation. Please see response to Comment # 49.
70	7/28/2012	US Department of Energy Comment USDOE-70	Health SOB, General	The proposed Health SOB is missing the footer and pagination for all pages past page 7 of the SOB. Recommendation: Revise the proposed Health SOB to include appropriate footers and pagination throughout the SOB.	Ecology agrees and will make the recommended changes.

Comment Number	Date	Source	Document Location	Comment	Response
71	7/28/2012	US Department of Energy Comment USDOE-71	Health SOB, General	Sections 5.0 and 6.0 appear to only include obsolete emission units and applicable requirements that have occurred since the last FF-01 renewal and issuance. If accurate, this makes the overall AOP SOB an incomplete document. The previous lists of obsolete emission units and applicable requirements that are in the current Health SOB need to be added to this list so that it is current at all times and reflect the complete history of the FF-01/AOP. Recommendation: Revise Sections 5.0 and 6.0 of the proposed Health SOB to include all the obsolete emission units and applicable requirements, not just those that have occurred since the last renewal effort in 2006. If the agencies, believe it is unnecessary to do so, please provide clarification of why and add an explanation to the Health SOB.	Ecology offers the following explanation. An interested person wanting to review the previous list of obsolete emission units and applicable requirements can view it through the last issuance of the Air Operating Permit. The renewal of an AOP is analogous to the issuance of a new AOP, so only the units becoming obsolete within the time frame of the expired AOP are the units listed as obsolete when the AOP is renewed.
72	7/28/2012	US Department of Energy Comment USDOE-72	Attachment 3 SOB, General	The footer in the proposed SOB incorrectly reflect "Ecology" instead of "BCAA" and should be corrected. Additionally, the header incorrectly references "Attachment 2" instead of "Attachment 3" and should be corrected. Recommendation: Revise the footer in the proposed Attachment 3 SOB to read as follows: *~~Ecology~~ BCAA Attachment 3 Statement of Basis* Revise the header in the proposed Attachment 3 SOB to read as follows: *Final Draft SoB for Attachment ~~2~~3 for AOP Renewal 2*	Ecology agrees. Permit language has been revised as recommended.
73	7/28/2012	US Department of Energy Comment USDOE-73	Attachment 3 SOB, page 1 of 16	In two places on the cover page(in the header and in the 1st paragraph), the incorrect agency name "Benton Clean Air Authority" is used. This should be corrected to reflect the current agency name "Benton Clean Air Agency." Recommendation: Revise the proposed SOB language in the identified two location so that the agency name reads as follows: *Benton Clean Air ~~Authority~~ Agency*	Ecology agrees. Permit language has been revised as recommended.
74	7/28/2012	US Department of Energy Comment USDOE-74	Attachment 3 SOB, page 1 of 16	In the second paragraph of the proposed SOB language, there is an incomplete list of changes to BCAA since the 1994 delegation letter. The name change from "Authority" to "Agency" is not reflected in the list of changes. Recommendation: Revise the proposed SOB language to include a line item identifying when the agency name was revised from "Authority" to "Agency."	Ecology agrees. Permit language has been revised as recommended.

Comment Number	Date	Source	Document Location	Comment	Response
75	8/2/2012	Mr. Bill Green Comment 1	General AOP structure	**This draft Hanford Site AOP is structured using a multi-agency regulatory scheme that cannot comply with the *Clean Air Act* (CAA), 40 CFR 70, the *Washington Clean Air Act* (RCW 70.94), and the operating permit regulation (WAC 173-401).** In this draft AOP conditions regulating most non-radionuclide air pollutants are contained in *Attachment 1*. *Attachment 2* (License FF-01) contains all radionuclide air emission applicable requirements; those created pursuant to CAA § 112 (*Hazardous Air Pollutants*) [WAC 173-401-200(4)(a)(iv)], and those created in accordance with "Chapter 70.98 RCW and rules adopted thereunder" WAC 173-401-200 (4)(b). Applicable requirements created pursuant to 40 CFR 61 Subpart M and requirements for outdoor burning are contained in *Attachment 3*. *Attachment 1* is enforced by the Washington State Department of Ecology (Ecology), the issuing permitting authority. *Attachment 2* is enforced solely by the Washington State Department of Health (Health), a state agency that is not a permitting authority under the CAA or 40 CFR 70 (*see* Appendix A of 40 CFR 70). *Attachment 3* is enforced only by the Benton Clean Air Agency (BCAA). While the BCAA has an approved Part 70 program (i.e. is a permitting authority under the CAA and 40 CFR 70), in the context of the draft Hanford Site AOP the BCAA is not a permitting authority, but rather a "permitting agency". Ecology, the only permitting authority, is required by the CAA, and 40 CFR 70 to have all necessary authority to enforce permits including authority to recover civil penalties and provide appropriate criminal penalties (*see* CAA § 502 (b)(5)(E) [42 U.S.C.7661a (b)(5)(E)] and 40 CFR 70.11 (a)). In this draft AOP Ecology only has the necessary authority to enforce *Attachment 1*. Absent the authority to enforce all applicable requirements, Ecology also cannot comply with state and federal requirements that Ecology have authority to issue a permit containing all applicable requirements [*see* WAC 173-401-100 (2), -600, -605, -700 (1); CAA § 502 (b)(5)(A)[3]; 42 U.S.C. 7661a (b)(5)(A); 40 CFR 70.1 (b), -70.3 (c), -70.6 (a), and -70.7 (a)]. The structure of the draft Hanford Site AOP allows Ecology, the single permitting authority, to issue and enforce only those applicable requirements addressed in *Attachment 1*. Whether *Attachment 2* or *Attachment 3* even appears in the AOP is at the sole discretion of Health and BCAA, respectively; this because Ecology cannot enforce either *Attachment 2* or *Attachment 3*, and neither Health nor BCAA has Legislative authorization to give direction to Ecology. Also, *Attachment 2* (License FF-01) is a product authorized and created pursuant to RCW 70.98, the *Nuclear Energy and Radiation Act* (NERA) and the regulations adopted thereunder. NERA grants enforcement authority <u>only</u> to Health. Thus, Ecology lacks statutory authorization to take any action regarding *Attachment 2*, including those actions required by 40 CFR 70 and the CAA. Ecology also is prohibited from granting itself authority to act on *Attachment 2*. To underscore the independence between the CAA and NERA, *Attachment 2* (License FF-01) was both issued and became effective on February 23, 2012, absent the opportunity for any CAA-required pre-issuance reviews and well before final action on the remainder of this draft Hanford Site AOP	Ecology offers the following explanation. 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.

Comment Number	Date	Source	Document Location	Comment	Response
76	8/2/2012	Mr. Bill Green Comment 2	general AOP structure, *Attachment 2*, License FF-01	**In this draft Hanford Site AOP regulation of radionuclides is inappropriately decoupled from 40 CFR 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.** Radionuclides are listed in CAA § 112 (b) as *hazardous air pollutants*. Because radionuclides are identified as *hazardous air pollutants*, 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 CFR 70.2 *Applicable requirement* (4), RCW 70.94.161 (10)(d), and WAC 173-401-200 (4)(a)(iv). In the draft Hanford Site AOP radionuclides are regulated in *Attachment 2* (License FF-01) in accordance with RCW 70.98, the *Nuclear Energy and Radiation Act* (NERA) rather than in accordance with the CAA and 40 CFR 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)) According to *Appendix A* of 40 CFR 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 CFR 70. Furthermore, neither NERA nor Health-adopted regulations promulgated thereunder, implement requirements of 40.CFR 70. Contrary to CAA Title V and 40 CFR 70, regulation of radionuclide air emissions in this draft Hanford Site AOP occurs pursuant to a regulation that does not implement requirements of 40 CFR 70, and is not enforceable by Ecology, the issuing permitting authority.	Ecology offers the following explanation. Please see response to Comment # 75.

Comment Number	Date	Source	Document Location	Comment	Response
77	8/2/2012	Mr. Bill Green Comment 3	general AOP structure, *Attachment 2*, License FF-01	**The state regulatory structure under which *Attachment 2* (License FF-01) is issued prohibits public comment. Prohibiting public comment is contrary to the CAA. The U.S. Congress codified both a public right to comment and a public right to request a hearing on all draft Title V permits (AOPs). (*See* in CAA § 502 (b)(6); 42 U.S.C. 7661a (b)(6)). These rights are implemented by 40.CFR 70.7 (h), by the *Washington Clean Air Act* (RCW 70.94.161 (2)(a) & (7)), and by WAC 173-401-800.** Clean Air Act (CAA) § 502 (b)(6) [42 U.S.C. 7661a (b)(6)], 40 CFR 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 hearing[1]. However, RCW 70.98, the statute under which License FF-01 is issued, does not allow for public comments or public hearings. [*See* RCW 70.98.080.] Revised Code of Washington (RCW) 70.98.080 (2) specifically exempts licenses pertaining to Hanford from any pre-issuance requirements[2]. Indeed, *Attachment 2* was both issued and became effective on February 23, 2012, absent the opportunity for any CAA-required pre-issuance actions. Furthermore, Ecology, the sole permitting authority, has no statutory authorization to demand that Health provide either the required 30-day opportunity for public comment or the opportunity to request a public hearing for License FF-01. 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) Absent statutory authorization, Ecology can neither enforce RCW 70.98 or the regulations adopted thereunder, nor can Ecology modify RCW 70.98 or the regulations adopted thereunder to provide for public comments or public hearings required by CAA § 502 (b)(6) [42 U.S.C. 7661a (b)(6)], 40 CFR 70.7 (h), RCW 70.94.161 (2)(a) & (7), and WAC 173-401-800. Only Health has been authorized by statute to enforce RCW 70.98 and the regulations adopted thereunder. [*See* RCW 70.98.050 (1)] Even Health cannot modify RCW 70.98 to allow for public comments or public hearings required by the CAA. While the U.S. Supreme Court (Court) concluded federal environmental statutes cannot convey injury to a public interest sufficient to constitute injury in fact, this Court does recognize injury in fact resulting from denial of a procedural right accorded to protect an individual's concrete interests. The opportunity to comment is a procedural right accorded to protect an individual's concrete interest. This right is conveyed by statute, CAA § 502 (b)(6) [42 U.S.C. 7661a (b)(6)]. Denying this commenter the opportunity to mitigate the cumulative adverse impacts from exposure to radionuclides through submission of public comments or from receiving benefit from public comments submitted by others seems consistent with the Court's criteria for procedural standing. After all, radionuclides are regulated under the CAA as *hazardous air pollutants*, and EPA considers all exposure to radionuclides above background to adversely impact human health.	Ecology offers the following explanation 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 Number	Date	Source	Document Location	Comment	Response
78	8/2/2012	Mr. Bill Green Comment 4	general AOP structure, *Attachment 2*, License FF-01	**The state regulatory structure under which *Attachment 2* (License FF-01) is issued does not recognize the right of a public commenter to judicial review in State court, as required in the CAA. The U.S. Congress codified a right afforded to any person who participated in the public comment process to seek judicial review in State court of the final permit action. (*See* in CAA § 502 (b)(6); 42 U.S.C. 7661a (b)(6)). This right is implemented by 40 CFR 70.4(b)(3)(x) and (xii), and by WAC 173-401-735 (2).** *Attachment 2* (License FF-01) contains terms and conditions regulating 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 the CAA and 40 CFR 70. NERA does not provide an opportunity for judicial review by any person who participated in the public comment process. (*See* 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.	Ecology offers the following explanation 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.

Comment Number	Date	Source	Document Location	Comment	Response
79	8/2/2012	Mr. Bill Green Comment 5	general AOP structure, *Attachment 2*, License FF-01	**The CAA waiver of sovereign immunity applies solely to the CAA and to regulations implementing the CAA. The CAA waiver cannot be extended to requirements created pursuant to RCW 70.98, the *Nuclear Energy and Radiation Act* (NERA), a Washington State statute that is independent of the CAA, unenforceable under the CAA, inconsistent with the CAA, and enforceable solely by a state agency not authorized to either implement or to enforce the CAA.** Because there is no applicable waiver of sovereign immunity, requirements created and enforced pursuant to RCW 70.98, the *Nuclear Energy and Radiation Act* (NERA), and the regulations adopted thereunder are not enforceable against the U.S. Department of Energy. Sovereign immunity can be waived only by the U.S. Congress in legislation that clearly defines the specific extent of the waiver. The waiver cannot be expanded beyond the specific language and must be strictly interpreted in favor of the sovereign. The Supreme Court declared that a waiver of sovereign immunity must be unequivocally expressed in statutory text and may not be implied or inferred; it must be construed strictly in favor of the sovereign and not read for more than what the language strictly allows. (31) . . . Where a waiver would subject federal facilities to regulation under state law, the rule requiring the waiver to be unambiguous applies with special force. "Because of the fundamental importance of the principles shielding federal installations and activities from regulation by the State, an authorization of state regulation is found only when and to the extent there is a 'clear congressional mandate,' 'specific congressional action' that makes this authorization of state regulation 'clear and unambiguous.'" (33) . . . Moreover, the Supreme Court has commented sovereign immunity may only be waived by congressional legislation and that an agent of the federal government cannot waive sovereign immunity. (35) Harry M. Hughes, Federal sovereign immunity versus state environmental fines, 58 A.F. L. Rev. 207, 214-15 (2006) (available at http://www.afjag.af.mil/shared/media/document/AFD-081009-009.pdf) While the CAA does contain a waiver of sovereign immunity [CAA § 118; 42 U.S.C. 7418], this waiver applies solely to the CAA. The CAA waiver of sovereign immunity cannot be extended beyond the CAA by any federal agency or department, including the EPA or the U.S. Department of Energy (DOE). Neither can the EPA, or DOE, or the Washington State Legislature, or Health, extend the CAA waiver of sovereign immunity to RCW 70.98, a Washington State statute that is independent of the CAA, inconsistent with the CAA, unenforceable under the CAA, and enforceable solely by a state agency not authorized to either implement or to enforce the CAA.	Ecology offers the following explanation. Please refer to Exhibit A, pp. 2-4.
80	8/2/2012	Mr. Bill Green Comment 6	general AOP structure, payment of permit fees	**Revise the draft Hanford Site AOP to require the permittee pay all permit fees in accordance with 40 CFR 70, the *Washington Clean Air Act*, and WAC 173-401.** Each of the three (3) attachments in the draft Hanford Site AOP requires the permittee pay fees pursuant to different authorities. Permit fees for *Attachment 1* are assessed and payable in accordance with WAC 173-401-620 (2)(f), RCW 70.94.162 (1), WAC 173-401-930(3), 40 CFR 70.6 (a)(7), and 40 CFR 70.9. *Attachment 2* fees are required pursuant to WAC 246-247-065, WAC 246-254-120 (1)(e), and WAC 246-254-170, while *Attachment 3* requires fee payment in accordance with a memorandum of agreement (MOA) between the permittee and the Benton Clean Air Agency (BCAA). Only the fee assessment and collection process cited in *Attachment 1* complies with requirements in 40 CFR 70, the *Washington Clean Air Act* (RCW 70.94), and WAC 173-401.	Ecology offers the following explanation. The list of air operating permit fee eligible activities is contained in WAC 173-401-940(1). Hanford AOP fees for eligible activities are paid solely to Ecology. This payment is in accordance with WAC 173-401. Underlying requirements such as Notice of Construction permits, the FF-01 license, Asbestos Notifications, etc… are not AOP fee eligible activities identified in the state rule. Fees related to those activities are assessed and collected utilizing the applicable rules and regulations governing them.

Comment Number	Date	Source	Document Location	Comment	Response
81	8/2/2012	Mr. Bill Green Comment 7	general AOP structure, *Attachment 2*, License FF-01, Section 1; referencing by subject, partial delegation to enforce the radionuclide NESHAPs	**EPA's partial delegation of authority to Health to enforce the radionuclide NESHAPs overlooks restrictions in administrative law that prohibit a regulation from changing a statute. Specifically, EPA overlooked non-discretionary requirements in CAA § 502 (b)(5)(A) and (E) [42 U.S.C. 7661a (b)(5)(A) and (E)] when it codified 40 CFR 61.04 (c)(10).** In plain language, the U.S. Congress requires that permitting authorities SHALL have all necessary authority to issue and enforce permits containing all CAA applicable requirements. [CAA § 502 (b)(5)(A) and (E); 42 U.S.C. 7661a (b)(5)(A) and (E)] EPA regulation changes this plain statutory language by prohibiting Washington State permitting authorities from acting on a subset of CAA applicable requirements, the radionuclide NESHAPs. [40 CFR 61.04 (c)(10)] The Washington State Department of Health (WDOH) is not a permitting authority yet EPA regulation grants only this agency the ability to enforce the radionuclide applicable standards required by section 112 of the CAA [42 U.S.C. 7412]. Enacting regulation [40 CFR 61.04 (c)(10)] excluding Washington State permitting authorities from issuing Title V permits containing all CAA-applicable requirements and from enforcing all CAA-applicable requirements contained in Title V permits directly contradicts CAA § 502 (b) [42 U.S.C. 7661a (b)].	Ecology offers the following explanation. Please see response to Comment 75 and Exhibit A in its entirety.
82	8/2/2012	Mr. Bill Green Comment 8	general AOP structure, *Attachment 2*, public comment):	**All public involvement requirements were overlooked when *Attachment 2* was issued as final on February 23, 2012.** The CAA grants the right for public involvement on requirements developed pursuant to the CAA regarding control of pollutants regulated in accordance with the Act. Public involvement under the CAA is limited to only those applicable requirements that are federally enforceable (i.e. enforceable by EPA and the public). However, in granting Health partial authority to enforce the radionuclide NESHAPs, EPA interprets CAA § 116 [42 U.S.C. 7416] as requiring Health treat applicable requirements derived from the radionuclide NESHAPs as federally enforceable, even if there is a more stringent "state-only enforceable"[3] requirement. "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) Even though requirements in *Attachment 2* are issued pursuant to WAC 246-247, most of those requirements retain federal enforceability in accordance with CAA § 116 [42 U.S.C. 7416]. Additionally, Ecology's regulation provides that no permit or permit renewal can be issued absent public involvement[4]. Provide the opportunity for public involvement on *Attachment 2*.	Ecology offers the following explanation. Please see response to Comment 77.

Comment Number	Date	Source	Document Location	Comment	Response
83	8/2/2012	Mr. Bill Green Comment 9	general AOP structure, *Attachment 3*	**The regulatory structure under which *Attachment 3* is constructed does not allow Ecology, the sole permitting authority, to enforce WAC 173-425 (outdoor burning), 40 CFR 61 Subpart M, and requirements contained in the Benton Clean Air Agency (BCAA) Regulation 1, Articles 5 and 8. Under the draft Hanford Site AOP, only the BCAA can enforce 40 CFR 61 Subpart M and BCAA Regulation 1, Articles 5 and 8. In the context of the draft Hanford Site AOP, BCAA is merely a "permitting agency" and not a permitting authority.** Absent the authority to enforce all applicable requirements Ecology cannot comply with CAA § 502 (b)(5)(A) and (E)[2] [42 U.S.C. 7661a (b)(5)(A) and (E)], and 40 CFR 70.9 and 70.11 (a). Neither can Ecology comply with state and federal requirements that Ecology have authority to issue a permit containing all applicable requirements [*see* WAC 173-401-100 (2), -600, -605, -700 (1); CAA § 502 (b)(5)(A); 42 U.S.C. 7661a (b)(5)(A); 40 CFR 70.1 (b), -70.3 (c), -70.6 (a), and -70.7 (a)].	Ecology offers the following explanation. Enclosure 1 of the Statement of Basis for Attachment 3, "*The 1994 delegation letter from Ecology to BCAA for asbestos handling and outdoor burning*", states "[… RCW 70.105.240 does not give Ecology the option of delegating its final decision-making authority over preempted matters, notwithstanding any delegation to exercise day-to-day regulatory responsibility]". Therefore, Ecology retains permitting authority to enforce WAC 173-425 and 40 CFR 61, subpart M.
84	8/2/2012	Mr. Bill Green Comment 10	general AOP structure, *Attachment 2*, License FF-01	**Provide a complete draft Hanford Site AOP, including *Attachment 2*, to EPA and all affected states, including recognized Tribal Nations, for pre-issuance review as required by CAA § 505 [42 U.S.C. 7661d], 40 CFR 70.8, RCW 70.94.161 (7), and WAC 173-401-810 and -820. Further, provide for the disposition of any resulting comments and any other required follow-on actions.** *Attachment 2* (License FF-01) of the draft Hanford Site AOP contains terms and conditions regulating 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 the CAA and 40 CFR 70. 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 permitting authority, has no statutory power to require that Health provide for review by EPA and affected states for FF-01, a license issued in accordance with NERA, nor does Ecology have the statutory authority to address comments pertaining to FF-01 should any be provided. Because the issuance process required by NERA for License FF-01 does not provide for EPA and affected state review, *Attachment 2* cannot be issued in compliance with CAA § 505 [42 U.S.C. 7661d], 40 CFR 70.8, RCW 70.94.161 (7), and WAC 173-401-810 and 820. Highlighting this deficiency, *Attachment 2* was issued and became effective on February 23, 2012, absent the opportunity for any CAA-required pre- issuance reviews. The pre-issuance review process for all other portions of the draft Hanford Site AOP began on June 4, 2012, several months after Health's final action on *Attachment 2*.	Ecology offers the following explanation. Please see the response to Comment 77

Comment Number	Date	Source	Document Location	Comment	Response
85	8/2/2012	Mr. Bill Green Comment 11	general AOP structure; Section 9, Appendix B, *Statement of Basis for Standard Terms and General Conditions,* pgs. 30-50	**The regulatory structure under which radionuclides are addresses in *Attachment 2* (License FF-01) of the draft Hanford Site AOP will not allow for compliance with the AOP revision requirements of *Appendix B*, 40 CFR 70.7, and WAC 173-401-720 through 725.** *Attachment 2* (License FF-01) of the draft Hanford Site AOP contains terms and conditions regulating 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 the CAA and 40 CFR 70. As a result, the AOP revision processes required by *Appendix B*, 40 CFR 70.7, and WAC 173-401-720 through 725 cannot be met. *Appendix B* addresses AOP revisions through a prescriptive, form-driven process based on potential-to-emit regulated air pollutants. However, all revisions, including those correcting an address or a typographical error [40 CFR 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 thereunder. Under *Appendix B*, 40 CFR 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 CFR 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 authority[1]. 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 *Appendix B*, 40 CFR 70.7, and WAC 173-401-720 through 725.	Ecology offers the following explanation. 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 49, 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.
86	8/2/2012	Mr. Bill Green Comment 12	Standard Terms and General Conditions, pg. 10 of 57	**The building locations for 748 and 712 are on Northgate Drive, probably in the 900 block.** Neither is located on Jadwin Ave. as stated on page 10.	Ecology offers the following explanation. Building 748 was demolished in 2005 and no longer exists; reference to Building 748 will be removed. Building 712 is located at 712 Northgate and the AOP will be corrected.

Comment Number	Date	Source	Document Location	Comment	Response
87	8/2/2012	Mr. Bill Green Comment 13	Standard Terms and General Conditions, pgs. 10 & 11 of 57	**Change the statement at the bottom of page 10 to reflect that 40. CFR 70.2 and WAC 173-401-200 (19) both require use of SIC codes in accordance with the *Standard Industrial Classification Manual,* 1987. On page 11 please supply the proper SIC codes for the Hanford Site.**	Ecology offers the following explanation. The use of the Standard Industrial Classification Manual, 1987 codes (SIC) in WAC 173-401-200 (19) is for the purpose of determining if a grouping of sources is classified as a "major source". • The Hanford Site has been determined to be a major source • The Hanford Site has operated with an Air Operating Permit (AOP) since 2001. • The listing of SIC codes is not required under WAC 173-401-200 (19). As the Hanford Site has been determined to be a major source, operating with a valid AOP, and the listing of the SIC numbers isn't required, SIC numbers won't be added to the Standard Terms and General Conditions. As a reference and for informational purposes, the North American Industry Classification System numbers will be retained. Additionally, the STGC language was added to clarify that the NAICS listing is a 'partial' list.

Comment Number	Date	Source	Document Location	Comment	Response
88	8/2/2012	Mr. Bill Green Comment 14	Standard Terms and General Conditions, pg. 11 of 57	**Include all applicable SIC codes, such as those codes applicable to boilers and laboratories.** For example, laboratories are regulated in both *Attachment* and in *Attachment 2* of this draft Hanford Site AOP. However, codes applicable to laboratories (SIC: 8734 and NAIC: 541380) have been overlooked. List all applicable SIC codes.	Ecology offers the following explanation. The inclusion of NAICS codes was not intended to be exclusive. To reflect this, the text in the Standard Terms and General Conditions has been changed to: "The Hanford site is considered a "major source" of air pollutant emitting activities. A non-exhaustive list of North American Industry Classification System (NAICS) categories include:" Additionally, the first two paragraphs of Section 2.0 in the Statement of Basis for the General Terms and Standard Conditions have been changed to: "The Hanford Site is included in the Federal Clean Air Act (FCAA) Title V AOP Program because it is a "major source" as defined in the Federal Clean Air Act Section 112. Section 112 defines the term "major source" as "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants." When a facility or entity is located on the Hanford Site, the presumption is that the facility or entity is under the control of one of the DOE Hanford Site operations offices that control waste management and restoration operations on the Hanford Site, specifically, under the control of the Richland Operation Office (DOE-RL), the Office of River Protection (DOE-ORP), or the Office of Science (DOE-PNSO). Several entities operating on or near the Hanford Site under a contract or lease are not under DOE control. The presumption of common control may be overcome and DOE Hanford Site operations offices may seek to exclude an entity from the Hanford Site AOP on a case-specific basis. The final decision is made and approved by Ecology with agreement from EPA."

Comment Number	Date	Source	Document Location	Comment	Response
89	NA	NA	NA	**NA**	Comment number 89 was initially skipped when setting up the comment response document. It has been inserted to provide continuity and remove concerns that Ecology missed a received comment. As some comment responses were drafted before the skipped number was identified, and the responses refer to previous responses, this comment number was inserted as a place holder with no comment.
90	8/2/2012	Mr. Bill Green Comment 15	Standard Terms and General Conditions, pg. 11 of 57	**All facilities determined to be support facilities (using established criteria) need to be included in the AOP.** The facilities listed as "excluded" based on a lease with DOE-RL or DOE-ORP overlook contractual relationships between DOE-RL or DOE-ORP and their various contractors. Facilities where work is performed on DOE's behalf to satisfy contractual obligations should NOT be automatically excluded because such facilities are not directly leased by DOE-RL or DOR-ORP. DOE-RL and DOE-ORP only provide funding and oversight. Nearly all regulated air emissions result from actions, or the lack of actions, by various contractors and/or sub-contractors working on behalf of DOE-RL and DOE- ORP. The exclusions should be edited as follows: Examples of facilities excluded at the time of permit renewal in 2012 are the following: • all Energy Northwest facilities ~~unless leased to DOE-RL or DOE-ORP as~~ not determined to be a support facility • all Port of Benton facilities ~~unless leased to DOE-RL or DOE-ORP as~~ not determined to be a support facility	Ecology agrees. Permit language has been revised as recommended.
91	8/2/2012	Mr. Bill Green Comment 16	Standard Terms and General Conditions, Section 4.6, pg. 12 of 57	**Clarify *Section 4.6*. Federally enforceable requirements are those that are required under the CAA, or any of its applicable requirements, including under CAA § 116 [42 U.S.C. 7416].** For example, standard permit terms required by WAC 173-401-620 are federally enforceable. Both 40 CFR 70.6(b) and WAC 173-401-625 state that all terms and conditions of a Title V permit are federally enforceable except those designated as "state- only", and that "state-only" requirements are those requirements that are not required under the CAA or any of its applicable requirements. Thus almost all requirements in Sections 4.0 and 5.0 are federally enforceable and apply to all draft Hanford Site AOP attachments; *Attachment 1*, *Attachment 2*, and *Attachment 3*. Also, where both a federal requirement and a state (or local) requirement apply to the same source, both must be included in the AOP, regardless of whether one is more stringent than the other. In particular, this requirement is overlooked in *Attachment 2*. Radionuclides are a *hazardous air pollutant* listed under CAA § 112 [42 U.S.C. 7412]. Radionuclides do not cease to be federally regulated under the CAA simply because they are also regulated by Washington State. Compliance with requirements in the CAA[3] cannot be avoided by claiming federal requirements implemented through a state regulation are no longer federal requirements. Please clarify *Section 4.6*.	Ecology offers the following explanation. Section 4.6 redundantly covers paraphrasing of regulations. It will be changed to All terms and conditions ~~(or underlying applicable requirements where regulations are paraphrased)~~ are enforceable by the U.S. Environmental Protection Agency (EPA) and United States citizens unless specifically designated as not federally enforceable or listed as an inapplicable requirement in Table 5.1 [WAC 173-401-625]. Any paraphrasing of regulations or other applicable requirements is for the convenience of the reader. The underlying applicable requirement is the enforceable requirement**.**

Comment Number	Date	Source	Document Location	Comment	Response
92	8/2/2012	Mr. Bill Green Comment 17	Standard Terms and General Conditions, Section 4.12, pg. 13-14 of 57	**Specify the appeal process applicable to AOP 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 Health. Health is not a permitting authority nor does Health have the legal ability to issue an AOP in accordance with RCW 70.94, the CAA, and 40 CFR 70. Identify the appeal process applicable to *Attachment 2*.	Ecology offers the following explanation. Please see response to Comment 78.
93	8/2/2012	Mr. Bill Green Comment 18	Standard Terms and General Conditions, Section 5.3, pg. 16-17 of 57	**Revise *Section 5.3* to reflect that Health is not a permitting authority and therefore does not have the legal ability to either assess or collect AOP related fees.** Whether Health can assess and collect AOP-related fees is a well-argued issue that was settled in 2007 in partial resolution of *PCHB No. 07-012*. The settlement agreement was authored by Ecology's Assistant Attorney General <u>with Health's</u> <u>concurrence</u>, and was issued as a PCHB Order on May 17, 2007,. "The motion is based upon a series of commitments outlined in the April 30, 2007 letter, some of which involve commitments by the Washington State Department of Health (Health) and will affect Health's billing arrangement with Respondent U.S. Department of Energy (Energy). Health has reviewed the motion, including the commitments set forth in the letter, and is in agreement with the letter's contents." Andrea McNamara Doyle, presiding, *PCHB 07-012, Order Dismissing Legal Issues 10-13 and Ecology's Cross Motion on Fees*, 5/17/07 Under this PCHB order, Health commits to collect fees <u>only</u> for "non- air operating permit costs". The legal basis for the settlement language is that Health is not a permitting authority, and therefore has no authority under the *Washington Clean Air Act* (RCW 70.94) or 40 CFR 70 to assess and collect AOP-related fees. However, even if Health overlooks the PCHB order and underlying primary authorities, Ecology is obligated to enforce the agreed-to language. An AOP cannot vacate a PCHB order. Furthermore, Ecology cannot issue a permit that contravenes any applicable requirements, including applicable fee requirements. [Applicable fee requirements include those codified in 40 CFR 70.6 (a)(7), 40 CFR 70.9, RCW 70.94.162, and WAC 173-401-620 (2)(f).] Lastly, it is doubtful Health can overcome the very significant impediment posed by federal sovereign immunity. No administrative regulation can waive federal sovereign immunity, nor is it likely the CAA waiver of sovereign immunity can be extended to a fee collection regulation that is independent of the CAA, inconsistent with the CAA, unenforceable under the CAA, and enforceable solely by a state agency not authorized to implement the CAA.	Ecology offers the following explanation. ***Section 5.3*** will be changed to read: Per WAC 246-247-065 [Fees], fees for ***all non-AOP*** airborne emissions of radioactive materials shall be submitted in accordance with WAC 246-254-160. The permittee shall pay costs associated with direct staff time of the air emissions program in accordance with WAC 246-254-120 (1)(e). In any case where the permittee fails to pay a prescribed fee or actual costs incurred during a calendar quarter, Health (1) shall not process an application and (2) may suspend or revoke any license or approval involved; or (3) may issue any order with respect to licensed activities as Health determines appropriate or necessary to carry out the provisions of WAC 246-254-170. [WAC 246-247-065 (State only); WAC 246-254-120 (1)(e) (State only); and WAC 246-254-170 (State only)]

Comment Number	Date	Source	Document Location	Comment	Response
94	8/2/2012	Mr. Bill Green Comment 19	Standard Terms and General Conditions, Section 5.11.4, pg. 24 of 57	**Replace the certification language in *Section 5.11.4* with language required by 40 CFR 70.5 (d) and WAC 173-401-520, and enforce the required language in accordance with the CAA. Certification language specified in this draft Hanford Site AOP must both comply with the requirements of the CAA and be enforced pursuant to the CAA.** Health oversteps by requiring certification in accordance with 18 U.S.C. 1001. This federal statute (18 U.S.C. 1001) generally prohibits lying to or concealing information from a federal official for the purpose undermining the functions of federal governmental departments and federal agencies[1]. Health is a product of the Washington State Legislature and is limited in authority to that specified in Washington State statute[2]. Health has zero authority to modify or to otherwise re-focus either the applicability of or the enforcement of a federal statute.	Ecology offers the following explanation. The certification language comes from 40CFR 61.94(b)(9) and is as stringent as the certification language required by 40 CFR 70.5(d) and WAC 173-401-520. The quotation mark in section 5.11.4 was mistakenly placed before the reference to 18 U.S.C. 1001 and not after. The quotation mark has been moved to encompass {18 U.S.C. 1001}. In addition, to clarify this section, the following will be added: The certification language (including the 18 U.S.C. 1001) comes directly from 40 CFR 61.94(b)(9) and is an applicable requirement for the annual report. The report is to be submitted to both the Environmental Protection Agency as well as the Department of Health.

Comment Number	Date	Source	Document Location	Comment	Response
95	8/2/2012	Mr. Bill Green Comment 20	Standard Terms and General Conditions, Section 5.17, pgs. 28 and 29 of 57	**Revise *Section 5.17* to address the *Tailoring Rule* [75 Fed. Reg. 31,514 (June 3, 2010)] as implemented by 40 CFR 70 and WAC 173-401.** *Section 5.17* overlooks greenhouse gas (GHG) emissions as regulated air pollutants under the CAA, 40 CFR 70, and WAC 173-401. In *Massachusetts v. EPA* the U.S. Supreme Court found EPA was compelled to determine whether or not greenhouse gas (GHG) emissions cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision. EPA subsequently determined there was sufficient information available to conclude GHG emissions do endanger public health and public welfare. "The Administrator finds that six greenhouse gases taken in combination endanger both the public health and the public welfare of current and future generations. These Findings are based on careful consideration of the full weight of scientific evidence and a thorough review of numerous public comments. . ." 74 Fed. Reg. 66,496 (December 15, 2009) In accordance with EPA's 2009 endangerment finding, EPA completed rulemaking to regulate GHG emissions as an applicable requirement under the CAA and 40 CFR 70. The resulting *Tailoring Rule* regulates greenhouse gas (GHG) emissions for sources with a Title V permit as of January 2, 2011. "For the first step of this *Tailoring Rule*, which will begin on January 2, 2011, title V requirements will apply to sources' GHG emissions only if the sources are subject to title V anyway due to their non-GHG pollutants." 75 Fed. Reg. 31,514 (June 3, 2010) "Sources with title V permits must address GHG requirements when they apply for, renew, or revise their permits. These requirements will include any GHG applicable requirements (e.g., GHG BACT requirements from a PSD process) and associated monitoring, recordkeeping and reporting. . ." *Id.* (emphasis added) The Hanford Site already has a Title V permit, and that Title V permit is undergoing renewal. Renewal of the Hanford Site Title V permit must thus consider GHG emissions. The *Tailoring Rule* further requires use of short tons (2,000 lb/ton) as the standard unit of measurement for GHG emissions. "We are finalizing our proposal to use short tons because short tons are the standard unit of measure for both the PSD and title V permitting programs and the basis for the threshold evaluation to support this rulemaking." *Id. at* 31,532 (emphases added) The *Tailoring Rule* also included revisions to 40 CFR 70 needed to fulfill its obligation to classify GHGs as an air pollutant subject to regulation under Title V of the CAA. Ecology modified WAC 173-401 in late 2010[2] to maintain consistency with the revised *Part 70*. 'The purpose of this rule making is to incorporate EPA's requirements for reporting greenhouse gases into the state air operating permit regulation, chapter 173-401 WAC. Ecology revised the definition of "major source" and added the definition of "subject to regulation." This adoption keeps several hundred small sources out of the federal permitting program.' 10-24 Wash. St. Reg. 114 (Dec. 1, 2010) GHG emissions are now federally enforceable, and must be considered in this draft Hanford Site AOP. Please revise *Section 5.17* and all other sections referencing GHGs.	Ecology offers the following explanation. Guidance document EPA-457/B-11-001, "*PSD and Title V Permitting Guidance for Greenhouse Gases"* states that under the Tailoring Rule, "… any applicable requirement for GHGs must be addressed in the title V permit (i.e., the permit must contain conditions necessary to assure compliance with applicable requirements for GHGs). It is important to note that GHG reporting requirements for sources established under EPA's final rule for mandatory reporting of GHGs (40 CFR Part 98: Mandatory Greenhouse Gas Reporting, hereafter referred to as the "GHG reporting rule") are currently not included in the definition of applicable requirements in 40 CFR 70.2. Although the requirements contained in the GHG reporting rule currently are not considered applicable requirements under the Title V regulations, the source is not relieved from the requirement to comply with the GHG reporting rule separately from compliance with their title V operating permit. It is the responsibility of each source to determine the applicability of the GHG reporting rule and to comply with it, as necessary. However, since the requirements of the GHG reporting rule are not considered applicable requirements under title V, they do not need to be included in the title V permit." As the permittee currently has no other federally enforceable requirements related to GHG emissions (e.g. GHG BACT requirements resulting from PSD review process), Section 5.17 covers state only GHG requirements in WAC 173-441. WAC 173-441 reporting requirements are in metric tons. This explanation will be added to the Statement of Basis.

Comment Number	Date	Source	Document Location	Comment	Response
96	8/2/2012	Mr. Bill Green Comment 21	Standard Terms and General Conditions, Table 5-1, pg. 45 of 57	**Please clarify the reason 40 CFR 61 Subpart Q, "National Emission Standards for Radon Emissions from Department of Energy Facilities" is shown as inapplicable.** 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.	Ecology offers the following explanation. 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 a 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. .

Comment Number	Date	Source	Document Location	Comment	Response
97	8/2/2012	Mr. Bill Green Comment 22	Standard Terms and General Conditions, general comment	**Provide any federal regulatory analog for all WAC 246-247 citations appearing in this document and in *Attachment 2* as required by CAA § 116 [42 U.S.C. 7416], WAC 173-401-625 and 40 CFR 70.6 (b)**. EPA has determined CAA § 116 [42 U.S.C. 7416] requires Health to include both the "state-only" enforceable requirement plus the federally enforceable analog, regardless of which is the more stringent[1]. In the *Standard Terms and General Conditions* portion of the draft Hanford Site AOP, WAC 246-247 citations absent a federal analog include: WAC 246-247-080(11) in *Section 5.2.3*; WAC 246-247-080(1) and WAC 246-247-080(9) in *Section 5.2.5*; WAC 246-247-080(10) in *Section 5.4*; WAC 246-247-080(6) in *Sections 5.6.2e, 5.8.2.1.2,* and *5.10.1a*; WAC 246-247-075(9) and WAC 246-247-040 in *Section 5.12*; and WAC 246-247-080(5) in *Section 5.16*.	Ecology offers the following explanation. No federal regulatory analog exists except in *Section 5.12* Environmental Surveillance Program. The section will be updated as follows (emphasis added to this section for clarification and will not be added to the actual document). Under the requirements of WAC 246-247-075(9), Health may conduct an environmental surveillance program to ensure that radiation doses to the public from emission units are in compliance with applicable standards. Health may require the operator of an emission unit to conduct stack sampling, ambient air monitoring, or other testing as necessary to demonstrate compliance with the standards in ***40 C.F.R. 61.92 and*** WAC 246-247-040

Comment Number	Date	Source	Document Location	Comment	Response
98	8/2/2012	Mr. Bill Green Comment 23	*Attachment 1*, missing schedule of compliance, pg. ATT 1-38	**Supply a schedule of compliance as required by 40 CFR 70.6(c)(3) and WAC 173-401-630 (3) for CAA-applicable requirements to control fugitive dust through conditions in yet-to-be-prepared "Construction Phase Fugitive Dust Control Plan(s)", condition 8.1, pg. ATT 1-38. Also, provide the public with the opportunity to review the schedule of compliance, the dust control plan(s), and any resulting applicable requirements incorporated into the AOP, pursuant to 40 CFR 70.7 (h) and WAC 173-401-800.** According to condition 8.1, federally enforceable requirements controlling fugitive dust [WAC 173-401-040 (9)(a)] will not exist until specific dust control plans for the Waste Treatment Plant (WTP) construction site and the Marshaling Yard are developed and implemented. An identical condition appears on page ATT 1-64 of the version of the AOP issued on December 29, 2006. In the 2006 AOP revision and in this 2012 draft AOP revision Ecology overlooked the requirement for a schedule of compliance, required in situations where a source cannot be in compliance with all applicable requirements at the time of permit issuance. Such applicable requirements include requirements controlling fugitive dust. The permittee continues to perform fugitive dust-generating work at both locations, absent any assurance such activities will comply with specific requirements resulting from the yet-to-be- prepared dust control plans. There appears to be no urgency to complete the plans required since 2006; a situation highly likely to continue absent CAA-required actions by Ecology. Under the CAA, Ecology has a non-discretionary duty to issue an AOP that complies with all applicable requirements. A sources not in compliance with all applicable requirements at the time of permit issuance is required to adhere to a schedule of compliance in accordance with 40 CFR 70.6(c)(3) and WAC 173-401-630 (3).	Ecology offers the following explanation. • The *Dust Control Plan for the WTP Construction Site* (24590-WTP-GPP-SENV-015) was originally prepared December 23, 2002 to meet DE02NWP-002, Condition 8.1. The original DE02NWP-002 did not include the WTP Marshalling Yard. • On March 21, 2003, a separate *WTP Marshalling Yard Dust Control Plan* was developed in response to a BCAA Order of Correction 20030006. • On October 16, 2003, the case involving Order of Correction 20030006 was closed. • In 2006, Ecology incorporated the requirement for the WTP Marshalling Yard dust control plan into DE02NWP-002 via Amendment 4 in response to a public comment made during review of AOP 00-05-006, Renewal 1. Separate dust control plans for both WTP locations continued to be implemented. • On March 3, 2010, the above implemented and compliant Dust Control Plans were consolidated into one plan with issuance of 24590-WTP-GPP-SENV-015, Revision 1, *Fugitive Dust Control*. 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. As seen in the timeline above, a compliant dust control plan was submitted for the WTP Marshalling Yard and subsequently integrated with the WTP construction site into a comprehensive dust control plan.

Comment Number	Date	Source	Document Location	Comment	Response
99	8/2/2012	Mr. Bill Green Comment 24	*Attachment 2*, general	**Address federally enforceable requirements as specified in WAC 173-401-625 and 40 CFR 70.6 (b).** 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 CFR 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*; • those requirements that impact emissions (40 CFR 70.6 (a)(1)); • those requirements that set emission limits (*id.)*; • those requirements that address monitoring (40 CFR 70.6 (a)(3)(C)(i)), reporting (40 CFR 70.6 (a)(3)(C)(ii)), or recordkeeping (40 CFR 70.6 (a)(3)(C)(iii)); and • those requirements enforceable pursuant to 40 CFR 70.11(a)(3)(iii). The Washington State Department of Health (Health) cannot seek to avoid federal enforceability by incorporating federal requirements by reference (*see* WAC 246-247-035) 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)[4]), limitations on emissions (WAC 246-247-040(5)), and the need to follow WAC 246-247 requirements, including federal regulations incorporated by reference (WAC 246-247-060(5); *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 under 40 CFR 70.6. 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. 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) 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. Treat federally enforceable requirements as specified in WAC 173-401-625 and40 CFR 70.6 (b).	Ecology offers the following explanation. Please see response to Comment 49 in response to changing the FF-01 License. Additional supplemental information is also available in Exhibit A, pages 2 and 3.

Comment Number	Date	Source	Document Location	Comment	Response
100	8/2/2012	Mr. Bill Green Comment 25	*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 and that appear in the annual compliance certification report required by 40 CFR 70.6 (c)(5) and WAC 173-401-615 (5).** The licensee/permittee is required by 40 CFR 70.6 (c)(5) and WAC 173-401-615 (5) to annually certify compliance status (either continuous or intermittent) with each term or condition in the permit that is the basis of the certification. Absent some specified criteria, neither the licensee/permittee nor the public can determine what constitutes continuous compliance and how continuous compliance can be demonstrated. Without such criteria, the public, including this commenter, is denied the ability to attempt to impact any insufficient compliance demonstration requirement.	Ecology offers the following explanation. Please see response to Comment 49.

Comment Number	Date	Source	Document Location	Comment	Response
101	8/2/2012	Mr. Bill Green Comment 26	*Attachment 2*, treatment of CERCLA activities	**Pursuant to CAA § 502 (b)(5)(A) [42 U.S.C. 7661a (b)(5)(A)], 40 CFR 70, and WAC 173-401, include in *Attachment 2* all requirements to capture and report radionuclide air emissions, even those emissions from activities conducted in accordance with the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA). Also include any specific stop-work triggers.** The Washington State Department of Health (Health) already requires air monitoring plans with stop-work triggers for activities at CERCLA units. Incorporate requirements from these plans into *Attachment 2*. Compliance with the dose standard required by 40 CFR 61 Subpart H cannot be met without considering all radionuclide air emissions, including those radionuclide emissions resulting from CERCLA characterization and remediation activities. Activities conducted pursuant to CERCLA are exempt from the requirement to obtain a permit. However, Health cannot use the absence of a permit to excuse the impact CERCLA activities have on the offsite dose to the maximally exposed individual. In any case, once free of the CERCLA unit boundary CERCLA-generated radionuclide air emissions become subject to monitoring, reporting, and recordkeeping requirements of the CAA. Include in *Attachment 2* all requirements to capture and report radionuclide air emissions and all stop-work triggers.	Ecology offers the following explanation. The comment addresses inclusion of CERCLA activities into the FF-01 license. Guidance on permitting CERCLA activities is provided in EPA directive OSWER Directive 9355.7-03, "*Permits and Permit "Equivalency" processes for CERCLA On-site Response Actions*". Paraphrasing from the directive: CERCLA response actions are exempted by law (CERCLA section 121 (e) (1)) from the requirements to obtain Federal, State, or local permits related to any activities conducted completely on-site. In implementing remedial actions, EPA has consistently taken the position that the acquisition of permits is not required for on-site remedial actions. However, this does not remove the requirement to meet (or waive) the substantive provisions of permitting regulations that are applicable or relevant and appropriate requirements (ARARs). NCP Section 300.435 (b)(2) provides that once ARARs are selected, it becomes the responsibility of the lead agency during the Remedial Design (RD) and Remedial Action (RA) to ensure that all ARARs identified are met. The United States Environmental Protection Agency (EPA) is the lead agency for the CERCLA actions addressed in this comment and are responsible to ensure that US Department of Energy meets ARARs. Attachment 2 will not be modified to capture and report CERCLA triggers.

Comment Number	Date	Source	Document Location	Comment	Response
102	8/2/2012	Mr. Bill Green Comment 27	*Attachment 2*, general	**Track and report the total potential radionuclide emissions allowed from individual emission units specified in *Attachment 2, Enclosure 1 Emission Unit Specific License*; include potential radionuclide emissions from emission units regulated under the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA).** The sum of allowable potential emissions from emission units regulated in License FF-01 alone exceeds 10 mrem/yr to the maximally-exposed member of the public.	Ecology offers the following explanation. All required individual emission units are already tracked and monitored in the FF-01 license. Please see response to Comment 101 regarding emission units regulated under CERCLA.
103	8/2/2012	Mr. Bill Green Comment 28	*Attachment 3*, fees	**The fee assessment process used by the Benton Clean Air Agency (BCAA) to collect dollars from the Department of Energy in *Attachment 3* of this draft AOP is contrary to 40 CFR 70, RCW 70.94, and WAC 173-401. Because, in the context of this draft AOP, the BCAA is not a permitting authority[1] the BCAA is thus ineligible to determines, assess, or collect AOP fees. [*See* 40 CFR 70.6 (a)(7), 40 CFR 70.9, RCW 70.94.162 (1) and (3), WAC 173-401-620 (2)(f), and WAC 173-401-930(3).]** Only a permitting authority is allowed to determine, assess, and collect AOP fees. In this draft AOP, BCAA is not the permitting authority but merely a "permitting agency". Because BCAA is not a permitting authority it cannot participate in the fee collection process prescribed in 40 CFR 70 and in the *Washington Clean Air Act* (RCW 70.94). Even if the BCAA were considered a permitting authority rather than a "permitting agency", BCAA would be limited to collecting fees only in accordance with the BCAA fee schedule developed in accordance with 40 CFR 70.9 and WAC 173-401 *Part X*, rather than in accordance with a memorandum of agreement (MOA). Under 40 CFR 70 and the *Washington Clean Air Act* the permittee (U.S. DOE) is required to pay permit fees only in accordance with the permitting authority's fee schedule. Because the MOA was not developed pursuant to a fee schedule, the *Attachment 3* fee collection mechanism cannot comply with either 40 CFR 70 or the *Washington Clean Air Act*. Non-compliance results whether or not BCAA is considered a permitting authority rather than just a "permitting agency". Furthermore, Ecology, the permitting authority, can only issue a permit that is in compliance with all applicable requirements, including the requirement to pay permit fees in accordance with 40 CFR 70.9, RCW 70.94.162, and WAC 173-401	Ecology offers the following explanation. Please see response to Comment 80.

Comment Number	Date	Source	Document Location	Comment	Response
104	8/2/2012	Mr. Bill Green Comment 29	*Attachment 3*, general, missing applicable requirements	**Include applicable requirements from the dust control plan required by BCAA Administrative Order of Correction, No. 20030006. EPA has concluded CAA- applicable requirements include conditions resulting from a judicial or administrative process resulting from the enforcement of "applicable requirements" under the CAA. Such conditions must be included in title V permits.** On March 12, 2003, BCAA issued a Notice of Violation, (NOV), No. 20030006 to Bechtel National, Inc. (BNI) for failure to control particulate matter [WAC 173-400-040(2), 2002] and fugitive dust [WAC 173-400-040(8)(a), 2002] [2]. This NOV was based on serial observations of a BCAA inspector that occurred on February 20, 2003, on February 21, 2003, on March 5, 2003, on March 7, 2003, and again on March 11, 2003. On March 12, 2003, BCAA issued an Administrative Order of Correction, (Order), No. 20030006, based on the NOV. Under the Order, BNI was required to submit and implement a dust control plan for the Marshaling Yard. BNI subsequently developed a Marshaling Yard-specific plan (Plan). This Plan was submitted to BCAA on March 21, 2003. However, when preparing *Attachment 3* BCAA overlooked applicable requirements contained in BNI's Plan along with appropriate monitoring, reporting, and recordkeeping conditions. Please update *Attachment 3* to include all applicable requirements contained in the Plan.	Ecology offers the following explanation. Please see response to Comment 98. Additionally: • The case involving Order of Correction 20030006 was closed on October 16, 2003 • The Marshalling Yard dust control plan is a requirement of DENWP002, Amd 4, • The Marshalling Yard dust control plan is under the authority of Ecology. As a result of the three points above, the BCAA didn't overlook any applicable requirements.

Comment Number	Date	Source	Document Location	Comment	Response
105	8/2/2012	Mr. Bill Green Comment 30	Statement of Basis (SOB) for Standard Terms and General Conditions, page 1 of 50	**Include the Ecology – Health interagency agreement in the *Statement of Basis*. A *Statement of Basis* (SOB) is required by 40 CFR 70.7 (a)(5) and WAC 173-401-700 (8).** At the bottom of page 1 (one) of the SOB for *Standard Terms and General Conditions*, Ecology makes the following statement: "The interagency agreement between Ecology and Health . . . [is] documented in the Appendices to this Statement [of Basis]." However, this agreement is missing. The Ecology and Health interagency agreement also does not appear in the *Statement of Basis for Attachment 1* or in the *Statement of Basis for Attachment 2*. Ecology, the permitting authority, is required by 40 CFR 70.7 (a)(5) and WAC 173-401-700 (8) to "provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions)." (40 CFR 70.7 (a)(5)) This requirement cannot be met when Ecology fails to include the agreement under which Ecology and Health define their respective roles and responsibilities in coordinating activities concerning Hanford Site radionuclide air emissions.	Ecology offers the following explanation. The Statement of Basis is the factual and legal basis for each of the requirements Hanford is subject to. 1. The Hanford Site (USDOE) is not subject to the Inter-Agency Agreement (IAA). 2. The IAA is an agreement between the Department of Ecology and the Department of Health. 3. The IAA doesn't establish State Agency authority, only how Health will be reimbursed by Ecology for work supporting the AOP. 4. The IAA does not provide a factual or legal basis for any requirement in the Hanford AOP. As the IAA isn't required to be included in the Standard Terms and General Conditions (STGC), the text in the Statement of Basis for the Standard Terms and General Conditions has been changed to eliminate the reference to the IAA. The text now reads: "The Washington State Clean Air Act requires Ecology and the local air authorities to establish a program of renewable air operating permit [RCW 70.94.161 and Appendix A to Part 70 of Title 40 of the Code of Federal Regulations (40 CFR 70)]. Ecology is the lead agency for the Hanford AOP. The Hanford AOP is regulated and enforced by three agencies: Ecology, Health, and the Benton Clean Air Agency (BCAA). Ecology regulates non-radioactive toxic and criteria air emissions under the authority of 42 U.S.C. 7401, et. Seq, RCW 70.94, and WAC 173-401; Health regulates radioactive air emissions under the authority of RCW 70.92, WAC 173-480, and WAC 246-247; and Benton Clean Air Agency (BCAA) regulates asbestos and outdoor burning under delegation from Ecology."

Comment Number	Date	Source	Document Location	Comment	Response
106	8/2/2012	Mr. Bill Green Comment 31	SOB for Standard Terms and General Conditions, page 1 of 50, general: Ecology and Health interagency agreement	**The Ecology and Health interagency agreement is not the product of legislation and thus it cannot be used to transfer regulatory authority over Hanford's radionuclide air emissions from Health to Ecology.** *Attachment 2* (License FF-01) of the draft Hanford Site AOP is created pursuant to RCW 70.98, *The Nuclear Energy and Radiation Act* (NERA), and WAC 246-247, a regulation adopted under NERA. NERA grants only Health the authority to enforce RCW 70.98 and the regulations adopted thereunder. "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). … "Rules and regulations set forth herein are adopted and enforced by the department [Health] pursuant to the provisions of chapter 70.98 RCW which: (a) Designate the department as the state's radiation control agency having sole responsibility for the administration of the regulatory, licensing, and radiation control provisions of chapter 70.98 RCW. . ." (emphasis added) WAC 246-247-002 (1). No interagency agreement can replace plain language in a statute or revise a regulation.	Ecology offers the following explanation. Please see response to Comment 105. Please see Exhibit A, last paragraph on page 3 and the first paragraph on page 4.
107	8/2/2012	Mr. Bill Green Comment 32	SOB for Standard Terms and General Conditions, page 1 of 50, general: Ecology and Health interagency agreement	**Because the Ecology and Health interagency agreement is not the product of rulemaking, this agreement cannot change regulation or statute, and cannot be used to transfer regulatory authority between or among agencies.** Specifically: • the interagency agreement cannot be used to grant Ecology authority to subject License FF-01 to requirements of WAC 173-401, or to requirements of 40 CFR 70; • the interagency agreement cannot approve Health as a permitting authority under the CAA and 40 CFR 70; and • the interagency agreement cannot grant Ecology the authority to enforce the radionuclide NESHAPs.	Ecology offers the following explanation. Please see response to Comment 105. Please see Exhibit A, last paragraph on page 3 and the first paragraph on page 4.
108	8/2/2012	Mr. Bill Green Comment 33	SOB for Standard Terms and General Conditions, page 2 of 50, term "permitting agency"	**Clarify the term "permitting agency" is an invention of the Hanford Site AOP.** As used in the draft Hanford Site AOP, the term "permitting agency" has no basis in relevant statute or regulation, nor does a "permitting agency" possess any power or any authority derived from either statute or regulation	Ecology offers the following explanation. The entire bulleted item states that Ecology is the permitting authority and that that additional 'permitting agencies' and their authority are listed in other Statement of Basis. The use of the term is self-explanatory and no further explanation is required.

Comment Number	Date	Source	Document Location	Comment	Response
109	8/2/2012	Mr. Bill Green Comment 34	SOB for Standard Terms and General Conditions, page 8 of 50, general: Ecology and Health interagency agreement	**Change the discussion on support facilities to reflect that both 40 CFR 70.2 (*major source* definition) and WAC 173-401-200 (19) require use of the *Standard Industrial Classification Manual,* 1987, rather than the North American Industry Classification System**	Ecology offers the following explanation. Please see response to Comment 87.
110	8/2/2012	Mr. Bill Green Comment 35	SOB for Standard Terms and General Conditions, Section 5.17, page 18 of 50, greenhouse gases	**The *Tailoring Rule* is completely overlooked in *Section 5.17*. Greenhouse gases (GHGs) became subject to regulation under Title V of the CAA (and elsewhere within the CAA) effective January 2, 2011.** Beginning on January 2, 2011 regulation of GHG emissions is required for sources with a Title V permit. Pursuant to the *Tailoring Rule* [75 Fed. Reg. 31,514 (June 3, 2010)], GHG emissions are now regulated as an applicable requirement under 40 CFR 70 for any source with an existing Title V permit. The required unit of measurement for GHG emissions is short tons (2,000 lb/ton). The *Tailoring Rule* has been overlooked throughout the draft Hanford Site AOP and in all antecedent documentation provided to the public to support renewal of the Hanford Site AOP. Please correct this oversight and re-start the public review clock.	Ecology offers the following explanation. See comment 95 for additional information. As the permittee currently has no federally enforceable requirements related to GHG emissions (e.g. GHG BACT requirements resulting from PSD review process), the permittee is in compliance with GHG regulations. The explicit use of the term "*Tailoring Rule*" isn't required.

Comment Number	Date	Source	Document Location	Comment	Response
111	8/2/2012	Mr. Bill Green Comment 36	Statements of Basis, general enforcement authority	**Contrary to 40 CFR 70.7 (a)(5) and WAC 173-401-700 (8), the permitting authority failed to address the legal and factual basis for regulating radioactive air emissions in the draft Hanford Site AOP pursuant to *The Nuclear Energy and Radiation Act* (NERA) rather than in accordance with 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. One of the CAA pollutants the Hanford Site is required to control is radionuclides. However, in the draft Hanford Site AOP radionuclide applicable requirements 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 pollutant in a CAA-required permit?	Ecology offers the following explanation. Please see exhibit A, pages 1 through 4.
112	8/2/2012	Mr. Bill Green Comment 37	Statement of Basis (SOB) for *Attachment*	**In accordance with 40 CFR 70.7 (a)(5) and WAC 173-401-700 (8), provide the legal and factual basis for determining the 200W 283-W Water Treatment Plant, a facility previously subject to the requirements of 40 CFR 68 (Chemical Accident Prevention Provisions), is no longer subject to these requirements.** Requirements developed pursuant to CAA § 112 (r)(7) [42 U.S.C. 7412 (r)(7)] are applicable requirements under both WAC 173-401[1] and 40 CFR 70[2]. There must be some basis for choosing to eliminate several such federally applicable requirements	Ecology offers the following explanation. The de-registration of the 283-W Water Treatment Plant (Chlorine Tank) occurred in Revision E of 2006 AOP Renewal with an effective date of 4/23/2009, because the chlorine quantity was below 2500 pounds. Since the chlorine quantity was below 2500 pounds and de-registered from the AOP, this no longer became an applicable requirement and was removed from the AOP.

Comment Number	Date	Source	Document Location	Comment	Response
113	8/2/2012	Mr. Bill Green Comment 38	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.	Ecology offers the following explanation. The United States Department of Energy hasn't requested a permit for the Columbia River as a source of radioactive air emissions at this time.
114	8/2/2012	Mr. Bill Green Comment 39	Statement of Basis for *Attachment 2*, Section 7.0; pg. 19	**Correct the definition of ARARs to read "applicable or relevant and appropriate requirements".** ["However, the actions taken must meet the substantive requirements of applicable or relevant and appropriate" ~~regulations~~ requirements (ARARs)]	Ecology agrees. Permit language has been revised as recommended.

Comment Number	Date	Source	Document Location	Comment	Response
115	8/2/2012	Mr. Bill Green Comment 40	Statement of Basis for *Attachment 2*, Section 7.0; pg. 19	**In accordance with 40 CFR 70.7 (a)(5) and WAC 173-401-700 (8), provide the legal and factual basis for capturing all radionuclide air emissions that contribute to the offsite dose to the maximally exposed individual.** The discussion in *Section 7.0* regarding the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA) overlooks the duty to measure and report all radionuclide air emissions, and to abide by the dose standard in 40 CFR 61 Subpart H (Subpart H). The Washington State Department of Health (Health) is correct; actions conducted pursuant to CERCLA are exempt from the requirement to obtain a permit. However, Health errs if it assumes regulation pursuant to CERCLA vacates the dose standard in Subpart H. This standard cannot be ignored, whether or not radionuclide air emissions result from CERCLA characterization or remediation activities. Even if the CERCLA process at Hanford disregards measurement and reporting of radionuclide air emissions, Health's considerable regulatory authority and responsibility to enforce Subpart H is undiminished at the boundary to every CERCLA unit. Revise *Section 7.0* to reflect Health's authority to require air monitoring plans with stop-work triggers for all CERCLA activities and the Department of Energy's obligation to abide by the dose standard in Subpart H at all times. After all, radionuclide air emissions are the only emissions addressed in the Hanford Site AOP considered so hazardous that neither EPA nor Health recognizes a regulatory *de minimis* nor does either agency recognize a health-effects *de minimis* above background.	Ecology offers the following explanation. Additional language will be added to this section: Hanford is required to report all radioactive air emissions (including those resulting from CERCLA actions) to demonstrate compliance with all dose standards (WAC-246-247 and 40CFR61). Please see Comment 101. All air monitoring plan requirements and contents are the responsibility of the CERCLA Lead Agency. Health only provides review and comment. Section 7.0 will not be revised to include triggers.
116	8/2/2012	Mr. Bill Green Comment 41	Statements of Basis for *Attachment 2* and *Attachment 3*, fees	**Contrary to 40 CFR 70.7 (a)(5) and WAC 173-401-700 (8), the permitting authority overlooked the legal and factual basis for assessing and collecting permit fees associated with *Attachment 2* and with *Attachment 3* using regulations not supported by the CAA, 40 CFR 70.9, RCW 70.94.162, and WAC 173-401.** In the draft Hanford Site AOP the permittee is required to pay permit fees associated with *Attachment 2* pursuant to WAC 246-247-065, WAC 246-254-120 (1)(e), and WAC 246-254-170, while *Attachment 3* requires permit fee payment in accordance with a memorandum of agreement (MOA) between the permittee and the Benton Clean Air Agency (BCAA). None of these fee payment requirements comply with the federally approved permit fee payment requirements codified in 40 CFR 70.9, RCW 70.94.162, and WAC 173-401. What is the factual and legal basis for requiring the permittee to pay CAA- required fees in a CAA-required permit contrary to requirements of the CAA?	Ecology offers the following explanation. Please see response to Comment 80.
117	8/2/2012	Mr. Bill Green Comment 42	Statements of Basis	**In accordance with 40 CFR 70.7 (a)(5) and WAC 173-401-700 (8), provide the legal and factual basis for omitting public participation for *Attachment 2*, even though *Attachment 2* contains federally enforceable requirements. Public participation is required by 40 CFR 70.7 (h) and WAC 173-401-800.** Health issued *Attachment 2* as final effective February 23, 2012. Public participation for the remainder of the draft Hanford Site AOP did not begin until June 4, 2012, several months after Health's final action on *Attachment 2*.	Ecology offers the following explanation. Please see response to Comment 77..

Comment Number	Date	Source	Document Location	Comment	Response
118	8/2/2012	Mr. Bill Green Comment 43	Statement of Basis for *Attachment 3*	**In accordance with 40 CFR. 70.7 (a)(5) and WAC 173-401-700 (8), provide the legal and factual basis for the Bechtel National, Inc., dust control plan.** [*See* Administrative Order of Correction, No. 20030006, issued on March 12, 2003.]	Ecology offers the following explanation. Please see response to Comment 98 and 104.
119	8/2/2012	Mr. Bill Green Comment 44	Application oversight	**Contrary to 40 CFR 70.5 (c) and WAC 173-401-510 (1), the Hanford Site AOP application did not address the *Tailoring Rule* [75 Fed. Reg. 31,514 (June 3, 2010)]. It is also not apparent calculations in the application considered all six (6) CO_2 equivalents comprising the regulated air pollutant defined as greenhouse gases (GHGs).** Beginning on January 2, 2011 regulation of GHG emissions is required for sources with a Title V permit. Pursuant to the *Tailoring Rule*, GHG emissions are regulated as an applicable requirement under 40 CFR 70 for any source with an existing Title V permit[1]. The specified unit of measurement is short tons. Both 40 CFR 70.5 (c) and WAC 173-401-510 (1) require that "... [a]n application may not omit information needed to determine the applicability of, or to impose, any applicable requirement,..." [40 CFR 70.5 (c); WAC 173-401-510 (1)] and further that "[a] permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit..." 40 CFR 70.5 (c)(3)(i); WAC 173-401-510 (2)(c)(i). GHG emissions have been a regulated air pollutant under the CAA, 40 CFR 70, and WAC 173-401 since early 2011. Please update the application with all required information and re-start public review with a complete application.	Ecology offers the following explanation. Please see response to Comment 95 and 110. There is no compelling reason to further extend the public review period.
120	8/2/2012	Mr. Bill Green Comment 45	Application oversight	**Contrary to 40 CFR 70.5 (c) and WAC 173-401-510 (1), the Hanford Site AOP application did not contain a schedule of compliance required by 40 CFR 70.5 (c)(8)(iii)(C) and WAC 173-401-510 (2)(h)(iii)(C) for preparation of "Construction Phase Fugitive Dust Control Plan(s)", an AOP applicable requirement overlooked since 2006.** Please update the application with all required information and re-start public review with a complete application.	Ecology offers the following explanation. Please see response to Comment 98 and 104. There is no compelling reason to further extend the public review period.

Comment Number	Date	Source	Document Location	Comment	Response
121	8/2/2012	Mr. Bill Green Comment 46	Public review file deficiencies	**Provide a complete public review file as required by 40 CFR 70.7(h)(2), and WAC 173-401-800, and restart public review. A complete public review file includes all information used by Ecology and Health in the permitting process.** EPA's interpretation of certain language in 40 CFR 70.7(h)(2) is captured as a finding in case law. According to the appellate court decision 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 CFR § 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) With this EPA interpretation in mind, relevant information used it in the permitting process, but overlooked in the public review file, minimally includes "Ecology's responses and resolution of the site's informal advance comments on the draft AOP sections."[1] Because "[m]ost comments and changes [were] [ ] accepted. . ."[2] there can be no question Ecology used these comments in the permitting process. Even issues raised in Hanford Site comments and rejected by Ecology are a source of information used in the permitting process; as are Ecology's reasons for rejecting the comments. Also overlooked is relevant information used by Health to arrive at conditions appearing in License FF-01. This information includes the EPA-DOE memorandum of understanding (MOU): *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. This MOU is the basis for implementing federally enforceable NESHAP requirements regulating radionuclide air emissions, including emission units designated as "minor". "This effort has been undertaken to assure uniform and consistent interpretation of the NESHAP provisions for radionuclides at DOE facilities and EPA regional offices." *Id*. at 1. The MOU addresses various monitoring, testing, and QA requirements of 40 CFR61.93 (Subpart H); acceptable protocols for periodic confirmatory measurements; eligible requirements for exemption from submitting an application for any new construction or modification within an existing facility; an agreement the dose standard of 40 CFR 61, Subpart H applies to emissions from diffuse sources such as evaporation ponds, breathing of buildings and contaminated soils; and many other aspects regarding regulation of radionuclide air emissions at DOE facilities like the Hanford Site. *Attachment 2* could not have been prepared without using information in the MOU, yet this MOU does not appear in the public review file. Ecology additionally overlooked documentation relied on to eliminate 40 CFR 68 (Chemical Accident Prevention Provisions) as an applicable requirement in this draft Hanford Site AOP renewal. In the current AOP, the 200W 283-W Water Treatment Plant is subject to several paragraphs of 40 CFR 68. Also, the version of *Attachment 2* presented to the public for review could not have been prepared without the dispositions to Hanford Site comments. These pre-public review comments and dispositions need to be included in the public review file. Please update the public review file to include all information used by the agencies in the permitting process and re-start the public review clock.	Ecology offers the following explanations: Ecology agrees that the resolution of the advanced draft comments received from the permittee should have been included. As a result, a second comment period from December 3, 2012 to January 4, 2013 and a continuance from January 14 to January 25, 2013, was held. For the Memorandum of Understanding (MOU): • The MOU doesn't provide specific rules or regulations as they relate to the Hanford site AOP. • All enforceable terms and conditions are currently present in the Hanford AOP • The MOU is not considered a significant document in regards to formation of the Hanford AOP and therefore is not included in the public review file. For the 200W 283-W Water Treatment Plant, please see response to Comment 112. Please see response to Comment 49 and Exhibit A, second full sentence on page 6 "… Part 70 cannot be used to revise or change applicable requirements" for details dealing with the FF-01 license and public review.

Comment Number	Date	Source	Document Location	Comment	Response
122	8/2/2012	Mr. Bill Green Comment 47	Public review file deficiencies	**The public review file is missing other key documents and agreements used by Ecology and Health in the permitting process. Provide a complete public review file as required by 40 CFR 70.7(h)(2), and WAC 173-401-800, and restart public review.** The following documents used by the permitting authority and Health are missing from the public review file: • The Ecology-Health interagency agreement referenced on page 1 of 50 of the Statement of Basis (SOB) for Standard Terms and General Conditions. This agreement is the foundation upon which Ecology has constructed the draft Hanford Site AOP. • NESHAPs delegation notice: *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). This *Federal Register* notice specifies the CAA authorities delegated to Health, those authorities retained by EPA, and EPA's interpretation of CAA §116[1]. Health used this partial delegation to create License FF-01, but overlooked some of the restrictions. • The "Construction Phase Fugitive Dust Control Plan(s)" required in condition 8.1, page ATT 1-38 of *Attachment 1*, and any associated schedule of compliance. The plans provide the basis for compliance with federally enforceable fugitive dust requirements implemented in accordance with WAC 173-401-040 (9)(a). • The renewal application and application update were overlooked. Both the Hanford Site AOP renewal application and application update were omitted from the public review file transmitted by Ecology to the official information repository at Washington State University, Consolidated Information Center. While this commenter was able to obtain a copy of the application through a *Freedom of Information Act* (FOIA) request and a copy of the application update through a request pursuant to the *Public Records Act* (PRA), requiring the use of FOIA and the PRA to obtain relevant material used by the permitting authority in the permitting process does not comply with 40 CFR 70.7(h)(2) and WAC 173-401-800	Ecology offers the following explanation. For the Ecology Health Interagency Agreement (IAA), please see response to Comment 105. For the NESHAPs delegation, please see Exhibit A. For the fugitive dust plan, please see response to Comments 98 and 104. For the application and application update, they were overlooked. As a result, a second comment period from December 3, 2012 to January 4, 2013 and a continuance from January 14 to January 25, 2013, was held.
123	8/2/2012	Mr. Bill Green Comment 48	Public review file deficiencies	**The public review file is missing the Administrative Order of Compliance (#20030006) issue by BCAA to Bechtel National, Inc., and the dust control plan for the Marshaling Yard required by this Administrative Order.** These documents are the basis for CAA-applicable requirements BCAA must include in *Attachment 3*[1]. Please update the public review file to include all information used by BCAA in the permitting process and re-start the public review clock.	Ecology offers the following explanation. Please see response to Comment 98 and 104. There is no compelling reason to further extend the public review process.

Comment Number	Date	Source	Document Location	Comment	Response
124	8/2/2012	Mr. Bill Green Comment 49	Overlooked emission unit	**Overlooked in *Attachment 2* (License FF-01) of this draft Hanford Site AOP is The Environmental Assessment Services (EAS) environmental radio-laboratory.** The EAS environmental radio-laboratory should be added to Hanford's AOP as a support facility. Pacific Northwest National Laboratory (PNNL) recently transitioned Hanford's Environmental Monitoring Program (EMP) to EAS. Transfer of this substantial work scope to EAS means the Hanford Site[2] is the source for most of EAS's income. The Hanford Site also imposes restrictions on EAS employee conduct and on certain employee activities. Additionally, the Hanford Site is the source of the bulk of EAS's radionuclide air emissions; this because of the increase analyses of radionuclide- contaminated samples originating from the Hanford Site. EAS is located adjacent to the Hanford Site. Additionally Hanford Site procedures and protocols control: • how EAS conducts its sampling and analyses activities; • what specialized training is required to access the Hanford Site and certain sampling areas; and • the need to conduct background investigations on EAS employees required to gain access to the Hanford Site, including the need to impose a code of conduct for EAS employee's activities on and off the Hanford Site. The EAS environmental laboratory should be considered a support facility under 40 CFR 70 and WAC 173-401, because: • The Hanford Site has a substantial financial interest in EAS, accounting for a majority of EAS's income. (Absent Hanford and the associated tax-payer dollars, it is very doubtful enough funding would be available to sustain an environmental radio- laboratory; nor would sufficient interest exist to drive characterization of radionuclides in the local environment.); • the EAS environmental radio-laboratory is located adjacent to the Hanford Site, easily accessed via short-distance travel on public roads; • Hanford Site protocols control EAS sampling and analytical laboratory processes and analytical procedures; • Radio-analyses conducted at EAS either were performed at another Hanford Site laboratory (e.g. PNNL EMP program) or could be performed at another Hanford Site radio-laboratory (e.g. 222-S, WSCF, etc.) • The Hanford Site specifies EAS employee conduct, training, site access requirements, and even controls which EAS employees are allowed on the Hanford Site. EAS is effectively under Hanford Site's common control. EAS is located adjacent to the Hanford Site, and EAS is a radio-laboratory like several other radio-laboratories on the Hanford Site. Incorporate EAS into Hanford's AOP as a support facility.	Ecology offers the following explanation. A determination of applicability of the Environmental Assessment Services (EAS) environmental radio-laboratory has been undertaken. The determination has reaffirmed that the facility is independently owned and operated, that no contractual control of EAS by USDOE or its subcontractors is exhibited, and that it meets no other criteria for applicability under WAC 173-401-300. EAS will not be incorporated into this permit.

Comment Number	Date	Source	Document Location	Comment	Response
125	8/2/2012	Mr. Bill Green Comment 50	Overlooked emission unit	**Overlooked in *Attachment 2* (License FF-01) of this draft Hanford Site AOP 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. 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; 4) neither Health nor EPA recognize either a regulatory *de minimis* or a health-effects *de minimis* for radionuclide air emissions above background.	Ecology offers the following explanation. Please see response to Comment 113.
126	8/2/2012	Mr. Bill Green Comment 51	Application oversight, overlooked emission unit, and public review file deficiency; 618-11	**The 618-11 Burial Ground is completely overlooked in the draft Hanford Site AOP. This burial ground is also overlooked in the AOP application and in information contained in the public review file.** The 618-11 Burial Ground contains a huge curie inventory with an accompanying significant potential-to-emit; yet this source of diffuse and fugitive radionuclide air emissions is completely overlooked. While the 618-11 Burial Ground may someday be characterized and remediated in accordance with the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA), this burial ground is presently a source of CAA-regulated hazardous air pollutants and is immediately subject to requirements of the CAA. Such requirements include monitoring, reporting, and recordkeeping. Update the application and the draft AOP, and restart the public review clock.	Ecology offers the following explanation. Please see response to Comment 101. No compelling reason exists to update the application or further extend the public review process.
127	8/2/2012	Mr. Bill Green Comment 52	Application oversight, overlooked emission unit, and public review file deficiency	**Address all emission units contained in the annual radionuclide air emissions reports required by 40 CFR 61 Subpart H in the Hanford Site AOP and in all required antecedent documentation.** For example, the 618-10 Burial Ground is contained in the calendar year 2010 annual radionuclide air emissions report (DOE/RL-2011-12, Revision 0) but is not contained in the draft Hanford Site AOP. All emission units with the potential-to-emit any CAA-regulated air pollutant must appear in the Hanford Site AOP. Even emission units remediated under the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA) should be addressed, perhaps in a separate table akin to an inapplicable requirements table, if for no other reason than to assure that no contributor to the offsite dose to the maximally exposed individual has been overlooked. Update the application and the draft AOP, and restart the public review clock.	Ecology offers the following explanation. Please see response to Comment 101. No compelling reason exists to update the application or further extend the public review process.

Comment Number	Date	Source	Document Location	Comment	Response
128	8/2/2012	Mr. Bill Green Comment 53	General	**The permitting authority cannot seek to amend, modify, or otherwise revise the Hanford Site AOP that expired on December 31, 2011. Any new or modified terms or conditions can only become effective in the final permit issued at the conclusion of the current renewal effort. Until the final 2013 renewal AOP is issued, the permittee must abide by all conditions in the 2006-2011 version.** Content in the 2006-2011 Hanford Site AOP was locked on December 31, 2011, when this AOP expired. The permittee can continue to operate under this AOP version because it submitted a timely application and Ecology did not request additional information to correct the application oversights. However, Ecology is precluded from making any changes to the 2006-2011 AOP, even very minor changes associated with an administrative amendment.	Ecology offers the following explanation. Until the current AOP renewal is issued, the permittee is operating under and conforming to the AOP that expired on December 31, 2011. The expired AOP is not being modified, amended, or otherwise revised.
129	8/2/2012	Mr. Bill Green Comment 54	Response to comments, general	**Respond to all significant comments above pertaining to federally enforceable applicable requirements in accordance with the federal *Administrative Procedures Act* (APA) (5 U.S.C. 500 *et. seq.*).** Unlike the Washington State *Administrative Procedures Act* (RCW 34.05) the federal APA requires a response to all significant comments. According to the EPA, failure to respond to significant comments is itself subject to petition under section 505(b)(2) of the CAA [42 U.S.C. 7661d (b)(2)] and 40 CFR 70.8(d)[1]. Courts have determined "significant comments" to be those that raise significant problems; those that can be thought to challenge a fundamental premise; and those that are relevant or significant. [*State of N.C. v. F.A.A.*, 957 F.2d 1125 (4th Cir. 1992); *MCI WorldCom, Inc. v. F.C.C.*, 209 F.3d 760 (D.C. Cir. 2000); *Texas Office of Public Utility Counsel v. F.C.C.*, 265 F.3d 313 (5th Cir. 2001), cert. denied, 535 U.S. 986, 122 S. Ct. 1537, 152 L. Ed. 2d 464 (2002) and *Grand Canyon Air Tour Coalition v. F.A.A.*, 154 F.3d 455 (D.C. Cir. 1998)]. (*After* Dietz, Laura Hunter, J.D., et. al., *Federal Procedure for Adoption of Rules, Response to comment*, 2 Am. Jur. 2d Administrative Law § 160, April 2010) Please respond to all significant comments pertaining to federally enforceable applicable requirements in accordance with the federal *Administrative Procedures Act*.	Ecology agrees and has responded to all comments, which are consolidated in this table
130	8/2/2012	Mr. Jeff Thompson, Friends of the Columbia Gorge	General	RCW 43.97.025(1) requires that all state agencies comply with the Scenic Area Act and the Management Plan for the National Scenic Area. As such, Ecology must ensure that the project is consistent with the Scenic Area Act and the Management Plan. The Management Plan for the Columbia River Gorge National Scenic Area states 'air quality shall be protected and enhanced, consistent with the purposes of the Scenic Area Act.' NSA Management Plan I-3-32. To carry out this mandate, the Department of Environmental Quality, Southwest Clean Air Agency, U.S. Forest Service and Columbia River Gorge Commission are charged with the responsibility of adopting a comprehensive air quality strategy for the Columbia River Gorge that addresses *all* sources of air pollution. The current air quality strategy calls for continued improvement of air quality within the National Scenic Area especially in regards to visibility and the emission of any pollutants that may adversely affect the area's scenic, natural, cultural, or recreational resources. The Department of Ecology must ensure that the proposed permit will comply with the Management Plan and National Scenic Area Act standards and protect the Gorge from adverse impacts of air pollution. To ensure that the Gorge is protected from adverse impacts to air quality the Department of Ecology should model air pollution impacts to the Columbia River Gorge national Scenic Area.	Ecology offers the following explanation The development of the Air Operating Permit's (AOP) underlying permits, licenses, orders, and regulations conformed with RCW 43.97.025(1) air pollution impact modeling performed when required by regulations. These underlying requirements were then incorporated into the Air Operating Permit (AOP). With the underlying requirements conforming to regulations, the AOP as a whole conforms with RCW 43.97.025(1). No compelling reason exists to perform additional modeling of air emissions.

Comment Number	Date	Source	Document Location	Comment	Response
131	1/3/2013	Mr. Bill Green Comment 55	General	**All comments submitted to Ecology during the first comment period (June 4, 2012, through August 3, 2012) are incorporated by reference.** On August 2, 2012, this commenter submitted 54 comments on the draft Hanford Site AOP renewal. Because "[t]he AOP and statement of basis for this [second] comment period are exactly the same as presented in the first comment period"[1, 2], these 54 comments still apply. Also, comments contained in this commenter's August 2, 2012, transmittal letter still apply.	Ecology agrees. All prior submitted comments from the first comment period are contained in this response summary as comments 1 to 130.
132	1/3/2013	Mr. Bill Green Comment 56	Attachment 2, first 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, however, grant Health certain enforcement authority for licenses issued in accordance with RCW 70.98 and the rules adopted thereunder.[1] *Attachment 2*, Section 3.10, correctly captures Health's authority under RCW 70.94.	Ecology offers the following explanation. Please see response to Comment 49 and 75. –

Comment Number	Date	Source	Document Location	Comment	Response
133	1/3/2013	Mr. Bill Green Comment 57	Statement of Basis, general enforcement authority, reference Bill Green comment 36	**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 radioactive air emissions in the draft Hanford Site AOP renewal pursuant to RCW 70.98, *the Nuclear Energy and Radiation Act* (NERA) rather than in accordance with WAC 173-400 and the federal *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. One of the CAA pollutants the Hanford Site is required to control is radionuclides. However, in the draft Hanford Site AOP radionuclide terms and conditions are developed and enforced pursuant to NERA rather than in accordance with WAC 173-400 and Title V of the CAA. Ecology adopted the Radionuclide NESHAPs by reference into its state regulations[1]. These regulations apply statewide[2]. Through the EPA authorization of Ecology as a Part 70 permit issuing authority, Ecology has authority under the CAA to implement and enforce the Radionuclide NESHAPs against sources, such as the Hanford Site, when the Radionuclide NESHAPs are included in the Part 70 permits Ecology issues. Furthermore, terms and conditions developed by Ecology pursuant to the Radionuclide NESHAPs are federally enforceable, even though EPA has not delegated enforcement of these NESHAPs to Ecology[3]. Had Ecology chosen to regulate radionuclides in this draft Hanford Site AOP renewal pursuant to WAC 173-400, this draft AOP renewal would comply with Title V of the CAA. Pursuant to 40 C.F.R. 70.7 (a)(5) and WAC 173-401-700 (8), supply the legal and factual basis for regulating radionuclides in this draft Hanford Site AOP renewal through terms and conditions developed under the authority of NERA rather than through terms and conditions created in accordance with WAC 173-400 and Title V of the CAA.	Ecology offers the following explanation. Please see responses to Comment 75.
134	1/3/2013	Mr. Bill Green Comment 58	Standard Terms and Conditions, Section 4.4, and Section 2.0, and SOB for Standard Terms and Conditions pg. 9 of 50	**Add UniTech Services Group, formerly Interstate Nuclear Services (INS), to the Hanford Site AOP.** This laundry has a "direct contract with DOE-RL to provide laundry service for RL, ORP and site contractors; including both regulated (rad) and nonregulated, garments, as well as face masks."[1] All work UniTech Services Group performs is for DOE, whether DOE's Idaho National Environmental Engineering Laboratory, DOE's Sandia National Laboratory, or DOE's Hanford Site.[2] Because "DOE is considered the owner and operator of Hanford"[3], because 100 percent of the work performed by UniTech Services Group is for DOE, and because UniTech Services Group is locate adjacent to DOE's Hanford Site, this laundry is a part of DOE's Hanford major stationary source.	Ecology provides the following explanation. The Air Operating Permit Statement of Basis on page 9 states "An entity outside the Hanford Site is not considered a 'support facility' to DOE under the guidance on 'common control' if the percentage of the **entity's output provided to the Hanford Site** is less than 50%." {emphasis added} As this statement remains valid, UniTech Services Group will not be added to the Hanford AOP.

Comment Number	Date	Source	Document Location	Comment	Response
135	1/3/2013	Mr. Bill Green Comment 59	Public Review Process	**Provide the public with the full comment period required by WAC 173-401-800 (3).** Public notice for the second round of public review on the draft Hanford Site AOP renewal was published in the December 2, 2012, issue of the *Tri-City Herald*. A similar notice was also published in the December 10, 2012, edition of the *Permit Register* (Volume 13, Number 23). Both notices state the public review period for the draft Hanford Site AOP renewal extends from "3 December, 2012, to 4 January, 2013". This period does not comply with regulation. According to WAC 173-401-800 (3): ". . .[the] comment period begins on the date of publication of notice in the *Permit Register* or publication in the newspaper of largest general circulation in the area of the facility applying for the permit, **whichever is later**. . ." (emphasis is mine) WAC 173-401-800 (3). The "**whichever is later**" date between December 2, 2012, and December 10, 2012, is December 10, 2012. Thus, the public comment period should have begun no sooner than December 10, 2012, rather than on December 3, 2012, and should have extended for a minimum of thirty (30) days thereafter. The requirements for public involvement cannot be met when the thirty (30) day comment period begins BEFORE the date of publication of notice in the *Permit Register*. Restart public involvement following the process required by WAC 173-401-800 (3).	Ecology provides the following explanation. The additional comment period ran from December 3, 2013 to January 4, 2013 and a continuance from January 14, 2013 to January 25, 2013. This yields 39 days for public comment and exceeds the required 30 day minimum.

Comment Number	Date	Source	Document Location	Comment	Response
136 Part A **NOTE:** This comment is too long to fit on one page. It has been split into two sections, a part A and a part B, by Ecology personnel.	1/3/2013	Mr. Bill Green Comment 60	Incomplete public review file. See Bill Green comments 45, 46, 47, and 48.	**Provide a complete public review file as required by 40 CFR 70.7(h)(2), and WAC 173-401-800, and restart public review. A complete public review file includes all information used by Ecology, Health, and BCAA in the permitting process.** Ecology states the only change between the first and second public comment periods is the documentation provided to the public[1], yet Ecology overlooks most of the missing information identified in comments 45, 46, 47, and 48. Material used in the permitting process must be furnished to support public review. Please provide the public with ALL information Ecology, Health, and BCAA used in the process of creating the draft Hanford Site AOP renewal. Quoting from comment 46 above: 'EPA's interpretation of certain language in 40 CFR 70.7(h)(2) is captured as a finding in case law. According to the appellate court decision 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)' Relevant information used in the permitting process but once again not provided to the public to support review of the draft Hanford Site AOP renewal includes, but is not limited to, the following: • The Ecology-Health interagency agreement, referenced on page 1 of 50 of the Statement of Basis (SOB) for Standard Terms and General Conditions, - This agreement is NOT included in the draft permit renewal or in any SOB even though Ecology states it is included. "The interagency agreement between Ecology and Health . . . [is] documented in the Appendices to this Statement." SOB for Standard Terms and General Conditions, at 1 Giving credit to this quote, Ecology minimally failed to provide the public with an interagency agreement Ecology recognizes as significant to the permitting process. Ecology's failure to include the interagency agreement ". . .in the Appendices to this Statement" also indicates the Statement of Basis is not complete. *See* comment 47. • Administrative Order number 20030006, dated March 12, 2003, and resulting dust control plan submitted to BCAA on March 21, 2003 – Information provided the public is insufficient because it does not contain either the administrative order (AO) or the resulting dust control plan. EPA has determined an AO reflects the conclusion of an administrative process resulting from the enforcement of "applicable requirements" under the CAA. (See Washington State SIP and WAC 173-400-040 (9)(a)) Thus, all CAA-related requirements in an AO are appropriately treated as "applicable requirements" and must be included in title V permits. (*See* Comment 29, footnote 4.) Furthermore, neither the AOP renewal application nor the draft Hanford Site AOP renewal is complete. The application not complete because it does not contain all information needed to determine all applicable requirements contrary to 40 C.F.R. 70.5 (c), 40 C.F.R. 70.5 (c)(3)(i), WAC 173-401-510 (1), and WAC 173-401-510 (2)(c)(i). The Hanford Site AOP renewal is also not complete because it does not contain applicable requirements resulting from the AO and dust control plan as required by 40 C.F.R. 70.7 (a)(1)(iv) and WAC 173-401-600 (1). *See* comments 25 (footnote 1), 43, and 48.	Ecology offers the following explanation. For the Ecology Health Interagency Agreement (IAA), please see response to Comment 105. For the BCAA Order of Correction 20030006, please see response to Comments 98 and 104.

Comment Number	Date	Source	Document Location	Comment	Response
136 Part B **NOTE:** This comment is too long to fit on one page. It has been split into two sections, a part A and a part B, by Ecology personnel.	1/3/2013	Mr. Bill Green Comment 60	Incomplete public review file. See Bill Green comments 45, 46, 47, and 48.	• "Construction Phase Fugitive Dust Control Plan(s)", required by condition 8.1, on page. ATT 1-38. The requirement to prepare "Construction Phase Fugitive Dust Control Plan(s)" first appeared in the AOP version issued as final in 2006. If the plan(s) have been prepared sometime during the intervening six (6) years, then Ecology has no option but to include them in the public review file. On the other hand, if the plan(s) have not been prepared then Ecology has no option but to require a schedule of compliance. A sources not in compliance with all applicable requirements at the time of permit issuance is required by 40 C.F.R. 70.6(c)(3) and WAC 173-401-630 (3) to adhere to a schedule of compliance that is at least as stringent as any judicial consent decree or administrative order [40 C.F.R. 70.5 (c)(8)(iii)(C),WAC 173-401-510 (h)(iii)(C)]. The plan(s) or schedule of compliance are required to meet federally enforceable requirements implemented through the Washington State SIP and WAC 173-400-040 (9)(a). *See* comments 23 and 47. • The *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 This memorandum of understanding (MOU) is necessary to provide the public with the terminology and an understanding of the concepts required to evaluate compliance with 40 C.F.R. 61, subpart H. Without this MOU, *Attachment 2* could not have been prepared, nor can terms and conditions in *Attachment 2* be properly evaluated with respect to compliance with the radionuclide NESHAPs applicable to Hanford. Thus, the MOU is used in the permitting process. *See* comments 24 and 46. In accordance with 40 CFR 70.7(h)(2) and WAC 173-401-800, please provide the public with all information used in the permitting process and re-start public review.	Ecology offers the following explanation. For the fugitive dust plan, please see response to Comments 98 and 104. For the Memorandum of Understanding (MOU): • The MOU doesn't provide specific rules or regulations as they relate to the Hanford site AOP. • All enforceable terms and conditions are currently present in the Hanford AOP • The MOU is not considered a significant document in regards to formation of the Hanford AOP. No compelling reasons exist to further extend the public review process.

Comment Number	Date	Source	Document Location	Comment	Response
137	1/3/2013	Mr. Bill Green Comment 61	Incomplete application. *See* comments 44 and 60	**Provide a complete application as required by 40 C.F.R. 70.5 (c) and WAC 173-401-510 (1), and re-start public review.** Required items missing from the Hanford Site AOP renewal application include, but are not limited to, the following: • Statements required by 40 C.F.R. 70.5 (8)(iii)(A)[1] & (B)[2] and WAC 173-401-510 (h)(iii)(A) & (B) (*See also* comment 60, second and third bullets.) • Emission rates, including those for greenhouse gas (GHG) emissions, expressed in tons per year (tpy) as required by 40 C.F.R. 70.5 (c)(3)(iii)[3] and WAC 173-401-510 (2)(c)(iii) – (*See* comments 44 and 20.) • All newly regulated internal combustion engines, including those of less than 500 HP now regulated pursuant to 40 C.F.R. 63, subpart ZZZZ as required by 40 C.F.R. 70.5 (c)[4] and WAC 173-401-510 (1). *See* comment USDOE-37: "Three additional newly regulated stationary source internal combustion engines of less than 500 HP have been identified that were inadvertently omitted from the Hanford Site AOP Renewal Application (including the supplemental application document) . . ." comment USDOE-37[5], copy obtained through the *Public Records Act*) The permittee also has a nondiscretionary duty to supplement and correct its application, to include information pertaining to any new applicable requirements. "In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit." 40 C.F.R. 70.5 (b) & WAC 173-401-500 (6) Likewise, Ecology has a duty to provide the public with a complete application (in addition to all information used in the permitting process) to support public review. Please comply with 40 C.F.R. 70.5 (c) and WAC 173-401-510 (1) by providing a complete application and re-start public review.	Ecology offers the following explanations. Please see response to Comments 98 and 104 for the first bullet. Please see response to Comment 95 and 110 for the second bullet. For the third bullet, 40 CFR 63, subpart ZZZZ states in 63.6595 "…must comply with the applicable emission limitations and operating limitations no later than May 3, 2013." As this date is still in the future, it isn't currently an applicable requirement at this time. No compelling reason exists to further extend the public comment period.
138	1/24/2013	Mr. Bill Green Comment 62	General	**All comments submitted to Ecology during the first and second comment periods (June 4, 2012, through August 3, 2012, and December 10, 2012 through January 4, 2013) are incorporated by reference.** This commenter previously submitted 61 comments in accordance with timeframes specified for earlier public comment periods. All previous comments submitted continue to apply and are incorporated by reference because "[t]he AOP and supporting documents are exactly the same as in the earlier comment periods"[1]. Comments include any associated footnote(s).	Ecology agrees. All prior submitted comments from the first and second comment period are contained in this response summary as comments 1 to 130 for the first comment period and 131 to 137 for the second comment period.

Comment Number	Date	Source	Document Location	Comment	Response
139 Part A **NOTE:** This comment is too long to fit on one page. It has been split into two sections, a part A and a part B, by Ecology personnel	1/24/2013	Mr. Bill Green Comment 63	Public review process, *see* comment 59	**Provide the public with an accurate notice of the opportunity to submit comments on the draft Hanford Site AOP renewal along with a minimum of thirty (30) days to provide such comments, as required by 40 C.F.R. 70.7 (h) and WAC 173-401-800.** Timeline: December 10, 2012 through January 4, 2013: Ecology opened a second (2nd) comment period on the draft Hanford Site AOP renewal on December 10, 2012. This comment period extended from December 10, 2012 through January 4, 2013. The second (2nd) comment period was supported by "the permit application, its supplement, and supporting material. . .[1]", information omitted from the initial public review file[2]. January 5, 2013 through January 13, 2013: No comment period on the draft Hanford Site AOP renewal was open from January 5, 2013 through January 13, 2013. January 14 to January 25, 2013: Ecology opened a comment period on the draft Hanford Site AOP renewal from January 14 to January 25, 2013. In the January 10 edition of the *Permit Register* (Volume 14, Number 1), Ecology explains its rationale for opening a comment period from January 14, 2013 to January 25, 2013, as follows: This permit register entry is to extend the comment period listed in the 12/10/2012 permit register of 12/10/2012 to 1/4/2013. This **extension** will run [from] 14 [January] to 25 January, 2013. Combining the 25 days from the 12/10/2012 register with the 14 days on this announcement will provide the public with more than the minimum required 30 days comment period on the draft AOP. (emphasis is mine) *Permit Register* Vol. 14, No. 1. Available at: http://www.ecy.wa.gov/programs/air/permit_register/Permit_PastYrs/2013_Permits/2013_01_10.h tml	Ecology provides the following explanatioFn. WAC 173-401-800 (3) states that a minimum of thirty days for public comment will be provided with the later of the dates between newspaper publication or publication in the permit register. Ecology provide a total of 39 days for public comment from the December 10, 2012, Permit Register publication. No compelling reason exists to further extend the public comment period.

Comment Number	Date	Source	Document Location	Comment	Response
139 Part B **<u>NOTE:</u>** This comment is too long to fit on one page. It has been split into two sections, a part A and a part B, by Ecology personnel	1/24/2013	Mr. Bill Green Comment 63	Public review process, *see* comment 59	Ecology is thus proposing to combine two (2) comment periods that are separated in time by nine (9) days into a single comment period. Each of the two (2) comment periods is less than thirty (30) days in length. However, when the two (2) comment periods are combined the total length exceeds thirty (30) days. Ecology calls the process of combining the two (2) comment periods an extension of the first (1st) of these two (2) comment periods. Ecology mis-understands "extension" as it applies to a comment period that is closed. The word "extension" means "an increase in the length of time"[3]; closed means "to bring to an end"[4]. Ecology can no more increase the number of days of a comment period that has come to an end than it can increase the number of days of a life that has come to an end. Ecology is not increasing the length of time of a comment period that closed on January 4, 2013, by adding days from a comment period that opened more than one (1) week later. Rather Ecology has created a new comment period, one with a distinct starting date (January 14, 2013) and a distinct ending date (January 25, 2013). The sum of one (1) comment period that cannot comply with regulatory requirements plus another comment period that cannot comply with regulatory requirements is two (2) comment periods that cannot comply with regulatory requirements. Ecology's position to the contrary is in error. Each distinct comment period is individually subject to the requirements of 40 C.F.R. 70.7 (h) and WAC 173-401-800. Ecology's attempt to combine two (2) separate and non-compliant comment periods also overlooks the public notice requirements in 40 C.F.R. 70.7 (h)(1) & (2) and WAC 173-401-800 (1) & (2). Ecology is responsible to accurately convey to the public information regarding any comment period subject to 40 C.F.R. 70.7 (h) or WAC 173-401-800[5]. Ecology's public notices for the December 10 through January 4 comment period made no mention this comment period would be combined with a comment period beginning on January 14 and ending on January 25, 2013. Ecology cannot now reach back in time and edit the December 10, 2012, notice in the *Permit Register* and the December 2, 2012, notice in the *Tri-City Herald* to include the January 14 to January 25, 2013, comment period "extension". Nor can Ecology now add days to the comment period that closed on January 4, 2013. Provide the public with an accurate notice of the opportunity to submit comments along with a minimum of thirty (30) days in which to do so.	Ecology offers the following explanation. Please see response to Comment 139, Part A.

Comment Number	Date	Source	Document Location	Comment	Response
140	1/24/2013	Mr. Bill Green Comment 64	Incomplete public review file. *See* comments 45, 46, 47, 48, and 60	**Provide a complete public review file as required by 40 CFR 70.7(h)(2), and WAC 173-401-800, and restart public review. A complete public review file includes all information used by Ecology, Health, and BCAA in the permitting process.** As affirmed by the court's decision in *Sierra Club v. Johnson*, 436 F.3d 1269, (11th Cir. 2006), the Administrator of EPA, and thus EPA, has determined that the phrase "materials available to the permitting authority that are relevant to the permit decision," in 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. (*Sierra Club v. Johnson*, 436 F.3d 1269, 1284, (11th Cir. 2006)) There is no question Ecology used, "in the permitting process", public comments submitted during previous public comment periods[1], yet Ecology overlooked such comments along with any responses to these comment. In accordance with 40 CFR 70.7(h)(2) and WAC 173-401-800, please provide the public with ALL information used in the permitting process and re-start public review.	Ecology offers the following explanation. Please see response to Comments 120, 121, 122, 123, 136 PartA, and 136 Part B. No compelling reason exists to further extend the public comment period.
141	1/24/2013	Mr. Bill Green Comment 65	Insufficient public review; see comments 1, 3, 8, 10, 30, 42, 44, 46, 47, and 60)	**Provide the public with the opportunity to review all portions of a complete draft Hanford Site AOP renewal. *Attachment 2* was issued as final absent any public review. *Attachment 2* also overlooks many federally-applicable requirements as required by CAA § 116 and WAC 173-401-600 (4)[1]. *Attachment 3* was approved well in advance of public review.** *Attachment 2* was issued as final and became effective on February 23, 2012, several months in advance of all required pre-issuance reviews (public review, EPA review, and affected state(s) review). Included in *Attachment 2* are more than 100 notice of construction (NOC) approvals that also bear the approval date February 23, 2012. Many other NOC approvals have an approval date later than 2007. These NOC approvals and all predecessors were issued in accordance with a regulation that does not accommodate any federal *Clean Air Act* (CAA)-required pre-issuance reviews despite containing some federally-enforceable terms and conditions. Most, if not all, of these NOC approvals fail to include analogous federally-enforceable terms and conditions for those shown as "state-only enforceable" as required by CAA § 116 and WAC 173-401-600 (4). According to the signed and dated title page, *Attachment 3* was approved on5/16/12, half-a-month in advance of public review and without any EPA and affected state(s) review. Provide the public with the opportunity to review all portions of the draft Hanford Site AOP renewal.	Ecology provides the following explanation. Please see response to Comment 49. Additionally, please see Exhibit A, last paragraph page 5 and continued on page 6.

Comment Number	Date	Source	Document Location	Comment	Response
142 Part A **<u>NOTE:</u>** This comment is too long to fit on one page. It has been split into two sections, a part A and a part B, by Ecology personnel	1/25/2013	Hanford Challenge	General	The Hanford Site and numerous facilities surrounding it pose significant risk the human health and the environment due to air emissions. In order to ensure that emissions of radionuclides to the ambient air from Department of Energy facilities shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 10 mrem/yr (as is noted in the permit and required by 40CFR61 Subpart H), the Hanford Air Operating Permit should take into consideration the cumulative dose received by members of the public from the Hanford site and nearby sites excluded from the AOP. These sites include, but are not limited to PermaFix Northwest (PFNW) Richland, Battelle Memorial Institute Richland North facilities, Energy Northwest Applied Process Engineering Laboratory, all Energy Northwest facilities, US Ecology, Inc. commercial low-level radioactive waste burial site, and AREVA NP. Hanford Challenge wants to ensure that compliance is indeed assessed based on the cumulative releases from all area facilities, and not just those considered in the AOP. Individuals on or near the site who do not work on site must be sufficiently protected and their air quality must be sufficiently monitored. Individuals work, attend school, or travel near potentially dangerous emissions sources. Co-located workers should be considered members of the public, as 10CFR20 requires, and the AOP should acknowledge that co-located workers are considered members of the public and limits and monitoring should be adjusted to assure their protections. Public visitors come through the site, tour the site, work in and around the site, visit the B Reactor and other areas of the site, and pass through uncontrolled areas.	Ecology offers the following explanation. Responding to the first paragraph from your comments: 1. The Nuclear Waste Program would like to thank you for taking the time to comment on Ecology's proposed action. Your comment addresses issues that are outside the scope of the action we are considering, therefore no formal response is provided. 2. The FF-01 license issued by Health sets requirements on the Hanford Site to ensure the Maximally Exposed Individual (MEI) is sufficiently protected. 3. Your comment will reside in Ecology's business record for this action, in accordance with our public records and records retention procedures. 4. No compelling reason exists to change the AOP. Responding to the second paragraph from your comment: 1. The Clean Air Act (CAA) and its amendments regulate ambient air. Ambient air is defined in 40 CFR Part 50.1 (e) as "… that portion of the atmosphere, external to buildings, to which the general public has access." The Hanford site is land owned or controlled by the source and to which general public access is precluded by a fence or other physical barriers. As the Hanford site doesn't qualify as ambient air, the CAA isn't applicable; but on-site personnel are covered by other laws, rules, and regulations 2. The FF-01 license issued by the Department of Health sets conditions and limitations on the Hanford Site to ensure the Maximally Exposed Individual (MEI) are sufficiently protected to meet the applicable radiological air emissions regulations. 3. No compelling reason exists to change the AOP.

Comment Number	Date	Source	Document Location	Comment	Response
142 Part B **NOTE:** This comment is too long to fit on one page. It has been split into two sections, a part A and a part B, by Ecology personnel	1/25/2013	Hanford Challenge	General	40 CFR61 requires continuous monitoring for radiation releases. Hanford Challenge is concerned by the blanket statement in the AOP that the Department of Ecology may allow a facility to use alternative monitoring procedures or methods if continuous monitoring is not a feasible or reasonable requirement under WAC 246-247-075(4). Hanford Challenge requests that the enforcement agencies ensure the most comprehensive approach to sampling for pollutants of concern and radionuclides is conducted and enforced. Two significant pollutants of concern in the Hanford Waste Tanks are Dimethyl mercury (a neurotoxin) and N-Nitrosodimethylamine (NDMA – a known carcinogen). These pollutants of concern are emitted into the air from the Hanford Waste Tanks. Hanford Challenge is concerned by the lack of sampling for dimethyl mercury and lack of real time sampling for NDMA. The AOP should require monitoring for these pollutants of concern to not only protect tank farm workers, but also the co-located public.	Responding to the third paragraph from your comment:: 40 CFR Part 61 and WAC 246-247-075 (4) allow for alternative monitoring. 40 CFR Part 61.93(b)(3) When it is impractical to measure the effluent flow rate at an existing source in accordance with the requirements of paragraph (b)(1) of this section or to monitor or sample an effluent stream at an existing source in accordance with the site selection and sample extraction requirements of paragraph (b)(2) of this section, the facility owner or operator may use alternative effluent flow rate measurement procedures or site selection and sample extraction procedures provided: (i) It can be shown that the requirements of paragraph (b) (1) or (2) of this section are impractical for the effluent stream. (ii) The alternative procedure will not significantly underestimate the emissions. (iii) The alternative procedure is fully documented. (iv) The owner or operator has received prior approval. Responding to the fourth paragraph from your comment: 1. For worker protection issues, please see response (1) for your second paragraph comment in regards to ambient air. 2. US DOE submitted a Health Impact Assessment (HIA) to Ecology evaluating off-site impacts of dimethyl mercury (DMM). Ecology's analysis indicated DMM from the ventilation systems should not pose a risk to the public. 3. N-Nitrosomethylethylamine (NDMA) was evaluated and assigned an Acceptable Source Impact Level (ASILs) in Notice of Construction Approval Order #94-07, Revision 3. WAC 173-460-080 (4) (a) provides authority for the permitting authority to approve a notice of construction.. 4. Periodic sampling of tank head space is performed and analysis for NDMA has not exceeded ASIL values. 5. No compelling reason exists to change the AOP.

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 Agency[1] 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.

Exhibit B

#2

Washington State Department of Health

WASHINGTON STATE DEPARTMENT OF ECOLOGY

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.

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.

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,

Stuart A. Clark
Air Quality Program Manager
Washington Department of Ecology

Sincerely,

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,

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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

Printed on Recycled Paper

List of Commenters

The table below lists the names of organizations or individuals who submitted a comment on the Hanford AOP and on which pages you can find Ecology's response to the comment(s).

Commenter	Page	Comment number
U.S. Department of Energy	6 – 24	1 – 74
Bill Green (August 2, 2012 submittal)	25 – 58	75 – 129
Bill Green (January 3 2013 submittal)	58	130
Bill Green (January 24, 2013 submittal)	59 – 64	131 – 137
Friends of the Columbia Gorge	64 – 67	138 – 141
Hanford Challenge	68 – 69	142

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. Events posted on Ecology Hanford Education & Outreach Facebook page.

PUBLIC COMMENT PERIOD

DEPARTMENT OF ECOLOGY
State of Washington

Nuclear Waste Program **June 2012**

Hanford Air Operating Permit Renewal

Washington's Department of Ecology invites you to comment on the proposed renewal of the Hanford Site Air Operating Permit (AOP). The draft permit is available for your review.

About the Permit

The permit is for the U.S. Department of Energy's Hanford site in south-central Washington, north of Richland. Here, a huge cleanup is under way for wastes resulting from making plutonium for the nation's nuclear arsenal.

The state's regulations for control of air emissions limit the duration of a permit to five years. Since Hanford still has air emissions, it still needs a permit. The current permit will expire this year and is up for renewal. During the permit renewal process the old permit remains in effect.

Three agencies administer the Hanford AOP. Ecology regulates the nonradioactive criterion and toxic air emissions. The state's Department of Health regulates all radioactive air emissions. The Benton Clean Air Authority administers outdoor burning and asbestos handling.

Background

Congress amended the federal Clean Air Act (CAA) in 1990 by creating AOPs for industrial sources of air pollution. Before then, emissions regulations were scattered throughout the CAA. An AOP brought all applicable requirements into one document. In 1991, the Washington State Legislature updated the Washington Clean Air Act (RCW 70.94) to make it consistent with these changes.

In 1993, Ecology developed Washington's AOP regulation (Washington Administrative Code 173-401) to comply with federal regulations. The U.S. Environmental Protection Agency granted the state the authority to implement AOP regulations in November 1994.

Ecology first issued the Hanford AOP in June 2001.

WHY IT MATTERS

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

Public Comment Period:

June 4 – August 3, 2012

Questions? Comments? Request a Public Hearing? Contact (in writing):

Phil Gent
3100 Port of Benton Blvd
Richland, WA 99354
hanford@ecy.wa.gov

Document Review Location:

Ecology's Nuclear Waste Program website

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

Hanford's Public Information Repositories (listed on the reverse)

For Tips on Effective Commenting: Visit http://www.ecy.wa.gov/biblio/0307023.html

Special accommodations
If you need this publication in an alternate format, call 509-372-7950.

Persons with hearing loss, call 711 for Washington Relay Service.

Persons with speech disability call 877-833-6341.

Publication Number: 12-05-010

Figure 1. Public notice (page 1 of 2).

DEPARTMENT OF
ECOLOGY
State of Washington

3100 Port of Benton Blvd
Richland, WA 99354

Public Comment Period
Hanford's Air Operating Permit
June 4 – August 3, 2012

Will there be a public hearing? We don't have one scheduled, but if we get requests (see sidebar), we may reconsider.

What's next? When the comment period closes, we will consider the comments received and revise the permit if needed. Then we will issue the final permit and a responsiveness summary. The permit will be in effect for five years.

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
Liz Paulus (503) 725-4542
paulus@pdx.edu

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

Washington State University
Consolidated Information Center
Room 101L
Richland, WA 99352
Janice Parthree (509) 375-3308
Janice.parthree@pnnl.gov

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

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

Figure 1. Public notice (page 2 of 2).

PUBLIC COMMENT PERIOD

DEPARTMENT OF ECOLOGY
State of Washington

Nuclear Waste Program **December 2012**

Hanford Air Operating Permit Renewal - Reopening

Washington's Department of Ecology (Ecology) is reopening the comment period for the Hanford Air Operating Permit (AOP). The AOP and statement of basis for this comment period are exactly the same as presented in the first comment period. This comment period differs by providing the U.S. Department of Energy's (USDOE) permit application, permit application supplement, and supporting material. Ecology makes available for your review the original draft permit, applications, and supporting material.

About the Permit

This permit regulates the 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 USDOE's Office of River Protection's address is PO Box 450, Richland, WA 99352.

State regulations for AOPs limit the duration to five years. Hanford still emits pollutants to the air and still requires a permit. The current permit expired on December 31, 2011. USDOE submitted an application for AOP renewal. During the renewal process, the old permit remains in effect.

Three agencies contribute underlying permits to the AOP.

- Ecology is the overall permitting authority and focuses on nonradioactive criterion and toxic air emissions.
- The state's Department of Health focuses on radioactive air emissions.
- The Benton Clean Air Authority focuses on outdoor burning and asbestos handling.

Ecology first issued the Hanford AOP in June 2001.

WHY IT MATTERS

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

PUBLIC COMMENT PERIOD

Originally: June 4 – August 3, 2012

Reopening: December 3, 2012 – January 4, 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

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.

Publication Number: 12-05-016

Figure 2. Public notice for comment period reopening (page 1 of 2).

DEPARTMENT OF
ECOLOGY
State of Washington

3100 Port of Benton Blvd
Richland, WA 99354

Public Comment Period
(Reopening)
Hanford's Air
Operating Permit
Dec 3, 2012 – Jan 4, 2013

Will there be a public hearing? We don't have one scheduled, but if we get requests (see contact information in the sidebar on page 1), we may reconsider.

What's next? When the comment period closes, we will consider the comments received and revise the permit if needed. Then we will issue the final permit and a Response to Comments. The permit will be in effect for five years.

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
weston@pdx.edu

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

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

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

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

Figure 2. Public notice for comment period reopening (page 2 of 2).

PUBLIC COMMENT PERIOD

DEPARTMENT OF ECOLOGY
State of Washington

Nuclear Waste Program **January 2013**

Hanford Air Operating Permit Renewal – Extended!

Washington's Department of Ecology (Ecology) is extending the reopened comment period for the Hanford Air Operating Permit (AOP). The online permit register was published after the start of the reopened comment period, so the comment period was shorter than the required 30 days.

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 USDOE's Office of River Protection's address is PO Box 450, Richland, WA 99352.

State regulations for AOPs limit the duration to five years. Hanford still emits pollutants to the air and still requires a permit. The current permit expired on December 31, 2011. USDOE submitted an application for AOP renewal. During the renewal process, the old permit remains in effect.

Three agencies contribute underlying permits to the AOP.

- Ecology is the overall permitting authority and focuses on nonradioactive criterion and toxic air emissions.
- The state's Department of Health focuses on radioactive air emissions.
- The Benton Clean Air Authority focuses on outdoor burning and asbestos handling.

Ecology first issued the Hanford AOP in June 2001.

How do you find the permit and supporting info?

You can find the permit and supporting info online at Ecology's Nuclear Waste Program website, and at the information repositories listed on page 2.

WHY IT MATTERS

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

PUBLIC COMMENT PERIOD

Originally: June 4 – August 3, 2012

Reopening: December 3, 2012 – January 4, 2013,

Extended January 14 – January 25, 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

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.

Publication Number: 12-05-016 (revised 1/13)

Figure 3. Public notice for comment period extension (version posted online but not mailed) (page 1 of 2).

DEPARTMENT OF
ECOLOGY
State of Washington

3100 Port of Benton Blvd
Richland, WA 99354

Public Comment Period
(Extended)
Hanford's Air Operating Permit
Jan 14 – Jan 25, 2013

Will there be a public hearing? We don't have one scheduled, but if we get requests (see contact information in the sidebar on page 1), we may reconsider.

What's next? When the comment period closes, we will consider the comments received and revise the permit if needed. Then we will issue the final permit and a Response to Comments. The permit will be in effect for five years.

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

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

Department of Ecology
Nuclear Waste Program
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Richland, WA 99354
Valarie Peery (509) 372-7920
Valarie.Peery@ecy.wa.gov

Department of Energy
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Richland, WA 99354
Heather Childers (509) 376-2530
Heather_M_Childers@rl.gov

Figure 3. Public notice for comment period extension (version posted online but not mailed) (page 2 of 2).

DEPARTMENT OF
ECOLOGY
State of Washington

Publication No. 13-05-001

NUCLEAR WASTE PROGRAM
3100 PORT OF BENTON BLVD.
RICHLAND, WA 99354

Working with you for a better Washington.

Hanford Air Operating Permit (AOP) Comment Period Extended

The Washington Department of Ecology is extending the comment period for the Hanford Air Operating Permit (AOP) that was reopened from December 3, 2012, to January 4, 2013. The online permit register was published after the start of the reopened comment period, so the comment period was shorter than the required 30 days. The end date for submitting comments is now February 25, 2013.

The initial comment period was June 4 to August 3, 2012. We reopened the comment period in December because the permit application materials were not available during the summer comment period.

The AOP and supporting documents are exactly the same as in the earlier comment periods. You can find the AOP and supporting information, and the original notice, on Ecology's Nuclear Waste Program website: www.ecy.wa.gov/programs/nwp/commentperiods.htm.

To submit comments, send them by email (preferred), U.S. mail, or hand deliver to:

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

If you have any questions, please email Hanford@ecy.wa.gov or call 800-321-2008.

Figure 4. Postcard notice for comment period extension.

DEPARTMENT OF
ECOLOGY
State of Washington

Publication No. 13-05-001 corrected 1/13

NUCLEAR WASTE PROGRAM
3100 PORT OF BENTON BLVD.
RICHLAND, WA 99354

Working with you for a better Washington.

Hanford Air Operating Permit (AOP) Comment Period Extended

Correction! The Washington Department of Ecology is extending the comment period for the Hanford Air Operating Permit (AOP) that was reopened from December 3, 2012, to January 4, 2013. The online permit register was published after the start of the reopened comment period, so the comment period was shorter than the required 30 days. The end date for submitting comments is now **January 25, 2013**.

The initial comment period was June 4 to August 3, 2012. We reopened the comment period in December because the permit application materials were not available during the summer comment period.

The AOP and supporting documents are exactly the same as in the earlier comment periods. You can find the AOP and supporting information, and the original notice, on Ecology's Nuclear Waste Program website: www.ecy.wa.gov/programs/nwp/commentperiods.htm.

To submit comments, send them by email (preferred), U.S. mail, or hand deliver to:

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

If you have any questions, please email Hanford@ecy.wa.gov or call 800-321-2008.

Figure 5. Corrected postcard for comment period extension.

Classified Legals

ADV
I
WARDEN
BOILER
Warden
N

Sealed bi
by Warde
No. 146-161 Bi-School Dis-
trict Administration Office,
101 West Beck Way, War-
den WA 98857, for the fol-
lowing project: WARDEN
HIGH SCHOOL BOILER
REPLACEMENT, until 3:00
p.m. Tuesday, June 12,
2012. Base bids will be re-
ceived until 3:00 p.m. and
held until 4:00 p.m. Alter-
nates and List of Sub-
contractors will be received
at 4:00 p.m. and will be
opened and read at that
time along with the base
bids. Bids received after the
above times will not be
considered.

General Contractors,
Plumbing, HVAC, and Elec-
trical Subcontractors only
may obtain drawings and
specifications and forms of
contract documents at the
Office of the Project Ar-
chitect, ALSC Architects,
203 N. Washington Street,
Suite 400, Spokane, WA
99201, (509) 838-8568. A
deposit of $100 will be re-
quired per set. General
Contractor Bidders may
have two (2) sets of
documents, Mechanical
and Electrical contractors
desiring more than one (1)
set of documents may ob-
tain additional or partial
sets of documents at their
own cost from Abadan, P.O.
Box 224, 503 E. 2nd, Spo-
kane, WA 99210-0224
(509) 747-2964 (800)
572-3706 FAX 744-3832.
The deposit will be returned
to the unsuccessful bidders
on receipt of plans and
specifications for a period
of ten days after opening of
bids, provided the
documents are complete
and in clean and usable
condition. Complete sets of
documents will be available
for examination only at the
Office of the Project Ar-
chitect and at Warden
School District, 101 W.
Beck Way, Warden,
Washington 98857.

Complete sets of
documents will be available
on or after May 25, 2012 for
examination at the following
locations:

ALSC Architects, P.S., 203
N Washington Suite 400,
Spokane WA 99201,
509-838-8568
Warden School District, 101
W. Beck Way, Warden,
Washington 98857
Associated General
Contractors, 4935 East
Trent, Spokane WA 99220,
509-534-1446
Spokane Regional Plan
Center, 209 N. Havana,
Spokane WA 99202,
509-328-9600
Associated General
Contractors, 3695 N.
Schreiber Way, Suite 100,
Coeur d'Alene ID 83816,
208-772-6068
Associated Builders &
Contractors, 12310 E. Mire-
beau Parkway, Suite 100,

595 Trades

98108, 206-378-4715
Daily Journal of Commerce
Plan Center, 921 S W
Washington St., Suite 210,
Portland OR 97205,
503-274-0624
Walla Walla Valley Plan
Center, 29 E. SumachP.O.
Box 644, Walla Walla WA
99362, 509-525-0850
Tri-Cities Construction
Council, 20 E Kennewick
Ave, Kennewick WA 99336,
(509) 582-7424

Questions should be ad-
dressed to Kamela Potratz
or Steve Walther at the of-
fice of the Architect, (509)
838-8568.

There will be a pre-bid con-
ference for this project on
Monday, June 4, 2012 at
3:30 p.m. The conference
will be held at the Warden
School District Administra-
tion Office, 101 West Beck
Way, Warden WA 98857.
**Attendance at the con-
ference is highly encour-
aged.**

Warden School District
encourages the participa-
tion of Minority Owned and
Women Owned Business
Enterprises in this Invitation
to Bid.

Each bid must be accom-
panied by a certified check,
cashier's check, or bid
bond with a State Licensed
Surety, in an amount not
less than five percent (5%)
of the total bid, made pay-
able to Warden School Dis-
trict. This surety shall be
forfeited in event of failure
by the successful bidder to
sign a contract or to furnish
the necessary one hundred
percent (100%) Perform-
ance Bond.
#12-3934, 5/29, 6/4/2012

**IN THE SUPERIOR
COURT OF THE STATE
OF WASHINGTON
IN AND FOR THE
COUNTY OF BENTON**

In the Matter of the Estate
of:
ISADORIE S. BURRUS,
aka
ISADORIE D. BURRUS,
Deceased.
No. 12-4-00166-3
PROBATE NOTICE
TO CREDITORS
RCW 11.40.030

The personal representa-
tive named below has been
appointed as personal re-
presentative of this estate.
Any person having a claim
against either deceased
must, before the time the
claim would be barred by
any otherwise applicable
statute of limitations, pres-
ent the claim in the manner
as provided by RCW
11.40.070 by serving or
mailing to the personal re-
presentative or the personal
representative's attorney at
the address stated below a

600 Miscellaneous

the notice to the creditor as
provided under RCW
11.40.020(1)(c); or (2) four
months after the date of the
first publication of the no-
tice. If the claim is not pre-
sented within this time
frame, the claim is forever
barred, except as otherwise
provided in RCW 11.40.051
and 11.40.060. This bar is
effective as to claims
against the deceased par-
ty's probate and non-
probate assets.

DATE OF FIRST
PUBLICATION:
May 28, 2012
BLASIUS A.
SCHUMACHER
Personal Representative

Address for Mailing
or Service:

Jan R. Armstrong
Armstrong, Klym, Waite,
Atwood & Jameson, P.S.
660 Swift Boulevard,
Suite A
Richland, WA 99352

Court of Probate
Proceedings and
case number:

Benton County
Superior Court
7122 West Okanogan
Place, Building A
Kennewick, WA 99336
Case No: 12-4-00166-3
#12-3902, 5/28, 6/4
6/11/2012

NOTICE OF HEARING

NOTICE IS HEREBY
GIVEN; That the Board of
Benton County Commis-
sioners has before it budget
adjustments to the
2011-2012 Budget. A copy
(summary) of these budget
adjustments will be posted
on the Benton County web-
site at http://www.co.
benton.wa.us or provided
upon request by contacting
the Office of the County
Commissioners,
Courthouse, 620 Market
Street, Prosser, Washing-
ton, or by calling 736-3086
(toll free from Tri-Cities), or
786-5600 (Prosser). Said
adjustments are listed as
follows:

1. Current Expense Fund
No. 0000-101, Sheriff Patrol
Dept. 121, in the amount of
$498,825 for expenditures
associated with the follow-
ing grants: PSN, Meth Ini-
tiative, JAG, BZP, RSO, and
Dept. of Energy;
2. Current Expense Fund
No. 0000-101, Planning
Dept. 116, in the amount of
$93,200 for expenditures
associated with the Depart-
ment of Ecology grant;
3. Solid Waste Collection
Fund No. 0155-101, Dept.
000, in the amount of
$225,850 for expenditures
associated with the Depart-
ment of Ecology grant;
4. Canine/Boat Fund No.
0127-101, Dept. 000, in the
amount of $32,944 for

750 For Sale

Board Room, Benton
County Courthouse,
Prosser, Washington, at
which time any person may
appear and be heard either
for or against the proposed
supplemental appropriation.

DATED at Prosser,
Washington, this 22nd day
May, 2012
By Keith Ma
Finance Man
#12-3920, 5/2 6/4/2012

Washington's Department
of Ecology invites you to
comment on the proposed
renewal of the Hanford Site
Air Operating Permit (AOP).
The draft permit is available
for review. The comment
period starts June 4, 2012
and runs through August 3,
2012.

The permit is for the U.S.
Department of Energy's
Hanford site in south-
central Washington, north
of Richland. Here, a huge
cleanup is under way for
wastes resulting from mak-
ing plutonium for the na-
tion's nuclear arsenal.

The permit ensures Han-
ford's air emissions stay
within safe limits that pro-
tect people and the environ-
ment.

The state's regulations for
control of air emissions limit
the duration of a permit to
five years. Since Hanford
still has air emissions, it still
needs a permit. The current
permit will expire this year
and is up for renewal. Dur-
ing the permit renewal pro-
cess the old permit remains
in effect.

**Three agencies admin-
ister the Hanford AOP.
Ecology regulates the
nonradioactive criterion
and toxic air emissions.
The state's Department of
Health regulates all radio-
active air emissions. The
Benton Clean Air Author-
ity administers outdoor
burning and asbestos
handling.**

Congress amended the fed-
eral Clean Air Act (CAA) in
1990 by creating AOPs for
industrial sources of air
pollution. Before then,
emissions regulations were
scattered throughout the
CAA. An AOP brought all
applicable requirements
into one document. In 1991,
the Washington State
Legislature updated the
Washington Clean Air Act
(RCW 70.94) to make it
consistent with these
changes.

**In 1993, Ecology devel-
oped Washington's AOP
regulation (Washington
Administrative Code
173-401) to comply with
federal regulations. The
U.S. Environmental
Protection Agency
granted the state the
authority to implement**

AOP regulations in
November 1994.

Ecology first issued the
Hanford AOP in June
2001.

**You can find the draft per-
mit online at www.ecy.wa.
gov/programs/nwp/
commentperiods.htm.
You can also find it at any
of the locations list be-
low:**

University of Washington
Suzzallo Library,
Government Publications
Department
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
Liz Paulus
(503) 725-4542
paulus@pdx.edu

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

Washington State
University, Consolidated
Information Center
Room 101L
Richland, WA 99352
Janice Parthree
(509) 375-3308
Janice.parthree@pnnl.gov

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

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

You can submit comments
via fax, email (preferred) or
postal mail. The fax number
is (509) 372-7971. The
email address is Hanford@
ecy.wa.gov. The postal ad-
dress is
Philip Gent
Department of Ecology
Nuclear Waste Program
3100 Port of Benton Blvd
Richland, WA, 99354

We do not plan a public
hearing, but if we get re-
quests, we may reconsider.
To request a public hearing,
contact Madeleine Brown at
Hanford@ecy.wa.gov.

For tips on effect comment-
ing, please visit www.ecy.
wa.gov/biblio/0307029.html.
After the comment period
closes, we will consider the
comments received and re-
vise the permit if needed.
Then we will issue the final
permit and a responsive-
ness summary. The permit
will be in effect for five
years.
#12-3982, 6/4/2012

To Place Your Legal Announcement, Call 582-1560

Figure 6. Initial classified legal advertisement.

Tri-City Herald
tricityherald.com
VOICE OF THE MID-COLUMBIA

Classified Legals

Hanford Air Operating Permit Renewal- Reopening

Washington's Department of Ecology (Ecology) is reopening the comment period for the Hanford Air Operating Permit (AOP). **The AOP and statement of basis for this comment period are exactly the same as presented in the first comment period.** This comment period differs by providing the U.S. Department of Energy's (USDOE) permit application, permit application supplement, and supporting material. Ecology makes available for your review the original draft permit, applications, and supporting material.

Public Comment Period:
Originally: June 4 - August 3, 2012
Reopening (now) December 3, 2012 through January 4, 2013

Questions? Hearing? Comments? Contact (in writing):
Phil Gent
3100 Port of Benton Blvd
Richland, WA 99354
(509) 737-7983
hanford@ecy.wa.gov

Document Review Location:
Ecology's Nuclear Waste Program website
www.ecy.wa.gov/programs/nwp/commentperiods.htm
Other Hanford Document Review Locations (listed on the reverse)

For Tips on Effective Commenting: Visit http://www.ecy.wa.gov/biblio/0307023.html

This permit regulates the 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 2 offices jointly applying for the permit. The Richland Operations Office has the lead. Its address is PO Box 500, Richland, WA 99352. The USDOE's Office of River Protection?s address is PO Box 450, Richland, WA 99352.

State regulations for AOPs limit the duration to five years. Hanford still has air emissions and still requires a permit. The current permit expired on 31 December, 2011. USDOE submitted a timely application for AOP renewal. During the renewal process the old permit remains in effect.

Three agencies contribute underlying permits to the AOP.

* Ecology is the overall permitting authority and focuses on nonradioactive criterion and toxic air emissions.
* The state's Department of Health focuses on radioactive air emissions.
* The Benton Clean Air Authority focuses on outdoor burning and asbestos handling.

Ecology first issued the Hanford AOP in June 2001.

Will there be a public hearing? We don't have one scheduled, but if we get requests (see contact information in the sidebar), we may reconsider.

What's next? When the comment period closes, we will consider the comments received and revise the permit if needed. Then we will issue the final permit and a responsiveness summary. The permit will be in effect for five years. Why does it matter? The permit ensures Hanford's air emissions stay within safe limits that protect people and the environment.

Hanford's Public Information Repositories

University of Washington
Suzzallo Library, Government Publications Department
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
Liz Paulus
(503) 725-4942
paulus@pdx.edu

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

Washington State University
Consolidated Information Center Room 101L
Richland, WA 99352
Janice Parthree
(509) 375-3308
Janice.parthree@pnnl.gov

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

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

12-4022, 12/2/2012

Figure 7. Classified advertisement for comment period reopening.

tricityherald.com

Classified Legals

C8 TRI-CITY HERALD SUNDAY, JANUARY 13, 2013

Washington's Department of Ecology (Ecology) is extending the reopened comment period for the Hanford Air Operating Permit (AOP). The online permit register was published after the start of the reopened comment period, so the comment period was shorter than the required 30 days. The comment period is extended to run from January 14 through January 25, 2013.

To submit comments, send them by email (preferred), U.S. mail, or hand-deliver to:

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

This permit regulates the 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 USDOE's Office of River Protection's address is PO Box 450, Richland, WA 99352.

State regulations for AOPs limit the duration to five years. Hanford still emits pollutants to the air and still requires a permit. The current permit expired on December 31, 2011. USDOE submitted an application for AOP renewal. During the renewal process, the old permit remains in effect.

Three agencies contribute underlying permits to the AOP. Ecology is the overall permitting authority and focuses on nonradioactive criterion and toxic air emissions. The state's Department of Health focuses on radioactive air emissions. The Benton Clean Air Authority focuses on outdoor burning and asbestos handling.

Ecology first issued the Hanford AOP in June 2001.

How do you find the permit and supporting info? You can find the permit and supporting info online at Ecology's Nuclear Waste Program web site, and at the information repositories listed below.

Will there be a public hearing? We don't have one scheduled, but if we get requests we may reconsider. To request a hearing or for more information, contact:

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

What's next? When the comment period closes, we will consider the comments received and revise the permit if needed. Then we will issue the final permit and a Response to Comments. The permit will be in effect for five years.

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

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

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

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

13-5047, 1/13/2013

Figure 8. Classified advertisement for comment period extension.

Brown, Madeleine (ECY)

From:	Brown, Madeleine (ECY)
Sent:	Tuesday, April 17, 2012 1:49 PM
To:	hanford-Info@listserv.wa.gov
Subject:	advance notice for Hanford Air Operating Permit comment period

This is a message from Washington's Department of Ecology.

Advance Notice

Hanford Site Air Operating Permit renewal - all of it!

We are preparing the renewal of Hanford's Air Operating Permit (AOP). This permit regulates Hanford's emissions to the air to ensure they stay within safe limits that protect people and the environment.

The public comment period will start around the end of May and run for 60 days.

The permit holder is the U.S. Department of Energy, Richland Operations Office, PO 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.

After the public comment period, we will write a response to comments. Our response will detail how comments affect the preparation of the proposed AOP.

Please contact Phil Gent at Hanford@ecy.wa.gov for more information.

Madeleine C. Brown
Washington Department of Ecology
Nuclear Waste Program
Mabr461@ecy.wa.gov
(509) 372-7936

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Figure 9. Comment period advance notice sent to Hanford-Info email list.

-------- Original message --------
Subject: Comment period starts today! For Hanford's Air Operating Permit renewal
From: "Brown, Madeleine (ECY)" <mabr461@ECY.WA.GOV>
To: HANFORD-INFO@LISTSERV.WA.GOV
CC:

This is a message from Washington's Department of Ecology

Comment period starts today!

Washington's Department of Ecology invites you to comment on the proposed renewal of the Hanford Site Air Operating Permit (AOP). The draft permit is available for review. The comment period starts June 4, 2012 and runs through August 3, 2012.

The permit is for the U.S. Department of Energy's Hanford site in south-central Washington, north of Richland. Here, a huge cleanup is under way for wastes resulting from making plutonium for the nation's nuclear arsenal. The permit ensures Hanford's air emissions stay within safe limits that protect people and the environment.

The state's regulations for control of air emissions limit the duration of a permit to five years. Since Hanford still has air emissions, it still needs a permit. The current permit will expire this year and is up for renewal. During the permit renewal process the old permit remains in effect.

Three agencies administer the Hanford AOP. Ecology regulates the nonradioactive criterion and toxic air emissions. The state's Department of Health regulates all radioactive air emissions. The Benton Clean Air Authority regulates outdoor burning and asbestos handling.

You can find the draft permit online at www.ecy.wa.gov/programs/nwp/commentperiods.htm. You can also find it at any of the locations listed below:

University of Washington
Suzzallo Library, Government Publications Department
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
Liz Paulus (503) 725-4542
paulus@pdx.edu

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

Figure 10. Comment period announcement sent to Hanford-Info email list (Page 1 of 2).

Washington State University
Consolidated Information Center Room 101L
Richland, WA 99352
Janice Parthree (509) 375-3308
Janice.parthree@pnnl.gov

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

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

You can submit comments via fax, email (preferred) or postal mail. The fax number is (509) 372-7971. The email address is Hanford@ecy.wa.gov. The postal address is
Philip Gent
Department of Ecology Nuclear Waste Program
3100 Port of Benton Blvd
Richland, WA, 99354

We do not plan a public hearing, but if we get requests, we may reconsider. To request a public hearing, contact Madeleine Brown at Hanford@ecy.wa.gov.
For tips on effective commenting, please visit www.ecy.wa.gov/biblio0307023.html. After the comment period closes, we will consider the comments received and revise the permit if needed. Then we will issue the final permit and a responsiveness summary. The permit will be in effect for five years.

Madeleine C. Brown
Washington Department of Ecology
Nuclear Waste Program
Mabr461@ecy.wa.gov

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Figure 10. Comment period announcement sent to Hanford-Info email list (page 2 of 2).

-------- Original message --------
Subject: Two comment periods start today
From: "Brown, Madeleine (ECY)" <mabr461@ECY.WA.GOV>
To: HANFORD-INFO@LISTSERV.WA.GOV
CC:

This is a message from the Washington Department of Ecology

2 comment periods start today

Today Ecology is starting comment periods for two air quality decisions.

The Hanford Air Operating Permit reissue comment period runs through January 4, 2013. A comment period for this permit was also held June 4 – August 3, 2012. The only change from then to now is that Ecology is making the permit application, its supplement, and supporting material available. The public notice is attached. You can find all the information about this permit by visiting the Nuclear Waste Program's comment period web page.

Diesel-powered water heaters for Hanford's tank farm retrieval work – This comment period runs through January 11, 2013. US Department of Energy Office of River Protection wants these water heaters so they will have the right temperature water to support waste retrieval from Hanford's single-shell tanks. This action does not meet the threshold for a comment period because the emissions are low. Ecology is holding the comment periods because of public interest in a similar change in Hanford's air emission limits. The public notice is attached. You can find the materials for this proposal by visiting the Nuclear Waste Program's comment period web page.

Contact Hanford@ecy.wa.gov if you have questions, or to submit comments.

Madeleine C. Brown
Washington Department of Ecology
Nuclear Waste Program
Mabr461@ecy.wa.gov
(509) 372-7936

1

Figure 11. Comment period reopening announcement sent to Hanford-Info email list.

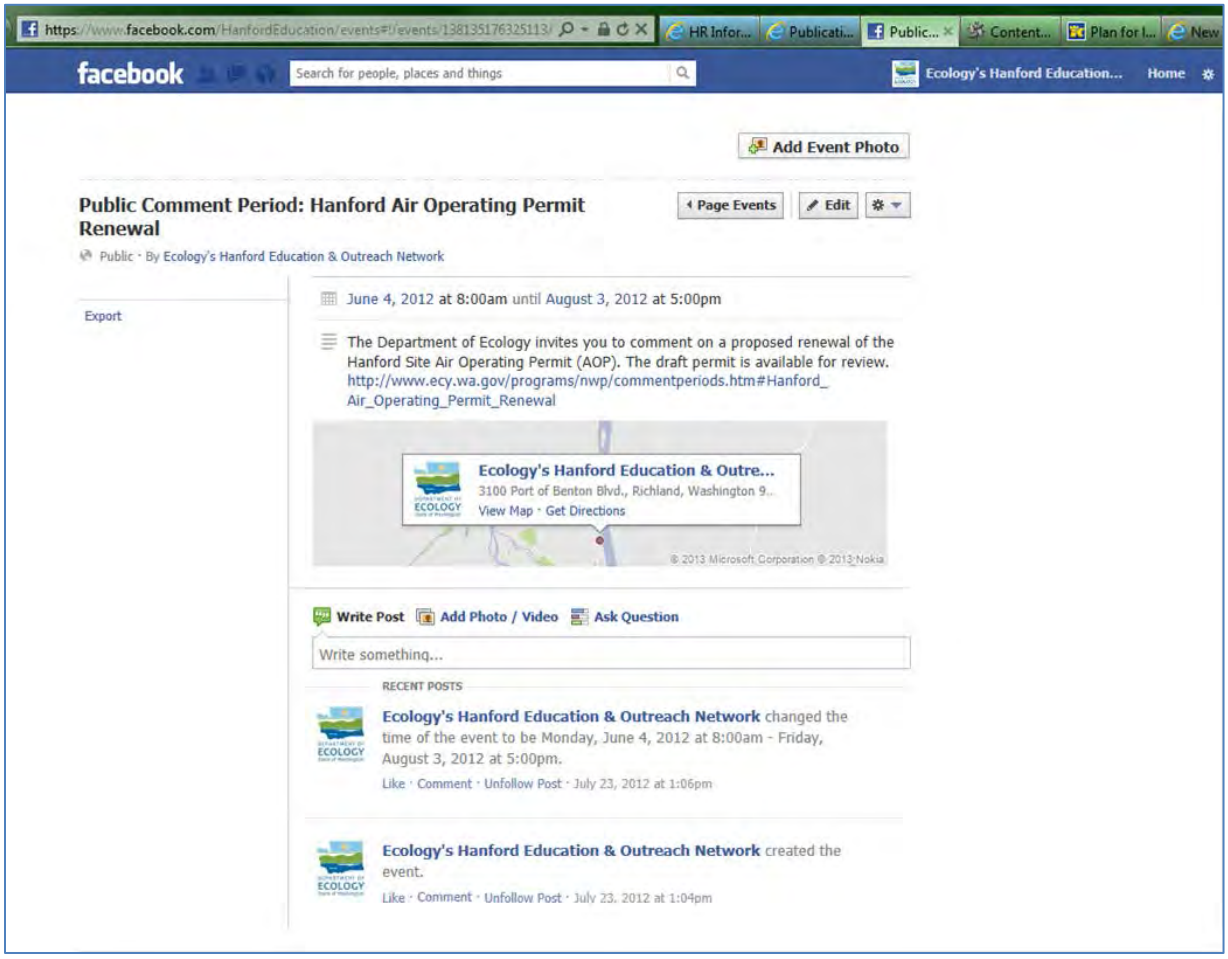

Figure 12. Facebook event for first comment period.

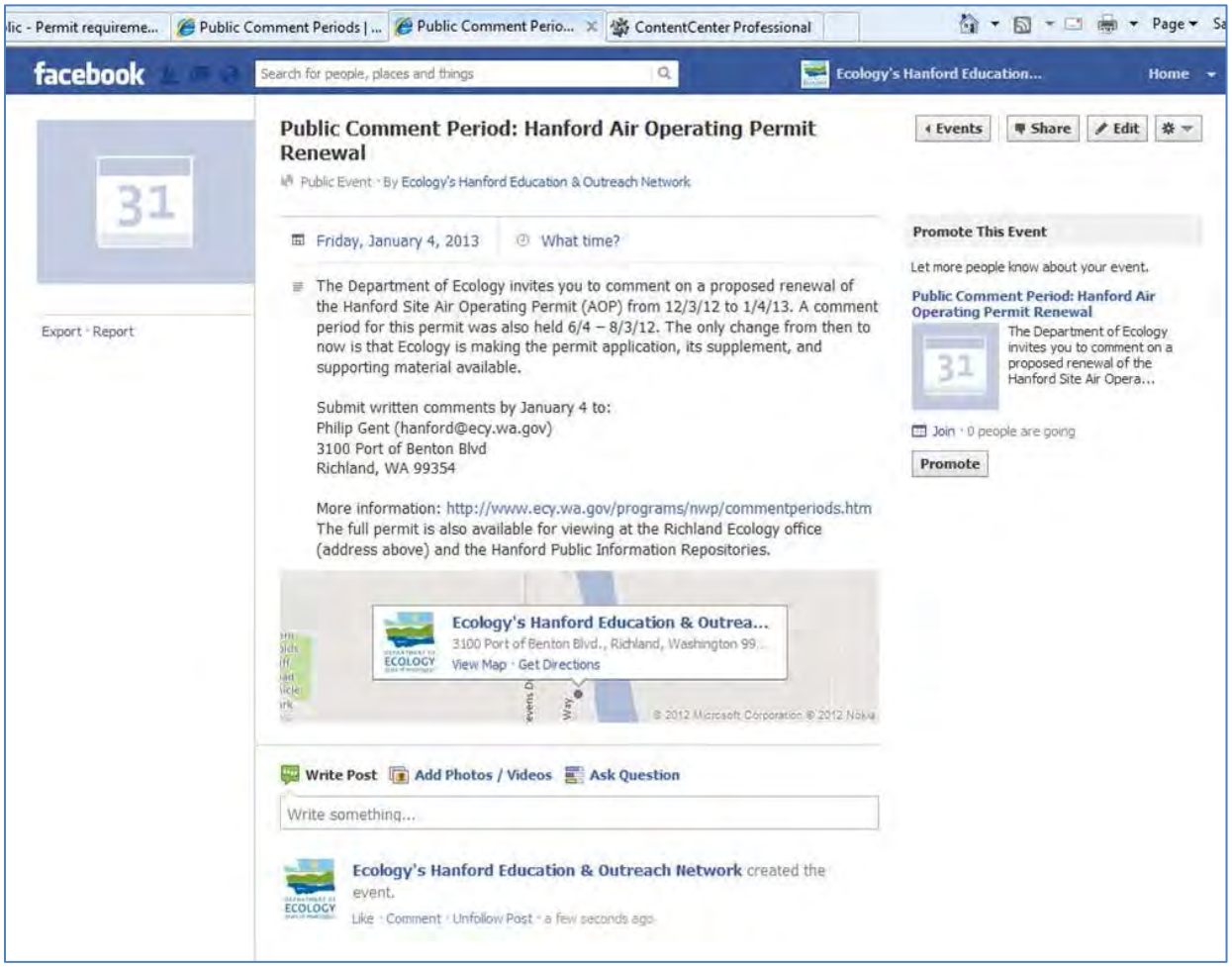

Figure 13. Facebook event for comment period reopening.

Appendix B: Copies of all written comments

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

Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change *(Proposed text additions: proposed text ~~deletions~~)*
USDOE-01	General/Editorial	The draft Hanford Site Air Operating Permit (AOP) contains numerous formatting (e.g. extra pages/spaces, pagination issues, broken internal formatting codes, etc.) and typographical errors in the various permit sections that detract from the overall quality of the document and should be corrected before Ecology issues the final permit.	Perform a thorough technical editing review of the complete, final Hanford Site AOP prior to issuance.
USDOE-02	Standard Terms &General Conditions (STGC), Table of Contents, page 7 of 57	The individual Attachment 2 sections listed in the Table of Contents do not match the actual sections contained within the FF-01 license issued by DOH that is included in Attachment 2 of the AOP.	Revise the STGC Table of Contents to accurately reflect the contents of the FF-01 license in Attachment 2 of the AOP.
USDOE-03	STGC, Section 2.0, page 10 of 57	The draft permit language includes a reference to the 748 Building on Jadwin Ave as an example of a structure in the 700 Area. The 748 building no longer exists and the text referencing it should be deleted.	Revise the proposed permit language as follows: • *700 Area in Richland, i.e., 825, ~~748,~~ and 712 Buildings on Jadwin Avenue.*
USDOE-04	STGC, Section 2.0, page 11 of 57	The draft permit language does not include any reference to the "The Pacific Northwest National Laboratory Site" in the example list of facilities that are excluded from the Hanford Site AOP during this renewal. Given the general perception by the public that PNNL is part of the Hanford Site, the exclusion of PNNL should be explicitly identified to ensure clarity.	Revise the proposed permit language to include a bullet showing that PNNL is excluded from the AOP as follows: • *Pacific Northwest National Laboratory Site*
USDOE-05	STGC, Section 5.2, Page 15 of 57	The draft permit language related to "authorized representatives" of the regulatory agencies and who is allowed access for inspections appears to suggest that authorized representatives could be someone other than a member of Ecology, Health or BCAA. The text should be revised to clarify that it is "authorized representatives of Ecology, Health and BCAA" that must be allowed access.	Revise the proposed permit language to read as follows: *"... the permittee shall allow an authorized representative of Ecology, Health, or BCAA ~~, or an authorized representative~~ to perform the following:"*

July 2012 Page 1 of 26

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

Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change *(Proposed text additions, proposed text ~~deletions~~)*
USDOE-06	STGC, Section 5.3, page 16 of 57	The draft permit language in the 2nd paragraph in this section is unnecessary. The cited regulation is defining what parameters Ecology must include in its AOP program. It is not intended to be a requirement that applies directly to an individual permittee. The 1st paragraph in this section is the appropriate language that applies to the permittee and is sufficient by itself to require payment of the appropriate fees.	Revise the proposed permit language to eliminate the 2nd paragraph of STGC Section 5.3 as follows: *~~The State AOP program shall require that the owner (or operator) of Part 70 sources pay annual fees that are sufficient to cover the permit program costs and shall ensure that any fee required by this section will be used solely for permit program costs. [40 CFR 70.9(a)]~~*
USDOE-07	STGC, Section 5.6.3, page 20 of 57	The draft permit language needs to be revised to clarify that submittal of the annual NESHAPs Report satisfies all AOP reporting requirements for the listed cited information elements, not just for one of the semiannual reporting requirements.	Revise the proposed permit language to read as follows: *Submittal of the information required in Section 5.11 Annual NESHAP's Report will meet the ~~one of the two~~ semiannual reporting requirements of diffuse and fugitive...*
USDOE-08	STGC, Section 5.9a, page 22 of 57	The draft permit language inappropriately lists Table 1.5 of Attachment 1 among the sources to be included in annual emissions inventory report. The proposed revised Table 1.5 is for newly regulated <500 hp internal combustion engines with compliance dates that are still in the future and which are later than the first time the Annual Emission Inventory Report will be due after the renewed AOP becomes effective. Reference to Table 1.5 should be deleted with respect to sources that must be included in this report until the applicable requirements for these engines are defined at a later date (as Ecology commits to do in its footnote for Table 1.5) and added to the AOP.	Revise the proposed permit language to read as follows: *...for emission unit composites, as requested and listed in the permit Attachment 1, Tables 1.3, and 1.4, ~~and 1.5,~~ and...*

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

Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change *(Proposed text additions. proposed text ~~deletions~~)*
USDOE-09	STGC, Section 5.17, page 28 of 57	The draft permit language in parentheses at the end of the 1st paragraph of this section seems to imply (primarily with use of the word "historically") that facility emissions prior to 2012 potentially impact a facility's reporting requirements by directing the permittee to WAC 173-441-030(5). This citation is for facilities that exceed the reporting threshold at some point in 2012 or beyond, and then subsequently fall below the threshold. The draft permit language needs to be revised to more clearly communicate that point.	Revise the proposed permit language as follows: *Beginning with 2012 emissions, if the permittee emits 10,000 metric tons of GHGs or more per calendar year, as defined under WAC 173-441-020(1)(g), reporting of GHG to Ecology is mandatory. (Note: WAC 173-441-030(5) details reporting requirements for facilities which ~~historically~~ exceed the threshold in 2012 or later years, but subsequently ~~currently~~ have lower annual CO_2e emissions).*
USDOE-10	STGC, Section 5.17, page 28 of 57	Although it can be implied from the draft permit language in the 1st paragraph, it is not explicitly clear that all requirements summarized in subsequent paragraphs are only required if the facility is subject to GHG reporting. Additional permit language is needed to clarify that point.	Insert additional permit language between the 1st and 2nd paragraphs in this section clarifying that the permittee is only subject to the subsequent listed GHG reporting program requirements if GHG emissions exceed the reporting threshold.
USDOE-11	STGC, Section 5.17, page 29 of 57	The draft permit language in the 1st sentence of the last paragraph of this section is inappropriate to include in the AOP since it applies to Ecology's ability to determine appropriate reporting fees, but is not a requirement that applies directly to the permittee.	Delete the 1st sentence of the draft permit language in this paragraph as follows: *~~All costs of activities associated with administering the reporting program, as described in RCW 70.94.151(2), are fee eligible.~~ Permittee must...*
USDOE-12	STGC, Section 5.17.2, page 29 of 57	Use of the term "trigger" in the parenthetical text of this section does not convey the correct intent/purpose of this requirement. Revise the draft permit language to more clearly state that the permittee is expected to exceed the Ecology GHG reporting threshold of 10,000 metrics tons (which will then logically "trigger" the requirement to submit a GHG report by the October 31 deadline).	Revise the draft permit language to read as follows: *... submit a report to Ecology no later than **October 31st** of each calendar year for GHG emissions in the previous calendar year if GHG emissions were equal to or more than the 10,000 metric tons threshold. (Note: Permittee is anticipated to exceed ~~trigger~~ this threshold ~~report deadline.~~)*

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Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change *(Proposed text additions, proposed text ~~deletions~~)*
USDOE-13	STGC, Section 5.24, page 35 of 57	The draft permit language does not clearly state that not all non-road engines are subject to WAC 173-400-035. There are a number of types/categories of non-road engines identified in the applicability language of WAC 17-400-035(1) that are excluded from being subject to the requirements of that rule (e.g. non-road engines less than 500 hp, and self-propelled engines). The permit language needs to be revised to clarify this point.	Revise the draft permit language to read as follows: *Prior to installation or operation of a nonroad engine, as defined in WAC 173-400-030(56), the permittee shall meet the requirements of WAC 173-400-035, as applicable. If the nonroad engine...*
USDOE-14	STGC, Statement of Basis (SOB), Background, page 2 of 50	The 2nd sentence in the 1st paragraph at the top of the page needs to be revised to be technically accurate and consistent with the approach displayed in the 1st sentence immediately proceeding. Renewal 1 of the AOP was actually issued on 12/29/2006 for a 5 year period from January 1, 2007 through December 31, 2011.	Revised the proposed SOB language to read as follows: *Renewal 1 was issued on December 29, 2006 covering the 5-year operating period from January 1, 2007 to December 31, 2011.*
USDOE-15	STGC, SOB, Background, page 2 of 50	The last paragraph on this page inaccurately states that the effective period of this AOP renewal would extend to December 31, 2018. It should be December 31, 2017.	Revise the proposed SOB language to read as follows: *The effective period of the 2013 AOP renewal (renewal 2) covers the five-year period from January 1, 2013 to December 31, 2017.*
USDOE-16	STGC SOB, Section 2.0, page 8 of 50	The lettering scheme for the sub-items of criteria #2 is missing a sub-item "f", making it appear as if there is missing information in the SOB.	Revise the proposed SOB language to correct the lettering scheme for the sub-items of criteria #2 by either inserting the missing element (if applicable) or "re-lettering".

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Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change *(Proposed text additions, proposed text ~~deletions~~)*
USDOE-17	STGC SOB, Section 2.0, page 10 of 50	The last sentence of the proposed language under the bullet "Energy Northwest Facilities" is contrary to the position previously taken by Ecology (as reflected in the current AOP STGC SOB) that facilities leased from Energy Northwest by RL contractors would be considered under common control of RL and potentially subject to inclusion in the AOP, as appropriate depending on the source. No clarification or information is provided to explain the basis for this change.	Provide clarification of the basis for Ecology's change in position on this issue. If the text in the proposed SOB is in error, revise the language to reflect Ecology's current position on this issue.
USDOE-18	STGC SOB, Section 2.0, page 11 of 50	Inclusion of a paragraph on the Environmental and Molecular Sciences Laboratory (EMSL) is no longer necessary now that a reference to EMSL has been removed from the corresponding section in the STGC portion of the AOP. Instead, a paragraph for the "Pacific Northwest National Laboratory Site" (of which EMSL is a part) should be included in its place consistent with earlier comment USDOE-04.	Revise the proposed SOB language to reflect the replacement of EMSL with the more generic reference to the PNNL site as follows and revise the subsequent descriptive paragraph to reflect PNNL, not just EMSL. • ~~*Environmental and Molecular Science Laboratory*~~ *Pacific Northwest National Laboratory Site*
USDOE-19	STGC SOB, Section 4.0, pages 14 and 15 of 50	Several years have passed since Ecology and the Hanford Site developed the CERCLA transition process outlined in this section of the SOB to ensure better consistency among site contractors. In the interests of continuing to identify opportunities to streamline/improve site regulatory processes, this would seem to be the right time to re-examine the outlined process to determine whether past experience indicates changes are appropriate or necessary.	Meet with responsible DOE and Hanford Site contractor staff to review the described CERCLA transition and determine if changes are appropriate to ensure the process is implemented in a consistent and standardized fashion. Revise the proposed SOB language, as appropriate, based on the results of those discussions.

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Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change *(Proposed text additions, proposed text ~~deletions~~)*
USDOE-20	STGC SOB, Section 4.0, pages 15 of 50	The paragraph at the bottom of the page describing STGC subsection 4.1.2 contains references to a 2005 supplemental report on insignificant emission units (IEUs) that was submitted as part of the last AOP renewal effort. This information was updated (with continued references to the 2005 report, as applicable) as part of the current AOP renewal application (DOE/RL-2011-27, Section 2.4). It would seem more appropriate for the SOB language to reflect the most current information that was relied upon to issue the latest AOP renewal.	Revise the proposed SOB language to reflect the information in the most current AO renewal application that Ecology relied upon in the development of this AOP renewal.
USDOE-21	STGC SOB, Section 4.0, pages 16 of 50	The paragraph describing STGC subsection 4.10 contains a reference to "Appendix D of this Basis". There is no Appendix D included with this proposed SOB. It appears that the correct reference should be to "Appendix B".	Revise the proposed SOB language, as appropriate, to reference the correct location of the description of the AOP modification process and permit change determination key.
USDOE-22	STGC SOB, Section 4.0, pages 18 of 50	The last paragraph of the text describing STGC subsection 5.8 contains an incorrect reference to "Section 4.15." It appears the correct reference should be to "Section 5.15."	Revise the proposed SOB language, as appropriate, to reference the correct STGC section related to emission units that are closed and considered irrelevant.
USDOE-23	STGC SOB, Section 4.0, pages 18 of 50	The 1st paragraph of the text describing STGC subsection 5.17 contains language that would benefit from revisions to better clarify that the Hanford Site GHG PTE is not just from stationary combustion sources.	Revise the proposed SOB language to read as follows: *The rule applies to certain facilities, including those which emit 25,000MT CO_2e or more per year in combined emissions from applicable sources, including ~~all~~ stationary fuel combustion sources.*
USDOE-24	STGC SOB, Section 4.0, pages 19 of 50	The 2nd paragraph of the text describing STGC subsection 5.18 inaccurately states the intended time period this AOP renewal will cover. The language would also benefit from some additional clarification regarding the deadline for submittal of the next renewal application.	Revise the proposed SOB language to read as follows: *This AOP renewal (renewal 2) will cover the 5 year period from January 2013 to December 2018~~7~~. The next application will be submitted by DOE no later than 6 months ~~from~~ prior to the AOP expiration date.*

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Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change *(Proposed text additions, proposed text ~~deletions~~)*
USDOE-25	STGC SOB, Section 8.0 Appendix A	The table "Ecology, Obsolete, Completed or Closed NOC Approvals, Terms and Conditions or Emission Units" appears to be incomplete. There may be additional missing information, but at a minimum, there are numerous 200 and 300 Area diesel engines/generators and boilers, as well as other emission units such as the 283-W water treatment plant or the 291-Z-1stack that have been removed from the AOP as part of this renewal process and need to be included in this table.	Review/verify Ecology records, including the information presented in the Hanford Site AOP Renewal Application (DOE/RL-2011-27) and supplemental (DOE/RL-2012-04), to develop a complete list of emission units and approval orders for inclusion in this section and revise the proposed SOB language, as appropriate.
USDOE-26	STGC SOB, Section 9.0 Appendix B	Each of the example AOP modification or notification forms in this section includes a "For Hanford Use Only" box at the bottom of the form. These boxes, which were originally intended to facilitate permit configuration control management, are no longer used by the Hanford Site contractors and should be removed from the example forms.	Revise each of the example AOP modification or notification forms in STGC SOB Appendix B to delete the "For Hanford Use Only" section at the bottom of the forms.
USDOE-27	Attachment 1, Table 1.1 (and related entries in other locations such as Table 1.4)	A review of facility information discovered that the emission unit ID numbers listed in this AOP table for the diesel engines at the Waste Encapsulation and Storage Facility (WESF) [200E E-225BC 001 and 200E E-225BG 001] are not accurate presented and need to be corrected.	Revise the draft permit language to reflect the correct identifying numbers for the WESF diesel engines as follows: ~~200E-225BC-001~~ 200E-225DG-1 ~~200E-225BG-001~~ 200E-225BG-GEN-1
USDOE-28	Attachment 1, Table 1.1 (and related entries in other locations such as Table 1.4)	Diesel engine 400E-4250 001, G-3 was removed from service in September 2006 and the diesel has been removed from the fuel tank. This engine source should be removed from the AOP.	Revise the draft permit language to remove the 400 E-4250 001, G-3 diesel engine source from the AOP and add it to the table in the STGC SOB, Appendix A.

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Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change *(Proposed text additions, proposed text ~~deletions~~)*
USDOE-29	Attachment 1, Table 1.1	The multiple emission unit entries in Table 1.1 for NOC approval order DE05NWP-001 make it confusing to find their corresponding emission unit requirements in Table 1.6. The emission unit names in Table 1.1 and Discharge Points in Table 1.6 do not match.	Combine the separate emission unit entries in Table 1.1 related to NOC approval order DE05NWP-001 into one entry under the same Discharge Point name from Table 1.6 and list all the affected emission units to ensure better correlation between the two tables. A redline/strikeout version of these specific proposed changes is attached at the back of these comments for Ecology's convenience.
USDOE-30	Attachment 1, Table 1.1	The multiple emission unit entries in Table 1.1 for NOC approval order DE11NWP-001 make it confusing to find their corresponding emission unit requirements in Table 1.6. The emission unit names in Table 1.1 and Discharge Points in Table 1.6 do not match.	Combine the separate emission unit entries in Table 1.1 related to NOC approval order DE11NWP-001 into one entry under the same Discharge Point name from Table 1.6 and list all the affected emission units to ensure better correlation between the two tables. A redline/strikeout version of these specific proposed changes is attached at the back of these comments for Ecology's convenience.
USDOE-31	Attachment 1, Table 1.1	The entry for emission unit 200E P296A042-001 contains an inaccurate NOC approval order reference in the Description column that needs to be corrected.	Revise the draft permit language in the Table 1.1 entry for 200E P296A042-001 to read as follows: *NOC: 94-07-~~01~~*
USDOE-32	Attachment 1, Table 1.2, Table 1.3, Table 1.4, Table 1.6 and Table 1.7	With the proposed elimination in the draft renewal permit of the previous AOP Attachment 1 Section 2.4 (RACT) and renumbering of subsequent sections, there are a significant number of references throughout these five AOP tables that are now inaccurate and need to be updated to reflect the new section numbers.	Revise the draft permit language in these five tables to correctly reflect the new section numbering caused by the elimination of the previous Attachment 1 Section 2.4.

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Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change *(Proposed text additions. proposed text ~~deletions~~)*
USDOE-33	Attachment 1, Table 1.4	The stated periodic opacity monitoring frequency for these diesel engines of "At least once per calendar quarter if operated" does not clarify if this requirement applies in situations where the engine is only briefly started for a few minutes at less than full load for maintenance or testing purposes. The requirement should not apply in these circumstances since it will unnecessarily increase actual emissions to the environment and potentially shorten the service life of the engine, just for the purposes of completing the visible emissions survey.	Revise the draft permit language for this requirement to read as follows: *At least once per calendar quarter if operated at full load or for more than 30 minutes at less than full load*
USDOE-34	Attachment 1, Table 1.5	To avoid potential confusion, the entry for the first 241-BX engine (31 HP) needs to have a parenthetical qualifier to better define its location and distinguish it from the subsequent "241-BX (MO-152)" entry.	Revise the draft permit language in Table 1.5 for the first 241-BX engine to read as follows: *241-BX (MO-297)*
USDOE-35	Attachment 1, Table 1.5	To avoid potential confusion, the entry for the first 241-SY engine (152 HP) needs to have a parenthetical qualifier to better define its location and distinguish it from the subsequent "241-SY (Change Trailer)" entry.	Revise the draft permit language in Table 1.5 for the first 241-SY engine to read as follows: *241-SY (MO-2173)*
USDOE-36	Attachment 1, Table 1.5	There is a typographical error in the table entry for the 31.5 HP "241-SY (Change Trailer)" engine. It is incorrectly shown as "24-SY (Change Trailer)".	Revise the draft permit language in Table 1.5 to correct the typographical error and read as follows: *241-SY (Change Trailer)*

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<table>
<tr><th>Comment Number</th><th>Draft AOP Section/Reference</th><th>Comment</th><th>Recommended Action/ Requested Change
(Proposed text additions, proposed text ~~deletions~~)</th></tr>
<tr><td>USDOE-37</td><td>Attachment 1, Table 1.5</td><td>Three additional newly regulated stationary source internal combustion engines of less than 500 HP have been identified that were inadvertently omitted from the Hanford Site AOP Renewal Application (including the supplemental application document), and should be added to Table 1.5. Two of the engines (282-B and 282-BA) are associated with site deep wells and one (225BC) is an air compressor located at WESF.</td><td>Revise the draft permit language in Table 1.5 to include the following additional internal combustion engines:
<table>
<tr><th>Location</th><th>HP</th><th>Usage</th><th>Regulation</th></tr>
<tr><td>282-B</td><td>80</td><td>Non-Emergency</td><td>40 CFR 63, Subpart ZZZZ</td></tr>
<tr><td>282-BA</td><td>190</td><td>Non-Emergency</td><td>40 CFR 63, Subpart ZZZZ</td></tr>
<tr><td>225BC</td><td>200</td><td>Emergency Backup</td><td>40 CFR 63, Subpart ZZZZ</td></tr>
</table></td></tr>
<tr><td>USDOE-38</td><td>Attachment 1, Table 1.6, page ATT 1-33,</td><td>The approval date for approval order NOC 94-07 Rev. 3 in the header portion for Discharge Point P-296042-001 is incorrectly listed as 5/6/2008. It should be 5/7/2008.</td><td>Revise the draft permit language to reflect the correct approval date for NOC 94-07 Rev. 3 as follows:
NOC 94-07 (8/29/1994), Rev 1 (12/22/1997), Rev 2 (10/25/1999), and Rev 3 (5/6/2008)</td></tr>
<tr><td>USDOE-39</td><td>Attachment 1, Table 1.6, page ATT 1-39</td><td>The first condition for Discharge Point P-WTP-001 at the top of this page contains incomplete references to 40 CFR 60, Appendix A in two places (in the "Condition" and "Test Method" sections) that need to be corrected.</td><td>Revise the draft permit language to read as follows in the two identified locations:
EPA Reference Method 9 of 40 CFR 60, Appendix A</td></tr>
<tr><td>USDOE-40</td><td>Attachment 1, Table 1.6, page ATT 1-50</td><td>For consistency with the previous comment USDOE-29, additional parenthetical text needs to be added to the current name for Discharge Point "Ventilation Systems for 241-AN and 241-AW Tank Farms" to reflect each individual emission unit covered by this NOC approval order and ensure full correlation with the revised permit language in Table 1.1.</td><td>Revise the draft permit language as follows to include the individual emissions units covered by approval order DE05NWP-001 as part of the Discharge Point name:
Ventilation Systems for 241-AN and 241-AW Tank Farms (P-296A044-001, P-296A045-001, P-296A046-001, P-296A047-001)</td></tr>
</table>

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Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change *(Proposed text additions. proposed text ~~deletions~~)*
USDOE-41	Attachment 1, Table 1.6, page ATT 1-68	For consistency with the previous comment USDOE-30, additional parenthetical text needs to be added to the current name for Discharge Point "241-AP, 241-SY, and 241-AY/AZ Ventilation" to reflect each individual emission unit covered by this NOC approval order and ensure full correlation with the revised permit language in Table 1.1.	Revise the draft permit language as follows to include the individual emissions units covered by approval order DE11NWP-001 as part of the Discharge Point name: *241-AP, 241-SY, and 241-AY/AZ Ventilation System (P-296AP-001, P-296SY-001, P-296A042-001)*
USDOE-42	Attachment 1, Table 1.6, pages 1-68 through ATT 1-72	The proposed draft permit language and conditions included for Discharge Point "241-AP, 241-SY, and 241-AY/AZ Ventilation System (P-296AP-001, P-296SY-001, P-296A042-001)" do not completely and accurately match the actual approval conditions in the referenced approval order DE11NWP-001. The AOP approval conditions need to more exactly match the requirements of the approval order to minimize the potential for confusion during the annual AOP compliance certification process.	Revise the draft permit language for this Discharge Point to more closely match the applicable requirements language from approval order DE11NWP-001. A redline/strikeout version of these specific proposed changes is attached at the back of these comments for Ecology's convenience.
USDOE-43	Attachment 1 SOB, General	This section of the draft AOP is missing footers and appropriate pagination.	Revise the Attachment 1SOB to include appropriate footers and pagination for future reference.
USDOE-44	Attachment 1 SOB, Sections 2.0 through 2.9	The introductory text at the beginning of Section 2.0 contains a reference to subsection 2.4 (RACT) that no longer exists in the draft permit language. This portion of the Attachment 1 SOB needs to be revised throughout to reflect the elimination of the previous subsection 2.4 and the subsequent renumbering of previous subsections 2.5 through 2.9.	Revise the proposed SOB language to delete subsection 2.4 (RACT) and renumber the subsequent subsections. Revise the proposed language to delete any additional references elsewhere in the SOB to the previous subsection 2.4, and revise the proposed SOB language to reflect the renumbering of previous subsections 2.5 through 2.9.

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USDOE-45	Attachment 1 SOB, Sections 2.7, 2.8 and 2.9	Each of these subsections includes proposed language indicating that the corresponding monitoring provisions apply to Attachment 1, Table 1.5. While this is true in the current AOP, it is not yet accurate for the AOP renewal as drafted since the current engine sources in the draft permit Table 1.5 will not have any applicable requirements until the compliance date(s) in 2013 are reached. This situation needs to be reflected in the SOB language.	Revise the proposed SOB language to clearly reflect that the monitoring provisions of subsections 2.7, 2.8 and 2.9 will not apply to the new Table 1.5 until such time as Ecology incorporates applicable requirements for engines less than 500 hp when the 2013 compliance dates in 40 CFR 63 Subpart ZZZZ are reached.
USDOE-46	Attachment 1 SOB, Section 3.1.5	Since the 331C emission unit has been closed and removed from the AOP, this section containing details of MODEL 6 should also be deleted.	Revise the proposed SOB language to delete MODEL 6 "Emissions from 331C Gas Cylinder Management Process". As a side note, it is not recommended that subsequent sections be renumbered since there are numerous references throughout Attachment 1 to these other MODELs.
USDOE-47	Attachment 1 SOB, Appendix A	Appendix A summarizes discussion regarding IEUs from the original AOP application (DOE/RL-95-07). Although this was the original source/basis for much of the current strategy and approach for IEUs in the Hanford Site AOP, this SOB should also reflect the information from the current AOP Renewal Application (DOE/RL-2011-27) that Ecology relied upon for issuance of this renewal.	Review Section 2.4 of DOE/RL-2011-27 and revise the proposed language in the SOB to incorporate any changes based on that review, as appropriate.
USDOE-48	Attachment 1 SOB, Appendices B and C	The IEU information presented in the proposed language of this SOB is taken directly from the current SOB, which was based on the previous AOP renewal effort. The current AOP Renewal Application contains updated information on the various types of IEUs present on the Hanford Site that should be reflected in the SOB.	Revise the proposed SOB language in Appendices B and C to reflect the updated IEU information provided in the current AOP Renewal Application (DOE/RL-2011-27). It may be appropriate to delete Appendix C based on that information.

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Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change *(Proposed text additions. proposed text ~~deletions~~)*
USDOE-49	Attachment 2, Radioactive Air Emissions License, #FF-01 (FF-01), General Conditions, Section 1.3	The title of this section "Prohibitive Activities" does not convey the intended meaning that is most appropriate for the requirements contained in the section. A more appropriate title would be "Prohibited Activities".	Revise the title of FF-01 Section 1.3 from "Prohibitive Activities" to "Prohibited Activities". This will also require the Table of Contents to be updated, as well as trigger a global FF-01 change from "prohibitive" to "prohibited" wherever else it is used.
USDOE-50	FF-01, General	A number of additional revisions to the FF-01 license have been approved/issued by DOH since the 2/23/2012 version that was included in the AOP public comment draft was issued. Prior to final issuance of the AOP renewal, an updated version of the FF-01 needs to be issued and incorporated into the AOP.	Verify all additional radioactive air emissions licensing activities issued/performed since DOH issued the renewed FF-01 on 2/23/2012 are identified and captured in an updated FF-01 for issuance with the final AOP.
USDOE-51	FF-01, Emission Unit (EU) 53, 296-P-22	The original revisions requested to the Operational Status as part of the Renewal Application have not been incorporated into the FF-01 License.	Revise the Operational Status language for EU53 to read as follows: *The emission unit operates ~~continuously~~ intermittently.*
USDOE-52	FF-01, EU58, 296-P-44	Typographical errors in the Operational Status language need to be corrected.	Revise text to read "241-SY-112" instead of "241-S-102". Revise text in 2nd to last sentence to read "…planned for further use at…"
USDOE-53	FF-01, EU59, 296-S-25	Typographical errors in the Operational Status language need to be corrected.	Revise text in the first sentence to include appropriate capitalization as follows: "…241-SY A Train….
USDOE-54	FF-01, EU141, 296-A-21	EU141 has been closed and should be removed from the FF-01. A report of closure for EU141 (DOE letter 12-ECD-0014) was transmitted to DOH on 6/6/2012.	Revise the FF-01 License to remove EU141 and update the Health SOB to add it to the list of obsolete emission units.
USDOE-55	FF-01, EU204, 296-A-40	Typographical error in the Average Stack Exhaust Velocity information needs to be corrected.	Revise the Average Stack Exhaust Velocity information to read "11.50 m/second" instead of "11.51 m/second".

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USDOE-56	FF-01, EU486, 200 Area Diffuse/Fugitive	The listed regulatory citations under Monitoring Requirements are not consistent with the identified Abatement Technology requirement of "BARCT"	Revise the text to refer to "WAC 246-247-075[3]" instead of "WAC 246-247-075[2]" Revise the text to read "40 CFR 61, Appendix B, Method 114(3)"
USDOE-57	FF-01, EU713, 244-CR Vault Passive Filter A	This emission unit has a radial filter as abatement technology instead of a G-1 filter. However, Conditions 2 and 4 of NOC ID 853 (AIR 12-332) associated with this EU continue to include requirements specific only to a G-1 HEPA filter, which are no longer applicable.	Delete the inapplicable Conditions 2 and 4 from NOC ID 853 or revise the conditions to reflect requirements appropriate for a radial filter (such as something similar to the "Alternative Approval" language included in NOC ID 825 (AIR 12-307) for EU1334.
USDOE-58	FF-01, EU735 (296-A-44) and EU736 (296-A-45)	An identified "Radionuclide Requiring Measurement" has been omitted from the FF-01 License.	Revise the text to add Cm-244 to the list as a "Radionuclide Requiring Measurement".
USDOE-59	FF-01, EU713, 244-CR Vault Passive Filter A FF-01, EU738, 244-A Primary HEPA FF-01, EU740, 244-BX Primary Filter FF-01, EU742, 244-S Primary HEPA FF-01, EU744, 244-TX Primary HEPA FF-01, EU751, 241-AZ-301	The original revisions requested to the Abatement Technology requirements for passive breather filters as part of the Renewal Application have not been incorporated into the FF-01 License.	Revise the text to read "ALARACT" instead of "BARCT" and remove the WAC 246-247-040(3) citation.
USDOE-60	Att. 2, EU855 (296-A-46) and EU856 (296-A-47)	Typographical error in the Stack Diameter information needs to be corrected.	Revise the Stack Diameter information to read "0.25 m" instead of "0.26 m".

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Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change *(Proposed text additions; proposed text ~~deletions~~)*
USDOE-61	FF-01, EU910, 241-ER-311	This emission unit has a radial filter as abatement technology instead of a G-1 filter. However, Conditions 4 and 5 of NOC ID 850 (AIR 12-329) associated with this EU continue to include requirements specific only to a G-1 HEPA filter, which are no longer applicable.	Delete the inapplicable Conditions 4 and 5 from NOC ID 850 or revise the conditions to reflect requirements appropriate for a radial filter (such as something similar to the "Alternative Approval" language included in NOC ID 825 (AIR 12-307) for EU1334.
USDOE-62	FF-01, EU894, 241-UX-302A FF-01, EU910, 241-ER-311 FF-01, EU912, 244-A Annulus HEPA FF-01, EU922, 244-BX Annulus HEPA FF-01, EU949, 244-S Annulus HEPA FF-01, EU969, 244-TX Annulus HEPA FF-01, EU1129, 241-U-301B FF-01, EU1130, 241-AZ-154	The original revisions requested to the Abatement Technology requirements for passive breather filters as part of the Renewal Application have not been incorporated into the FF-01 License.	Revise the text to read "ALARACT" instead of "BARCT" and remove the WAC 246-247-040(3) citation.
USDOE-63	FF-01, EU1180, EP-331-02	EU1180 has been closed and no longer exist. It should be removed from the FF-01, along with its approval letter AIR 11-302 and NOC ID 787.	Revise the FF-01 License to remove EU1180 and update the Health SOB to add it to the list of obsolete emission units.

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

Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change *(Proposed text additions; proposed text ~~deletions~~)*
USDOE-64	FF-01, EU1231, 241-EW-151	Typographical errors in the Operational Status language need to be corrected.	Revise the Operational Status text to read as follows: *"... under the appropriate regulations and/or permits for the activity being performed~~.~~ ~~A~~and the emission units associated with the activity. The emission unit is a passive breather filter ventilation that operate~~d~~s continuously.*
USDOE-65	FF-01, EU1232 241-S-302	The original revisions requested to the Abatement Technology and Monitoring Requirements sections for passive breather filters as part of the Renewal Application have not been incorporated into the FF-01 License.	Revise the text in the Abatement Technology section to reflect that the Required # HEPA filter units is *"1"*. Revise the Sampling Frequency requirement to read "Every 365 days".
USDOE-66	FF-01, EU1249, 241-S-102 Inlet Filter	Multiple text entries within the Abatement Technology and Monitoring Requirements sections are inconsistent with those includes for other passive breather filter emission units.	Revise the Abatement Technology requirement to read "ALARACT" instead of "BARCT" and remove the WAC 246-247-040(3) citation. Add the text "40 CFR 61, Appendix B, Method 114" to the Monitoring and Testing Requirements section. Revise the text in the Sampling Frequency section to read "Every 365 days" instead of "1 per year".
USDOE-67	FF-01, EU751, 241-AZ-301	This emission unit has a radial filter as abatement technology instead of a G-1 filter. However, Condition 4 of NOC ID 855 (AIR 12-334) associated with this EU continues to include a requirement specific only to a G-1 HEPA filter, which is no longer applicable. An Off-Permit Change Notice requesting deletion of this NOC Condition was hand-delivered and stamped "received" by DOH on 3/21/2012.	Incorporate the proposed Off-Permit Change Notice and delete the inapplicable Condition 4 from NOC ID 855.

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

Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change *(Proposed text additions; proposed text ~~deletions~~)*
USDOE-68	FF-01, EU1289, Decon Trailer 200 East (Int. Power Exhaust) FF-01, EU1290, Decon Trailer 200 West (Int. Power Exhaust) FF-01, EU1291, Decon Trailer 200E (Collection Tank Vent) FF-01, EU1292, Decon Trailer 200W (Collection Tank Vent)	The original revisions requested to the Abatement Technology requirements for passive breather filters as part of the Renewal Application have not been incorporated into the FF-01 License.	Revise the text to read "ALARACT" instead of "BARCT" and remove the WAC 246-247-040(3) citation.
USDOE-69	FF-01, EU738, 244-A Primary FF-01, EU740, 244-BX Primary FF-01, EU742, 244-S Primary FF-01, EU744, 244-TX Primary FF-01, EU912, 244-A Annulus FF-01, EU922, 244-BX Annulus FF-01, EU959, 244-S Annulus FF-01, EU969, 244-TX Annulus	These emission units each have a radial filter as abatement technology instead of a G-1 filter. However, Condition 4 of NOC ID 859 (AIR 12-338) associated with this EU continues to include a requirement specific only to a G-1 HEPA filter, which is no longer applicable.	Delete the inapplicable Condition 4 from NOC ID 859 or revise the condition to reflect a requirement appropriate for a radial filter (such as something similar to the "Alternative Approval" language included in NOC ID 825 (AIR 12-307) for EU1334.

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

Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change *(Proposed text additions, proposed text ~~deletions~~)*
USDOE-70	Health SOB, General	The proposed Health SOB is missing the footer and pagination for all pages past page 7 of the SOB.	Revise the proposed Health SOB to include appropriate footers and pagination throughout the SOB.
USDOE-71	Health SOB, General	Sections 5.0 and 6.0 appear to only include obsolete emission units and applicable requirements that have occurred since the last FF-01 renewal and issuance. If accurate, this makes the overall AOP SOB an incomplete document. The previous lists of obsolete emission units and applicable requirements that are in the current Health SOB need to be added to this list so that it is current at all times and reflect the complete history of the FF-01/AOP.	Revise Sections 5.0 and 6.0 of the proposed Health SOB to include all the obsolete emission units and applicable requirements, not just those that have occurred since the last renewal effort in 2006. If the agencies, believe it is unnecessary to do so, please provide clarification of why and add an explanation to the Health SOB.
USDOE-72	Attachment 3 SOB, General	The footer in the proposed SOB incorrectly reflect "Ecology" instead of "BCAA" and should be corrected. Additionally, the header incorrectly references "Attachment 2" instead of "Attachment 3" and should be corrected.	Revise the footer in the proposed Attachment 3 SOB to read as follows: *~~Ecology~~ BCAA Attachment 3 Statement of Basis* Revise the header in the proposed Attachment 3 SOB to read as follows: *Final Draft SoB for Attachment ~~2~~3 for AOP Renewal 2*
USDOE-73	Attachment 3 SOB, page 1 of 16	In two places on the cover page(in the header and in the 1st paragraph), the incorrect agency name "Benton Clean Air Authority" is used. This should be corrected to reflect the current agency name "Benton Clean Air Agency."	Revise the proposed SOB language in the identified two location so that the agency name reads as follows: *Benton Clean Air ~~Authority~~ Agency*
USDOE-74	Attachment 3 SOB, page 1 of 16	In the second paragraph of the proposed SOB language, there is an incomplete list of changes to BCAA since the 1994 delegation letter. The name change from "Authority" to "Agency" is not reflected in the list of changes.	Revise the proposed SOB language to include a line item identifying when the agency name was revised from "Authority" to "Agency."

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

These redline/strikeout changes to Table 1.1 correspond with comments USDOE-29 and USDOE-30

Table 1.1 List of Significant Emission Units

Emission unit	Requirements	Description
241-AP, 241-SY, and 241-AY/AZ Tank Farm Ventilation System 200E P-296AP-001, 200E P-296SY-001, 200W P-294A042-001 (Tank Exhausters)	Table 1.6	241-AP, 241-SY, and 241-AY/AZ Ventilation NOC: DE11NWP-001
Ventilation Systems for 241-AN and 241-AW Tank Farms (200E) 200E P-296A044-001 200E P-296A045-001 200E P-296A046-001 200E P-296A047-001 (Tank Exhausters)	Table 1.6	241-AN and 241-AW Tank Farms Ventilation Systems NOC: DE05NWP-001
~~200W P-296SY-001 (Exhauster)~~	~~Table 1.6~~	~~241-AP, 241-SY, and 241-AY/AZ Ventilation. NOC: DE11NWP-001~~
~~200E P-296AN-001 (Tank Exhauster)~~	~~Table 1.6~~	~~NOC approval for Ventilation Systems for 241-AN and 241-AW Tank Farms. NOC: DE05NWP-~~
~~200E P-296AP-001 (Tank Exhauster)~~	~~Table 1.6~~	~~241-AP, 241-SY, and 241-AY/AZ Ventilation. NOC: DE11NWP-001~~
~~200E P-296AW-001 (Tank Exhauster)~~	~~Table 1.6~~	~~NOC approval for Ventilation Systems for 241-AN and 241-AW Tank Farms. NOC: DE05NWP-~~
~~Ventilation Systems for 241-AN and 241-AW Tank Farms (200E)~~	~~Table 1.6~~	~~NOC approval for 200E Ventilation Systems for 241-AN and 241-AW Tank Farms. NOC: DE05NWP-001~~
~~241-AP, 241-SY, and 241-AY/AZ Tank Farm Ventilation System~~	~~Table 1.6~~	~~NOC approval for 241-AP, 241-SY, and 241-AY/AZ Tank Farm Ventilation System. NOC: DE11NWP-001~~

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

These redline/strikeout changes to Table 1.6 correspond with comment USDOE-42

Table 1.6 Emission Limits and Periodic Monitoring Requirements for Emission Units with NOC Approval Conditions

DISCHARGE POINT 241-AP, 241-SY, AND 241-AY/AZ VENTILATION SYSTEM (P-296-AP-001, P-296SY-001, P-296A042-001)

200E Area, Tank Farms - Ventilation
Requirement Citation (WAC or Order Citation): NOC Approval Order DE11NWP-001 (11/30/2011)

Condition Approval	**11/30/2011**
Condition:	EMISSION LIMITS Visible emissions will not exceed five (5)%. [WAC 173-400-040(2)].
Periodic Monitoring:	Compliance and monitoring shall be met by Tier 3 visible Emission Survey requirements of the Hanford AOP, Section 2. Should visible emissions be observed which are not solely attributable to water condensation, compliance shall be met by performing an opacity determination utilizing 40 CFR 60, Appendix A, Method 9, providing that such determination shall not place the visible emission observer in hazard greater than that identified for the general worker.
Test Method:	40 CFR 60, Appendix A, Method 9, as applicable.
Test Frequency:	None specified~~t applicable~~ (when visible emissions are observed).
Required Records:	Visible emission survey records in which a visible emission was observed and ~~is~~was not solely attributable to water condensation. 40 CFR 60, Appendix A, Method 9 results if conducted.
State-Only	No.
Calculation Model	Not applicable.

Condition Approval	**11/30/2011**
Condition:	EMISSION LIMITS VOC emissions shall not exceed 3.1 tons per year for the 241-SY system.
Periodic Monitoring:	Compliance and monitoring of this condition shall be demonstrated by VOC stack sampling and applying these concentration readings with contemporaneous stack flow rate and temperatures to determine mass release rate of VOCs in pounds per year.~~stack gas flow and temperature measurement.~~
Test Method:	VOC stack sampling and calculation as identified in the NOC Approval Condition 3.0.
Test Frequency:	Annually.
Required Records:	1. Records of exhauster system stack flow rates and temperature records. 2. Records of calibration of stack flow rate and temperature measurement devices. 3. Laboratory analysis result summaries from tank headspaces or primary tank ventilation system exhaust for VOCs.
State-Only	No.
Calculation Model	Not applicable.

Condition Approval	**11/30/2011**
Condition:	EMISSION LIMITS VOC emissions shall not exceed 3.8 tons per year for 241-AP system.
Periodic Monitoring:	Compliance and monitoring of this condition shall be demonstrated by VOC stack sampling and applying these concentration readings with contemporaneous stack flow rate and temperatures to determine mass release rate of VOCs in pounds per year.~~stack gas flow and temperature measurement.~~
Test Method:	VOC stack sampling and calculation as identified in the NOC Approval Condition 3.0.
Test Frequency:	Annually.
Required Records:	1. Records of exhauster system stack flow rates and temperature records. 2. Records of calibration of stack flow rate and temperature measurement devices. 3. Laboratory analysis result summaries from tank headspaces or primary tank ventilation system exhaust for VOCs.
State-Only	No.
Calculation Model	Not applicable.

Condition Approval	**11/30/2011**
Condition:	EMISSION LIMITS VOC emissions shall not exceed 3.2 tons per year for 241-AY/AZ system.
Periodic Monitoring:	Compliance and monitoring of this condition shall be demonstrated by VOC stack sampling and applying these concentration readings with contemporaneous stack flow rate and temperatures to determine mass release rate of VOCs in pounds per year ~~stack gas flow and temperature measurement.~~
Test Method:	VOC stack sampling and calculation as identified in the NOC Approval Condition 3.0.
Test Frequency:	Annually.
Required Records:	1. Records of exhauster system stack flow rates and temperature records. 2. Records of calibration of stack flow rate and temperature measurement devices. 3. Laboratory analysis result summaries from tank headspaces or primary tank ventilation system exhaust for VOCs.
State-Only	No.
Calculation Model	Not applicable.

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

Condition Approval	**11/30/2011**
Condition:	EMISSION LIMITS All TAPs, as shown in Table 2 of Approval Order DE11NWP-001, shall be below their respective ASIL or approved through a Second Tier review.
Periodic Monitoring:	Compliance and monitoring with this condition shall be demonstrated by: 1. Stack sampling as described in NOC Approval Section 3.0 for TAPs and applying these concentration readings with contemporaneous stack flow rates and temperatures to determine the mass release rate of these TAPs in pounds and their respective release rate averaging times in WAC 173-460-150. 2. ~~Compliance and monitoring shall be met by o~~Operating the exhauster systems in accordance with BACT and tBACT emission controls in place. These controls are operation of each primary tank ventilation exhauster system not exceeding the maximum ventilation rates shown in the Table below with a moisture de-entrainer, heater, pre-filters, and a two-stage high Efficiency Particulate Air (HEPA) filtration system in service in each treatment train.
Frequency:	Annually.
Test Method:	Stack sampling and calculations identified in the NOC Approval Condition 3.0.
Test Frequency:	Annually.
Required Records:	1. Records of exhauster system stack flow rates and temperature records. 2. Records of calibration of stack flow rate and temperature measurement devices. 3. Laboratory analysis result summaries from tank headspaces or primary tank ventilation system exhaust for TAPs. 4. Calculation of mass release rate TAPs in pounds and their respective release rate averaging times in WAC 173-460-150. 5. Documentation and record-keeping of BACT and tBACT compliance of emission controls.
State-Only	No.
Calculation Model	Not applicable.

Project Farm Ventilation Rates

Tank Farm(s)	Normal Operations	Maximum Operations
241-SY	1,360 scfm	2,500 scfm
241-AP	1,500 scfm	3,000 scfm
241-AY/AZ	1,500 scfm	3,000 scfm

scfm = standard cubic foot per minute, 1 atmosphere pressure at 20°C

Condition Approval	**11/30/2011**
Condition:	EMISSION LIMITS Ammonia emissions shall not exceed 58.1pounds per year for 241-SY system.
Periodic Monitoring:	Conduct ammonia concentration readings as described in in section 3.1.1 and 3.4 of NOC Approval Order DE11NWP-001, and applying these concentration readings with contemporaneous stack flow rate and temperatures to determine daily ~~instantaneous mass~~ release rate of ammonia.
Test Method:	Ammonia stack concentrations shall be sampled a minimum of three times. Ammonia sampling and analysis will be in accord with approved alternative sampling procedures including the use of Draeger tubes to measure stack gas concentration of ammonia providing such devices are spanned to appropriately measure the stack gas ammonia concentration. Stack flow rate and temperature will be applied with the ammonia stack gas concentration to report ammonia emission in terms of pounds per day.
Test Frequency:	*Baseline Assessments* Baseline assessments shall be conducted within ninety (90) days of commencement of operations. Results of baseline emission assessments shall be submitted to Ecology within ninety (90) days of completion of such assessment. *Quarterly Assessment* In order to maintain reasonable assurance of continued compliance with emission limitations from these exhauster systems, quarterly assessment of ammonia stack emissions will be conducted. A minimum of three samples shall be used to assess these emissions.
Required Records:	Results of emission assessments, baseline and quarterly emission monitoring results, supporting data and calculations to demonstrate compliance with ammonia limits.
~~Required Records:~~	~~Results of analyses.~~
State-Only	No.
Calculation Model	Not applicable.

Condition Approval	**11/30/2011**
Condition:	EMISSION LIMITS Ammonia emissions shall not exceed 71.9 pounds per year for 241-AP system.
Periodic Monitoring:	Conduct ammonia concentration readings as described in in section 3.1.1 and 3.4 of NOC Approval Order DE11NWP-001, and applying these concentration readings with contemporaneous stack flow rate and temperatures to determine daily~~instantaneous mass~~ release rate of ammonia.
Test Method:	Ammonia stack concentrations shall be sampled a minimum of three times. Ammonia sampling and analysis will be in accord with approved alternative sampling procedures including the use of Draeger tubes to measure stack gas concentration of ammonia providing such devices are spanned to appropriately measure the stack gas ammonia concentration. Stack flow rate and temperature will be applied with the ammonia stack gas concentration to report ammonia emission in terms of pounds per day.
Test Frequency:	*Baseline Assessments* Baseline assessments shall be conducted within ninety (90) days of commencement of operations. Results of baseline emission assessments shall be submitted to Ecology within ninety (90) days of completion of such assessment. *Quarterly Assessment* In order to maintain reasonable assurance of continued compliance with emission limitations from these exhauster systems, quarterly assessment of ammonia stack emissions will be conducted. A minimum of three samples shall be used to assess these emissions.
Required Records:	Results of emission assessments, baseline and quarterly emission monitoring results, supporting data and calculations to demonstrate compliance with ammonia limits.
State-Only	No.
Calculation Model	Not applicable.

Condition Approval **11/30/2011**

Condition: EMISSION LIMITS

Ammonia emissions shall not exceed 60.8 pounds per year for 241-AY/AZ system.

Periodic Monitoring: Conduct ammonia concentration readings as described in in section 3.1.1 and 3.4 of NOC Approval Order DE11NWP-001, and applying these concentration readings with contemporaneous stack flow rate and temperatures to determine daily~~instantaneous mass~~ release rate of ammonia.

Test Method: Ammonia stack concentrations shall be sampled a minimum of three times. Ammonia sampling and analysis will be in accord with approved alternative sampling procedures including the use of Draeger tubes to measure stack gas concentration of ammonia providing such devices are spanned to appropriately measure the stack gas ammonia concentration. Stack flow rate and temperature will be applied with the ammonia stack gas concentration to report ammonia emission in terms of pounds per day.

Test Frequency: *Baseline Assessments* Baseline assessments shall be conducted within ninety (90) days of commencement of operations. Results of baseline emission assessments shall be submitted to Ecology within ninety (90) days of completion of such assessment.

Quarterly Assessment In order to maintain reasonable assurance of continued compliance with emission limitations from these exhauster systems, quarterly assessment of ammonia stack emissions will be conducted. A minimum of three samples shall be used to assess these emissions.

Required Records: Results of emission assessments, baseline and quarterly emission monitoring results, supporting data and calculations to demonstrate compliance with ammonia limits.

State-Only No.

Calculation Model Not applicable.

Condition Approval **11/30/2011**

Condition: OPERATIONAL LIMITS

Normal Double-Shell Tank (DST) primary tank ventilation system flow rates during Normal Operations (e.g. storage, retrieval, and sampling) are shown in the Table below. The maximum flow rates for the DST ventilation systems shall not exceed ventilation rates for Maximum Operations (Table below).

Project Farm Ventilation Rates

Tank Farm(s)	Normal Operations	Maximum Operations
241-SY	1,360 scfm	2,500 scfm
241-AP	1,500 scfm	3,000 scfm
241-AY/AZ	1,500 scfm	3,000 scfm
scfm = standard cubic foot per minute, 1 atmosphere pressure at 20°C		

Periodic Monitoring: Stack gas flow and temperature measurement

~~Frequency: Annually.~~

Test Method: None Specified. ~~Stack sampling and calculations identified in the NOC Approval Condition 3.0.~~

Test Frequency: Annually.

Required Records: ~~Results of analyses.~~Records of calibration of stack gas flow rate and temperature measurement devices.

Records of exhaust system stack flow rate and temperature measurements.

State-Only No.

Calculation Model Not applicable.

Condition Approval	**11/30/2011**
Condition:	OPERATIONAL LIMITS No more than two of the three tanks in the 241-SY Tank Farm (241-SY-101 through 241-SY-103) shall be under active mixing and Waste Feed Delivery operations at any one time. Waste Feed Delivery operations are defined as those which mix and transfer waste, including transfers to the Waste Treatment and Immobilization Plant.
Periodic Monitoring:	Compliance and monitoring of this condition shall be demonstrated by operational record keeping of Waste Feed Delivery operations recorded into operational records sufficient to determine onset and cessation of such operations for each tank.
Test Method:	Not specified
Test Frequency:	Not applicable.
Required Records:	Operational records
State-Only	No.
Calculation Model	Not applicable.

Condition Approval	**11/30/2011**
Condition:	OPERATIONAL LIMITS No more than two of the eight tanks in the 241-AP Tank Farm (241-AP-101 through 241-AP-108) shall be under active mixing and Waste Feed Delivery operations at any one time. Waste Feed Delivery operations are defined as those which mix and transfer waste, including transfers to the Waste Treatment and immobilization Plant.
Periodic Monitoring:	Compliance and monitoring of this condition shall be demonstrated by operational record keeping of Waste Feed Delivery operations recorded into operational records sufficient to determine onset and cessation of such operations for each tank.
Test Method:	Not specified
Test Frequency:	Not applicable.
Required Records:	Operational records
State-Only	No.
Calculation Model	Not applicable.

Condition Approval	**11/30/2011**
Condition:	OPERATIONAL LIMITS No more than two of the four tanks within the 241-AY and 241-AZ Tank Farm (241-AY-101, 241-AY-102, 241AZ-101, and 241-AZ-102) shall be under active mixing and Waste Feed Delivery operations at any one time. Waste Feed Delivery operations are defined as those which mix and transfer waste, including transfers to the Waste Treatment and immobilization Plant.
Periodic Monitoring:	Compliance and monitoring of this condition shall be demonstrated by operational record keeping of Waste Feed Delivery operations recorded into operational records sufficient to determine onset and cessation of such operations for each tank.
Test Method:	Not specified
Test Frequency:	Not applicable.
Required Records:	Operational records
State-Only	No.
Calculation Model	Not applicable.

Condition Approval:	**11/30/2011**
Condition:	REPORTING Visible emission surveys, conducted pursuant to NOC Approval Compliance Demonstration requirement 1.4.2, and an assessment of the cause of the visible emissions with a report of the maintenance conducted to maintain the subject exhaust system's T-BACT operations.
Periodic Monitoring:	The completed surveys, assessment of cause and exhaust system maintenance report shall be submitted to Ecology within thirty (30) days of completion of the survey.

Test Method:	Not specified.
Test Frequency:	Not applicable.
Required Records:	Visible emission surveys, assessment of cause and report of maintenance.
State-Only:	No.
Calculation Model:	Not applicable

Condition Approval:	**11/30/2011**
Condition:	REPORTING
	Identification of any TAP(s) not previously identified within the NOC Application emissions estimate.
Periodic Monitoring:	Lab results and supporting calculations identifying the TAP(s) shall be submitted to Ecology within ninety (90) days of completion of the analyses which verify emissions of the toxic air pollutant(s) from the project.
Test Method:	Not specified.
Test Frequency:	Not applicable.
Required Records:	Laboratory results and supporting calculations.
State-Only:	Yes.
Calculation Model:	Not applicable

There were no conditions addressing the required Dimethyl Mercury Baseline assessments called out in approval order section 3.0?

SUBMITTED VIA E-MAIL

August 2, 2012

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

RE: Proposed Renewal of the Hanford Site Air Operating Permit

Dear Mr. Gent:

Friends of the Columbia Gorge has reviewed and would like to comment on the above-referenced renewal proposal. Friends of the Columbia Gorge is a non-profit organization with approximately 5,000 members dedicated to protecting and enhancing the Columbia River Gorge through the effective implementation of local, state and federal environmental laws, including the Columbia River Gorge National Scenic Area Act. Our membership includes hundreds of members who reside, work, and recreate in the six counties within the Columbia River Gorge National Scenic Area.

The Columbia River Gorge is a national scenic treasure. It is our collective responsibility to protect it. Of particular concern to Friends are the documented ongoing adverse impacts to air quality in the Gorge. Air quality and visibility within the Columbia River Gorge are currently degraded. The Gorge has is one of the most polluted airsheds in the western United States. Visibility is impaired more than 90% of days. Acid deposition in the eastern Gorge is damaging ecosystems and threatening Native American cultural resources. Data gathered from U.S Forest Service IMPROVE sites in the Gorge show that air quality is not improving. The Hanford Site is in relatively close proximity to the National Scenic Area and it is probable that emissions from the site could have negative impacts on Gorge air quality.

RCW 43.97.025(1) requires that all state agencies comply with the Scenic Area Act and the Management Plan for the National Scenic Area. As such, Ecology must ensure that the project is consistent with the Scenic Area Act and the Management Plan. The Management Plan for the Columbia River Gorge National Scenic Area states "air quality shall be protected and enhanced, consistent with the purposes of the Scenic Area Act." NSA Management Plan at I-3-32. To carry out this mandate, the Department of Environmental Quality, Southwest Clean Air Agency, U.S.

Forest Service and Columbia River Gorge Commission are charged with the responsibility of adopting a comprehensive air quality strategy for the Columbia River Gorge that addresses *all* sources of air pollution. The current air quality strategy calls for continued improvement of air quality within the National Scenic Area especially in regards to visibility and the emission of any pollutants that may adversely affect the area's scenic, natural, cultural, or recreational resources.

In addition, RCW 70.94.011 requires that the goals of the Washington Clean Air Act be incorporated into the actions of all state agencies. One of these goals is that "return areas with poor air quality to levels adequate to protect health and the environment as expeditiously as possible." RCW 70.94.011. As the Columbia River Gorge suffers from poor air quality, possible effects on the area from the Hanford Site should be modeled as part of the permit renewal process and no permit renewal should be issued if models show that Gorge air quality will be reduced as a result of continued operation of the Site.

The Department of Ecology must ensure that the proposed permit will comply with the Management Plan and National Scenic Area Act standards and protect the Gorge from adverse impacts of air pollution. To ensure that the Gorge is protected from adverse impacts to air quality the Department of Ecology should model air pollution impacts specific to the Columbia River Gorge National Scenic Area.

Thank you for this opportunity to comment.

Sincerely,

Jeff Thompson
Legal Intern

August 2, 2012

RECEIVED
AUG 02 2012
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:

Thank you for the opportunity to provide public comments on the draft Hanford Site Air Operating Permit (AOP) renewal. Enclosed are my comments. I hope you find them useful in crafting a proposed AOP that complies with the *Clean Air Act* (CAA) and the *Washington Clean Air Act* (WCAA).

I am a long-time resident of Richland, Washington. My home is within five (5) miles of the Hanford Site area that for many years has been the source for slightly more than ninety-nine percent (99%) of the total radionuclide air emissions from the entire Hanford Site; this according to certified reports required by 40 C.F.R. 61 subpart H. I also live within a few blocks of a portion of the Columbia River, downstream from the Hanford Site. I highly value and enjoy this section of the Columbia, frequently walking adjacent to the river on the footpath while generally enjoying the seasonally-variable flora and fauna. Because of the cumulative nature of exposure to radiation, this downstream river environment also cannot escape the affects from years of exposure to Hanford's radionuclides; whether from Hanford's air emissions, from Hanford's radionuclide-contaminated groundwater, or from the upstream wind erosion of radionuclide-contaminated tumbleweeds and soil.

Radionuclides are classified as a hazardous air pollutant under CAA § 112 (b) [42 U.S.C. 7412 (b)] and therefore subject to the requirements of CAA Title V and 40 C.F.R. 70. They are considered so hazardous that neither EPA nor the Washington State Department of Health (Health) recognize a regulatory *de minimis* . Furthermore, neither agency recognizes a health-effects *de minimis* above background. ['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] It is therefore curious that radionuclides in this draft AOP renewal are not regulated in accordance with either Title V of the CAA or 40 C.F.R. 70.

The enclosed comments identify as a fatal flaw of this draft AOP renewal, the inability of Ecology, the issuing permitting authority, to enforce all CAA Title V-applicable requirements. Under the CAA [CAA § 502 (b)(5)(E); 42 U.S.C. 7661a (b)(5)(E); *see also* 40 C.F.R. 70.11 (a)] a permitting authority must have authority to enforce all federally-applicable requirements including those requirements regulating

radionuclide air emissions. However, in this draft AOP renewal radionuclide air emissions are enforced only by the Washington State Department of Health (Health) through a license (# FF-01) issued under the authority of RCW 70.98, the *Nuclear Energy and Radiation Act* (NERA). Health is not a permitting authority and NERA and all its regulatory descendants are both independent of the CAA and largely incompatible with the CAA. The public and I suffer from this fatal flaw, in part, because NERA does not provide an opportunity for the public, EPA, and affected states to comment on NERA-Licenses nor does NERA allow for judicial review in State court of final permit actions by any person who participated in the public comment process.

In a *Clean Water Act* case the First Circuit Court of Appeals stated a purpose of public comments is ". . . to provide notice to the [issuing agency] so that it can address issues in the early stages of the administrative process. . ." [*Adams v. U.S. EPA*, 38 F.3d 43, 52 (1st Cir. 1994) (citation omitted)]. I believe the court's view regarding the purpose of public comments under the *Clean Water Act* directly applies to the CAA because Congress modeled Title V of the CAA after the *Clean Water Act* permit program[1]. The *Adams* court went on to state that "[t]he person filing the petition for review [] does not necessarily have to be the individual who raised the issue during the comment period." *Id.* Thus, public comments are intended to alert the issuing agency of potential problems early in the issuance process. Additionally, the ability to file any final-action challenge based on issues raised in public comments is not limited to the individual who submitted the particular comment.

It is with *Adams v. U.S. EPA* in mind that I respectfully provide Ecology with an opportunity to address issues raised in this letter and in the accompanying comments at the draft permit stage; thereby avoiding a future challenge by any qualified member of the public or organization whose membership includes a qualified member of the public.

Respectfully,

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

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

[1] "The operating permit program contained in this Act [CAA] is based on the essential features of the Clean Water Act's permit program,. . ." S. Rep. No. 101-228, at 3730 (12-20-89). This Senate Report accompanied bill S. 1630 to amend the CAA.

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).

I. Structure, draft Hanford Site air operating permit (AOP)

Comment 1: (general AOP structure): **This draft Hanford Site AOP is structured using a multi-agency regulatory scheme that cannot comply with the *Clean Air Act* (CAA), 40 C.F.R. 70, the *Washington Clean Air Act* (RCW 70.94), and the operating permit regulation (WAC 173-401).**

In this draft AOP conditions regulating most non-radionuclide air pollutants are contained in *Attachment 1*. *Attachment 2* (License FF-01) contains all radionuclide air emission applicable requirements; those created pursuant to CAA § 112 (*Hazardous Air Pollutants*)[1] [WAC 173-401-200(4)(a)(iv)], and those created in accordance with "Chapter 70.98 RCW and rules adopted thereunder" WAC 173-401-200 (4)(b). Applicable requirements created pursuant to 40 C.F.R. 61 Subpart M and requirements for outdoor burning are contained in *Attachment 3*.

Attachment 1 is enforced by the Washington State Department of Ecology (Ecology), the issuing permitting authority. *Attachment 2* is enforced solely by the Washington State Department of Health (Health), a state agency that is not a permitting authority under the CAA or 40 C.F.R. 70 (*see* Appendix A of 40 C.F.R. 70). *Attachment 3* is enforced only by the Benton Clean Air Agency (BCAA). While the BCAA has an approved Part 70 program (i.e. is a permitting authority under the CAA and 40 C.F.R. 70), in the context of the draft Hanford Site AOP the BCAA is not a permitting authority, but rather a "permitting agency"[2].

Ecology, the only permitting authority, is required by the CAA[3], and 40 C.F.R. 70 to have all necessary authority to enforce permits including authority to recover civil penalties and provide appropriate criminal penalties (*see* CAA § 502 (b)(5)(E) [42 U.S.C. 7661a (b)(5)(E)] and 40 C.F.R. 70.11 (a)). In this draft AOP Ecology only has the necessary authority to enforce *Attachment 1*.

Absent the authority to enforce all applicable requirements, Ecology also cannot comply with state and federal requirements that Ecology have authority to issue a permit containing all applicable requirements [*see* WAC 173-401-100 (2), -600, -605, -700 (1); CAA § 502 (b)(5)(A)[3]; 42 U.S.C. 7661a (b)(5)(A); 40 C.F.R. 70.1 (b), -70.3 (c), -70.6 (a), and -70.7 (a)].

The structure of the draft Hanford Site AOP allows Ecology, the single permitting authority, to issue and enforce only those applicable requirements addressed in *Attachment 1*. Whether *Attachment 2* or *Attachment 3* even appears in the AOP is at the sole discretion of Health and BCAA, respectively; this because Ecology cannot enforce either *Attachment 2* or *Attachment 3*, and neither Health nor BCAA has Legislative authorization to give direction to Ecology.

Also, *Attachment 2* (License FF-01) is a product authorized and created pursuant to RCW 70.98, the *Nuclear Energy and Radiation Act* (NERA) and the regulations adopted thereunder. NERA grants enforcement authority only to Health[4]. Thus, Ecology lacks statutory authorization to take any action regarding *Attachment 2*, including those actions required by 40 C.F.R. 70 and the CAA. Ecology also is prohibited from granting itself authority to act on *Attachment 2*.[5] To underscore the independence between the CAA and NERA, *Attachment 2* (License FF-01) was both issued and became effective on February 23, 2012, absent the opportunity for any CAA-required pre-issuance reviews and well before final action on the remainder of this draft Hanford Site AOP.

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[1] The Hanford Site is subject to the radionuclide National Emission Standards for Hazardous Air Pollutants (NESHAPs), specifically those codified in 40 C.F.R. 61 subparts A and H. In 2006 Health received partial delegation of authority to enforce the radionuclide NESHAPs pursuant to WAC 246-247, a Health-only-enforceable regulation adopted under RCW 70.98. *See* 71 Fed. Reg. 32276, (June 5, 2006); "WDOH [Health] is only delegated the Radionuclide NESHAPs. Other NESHAPs will be enforced by Washington State Department of Ecology and local air agencies, as applicable." 40 C.F.R. 61.04 (c)(10) n. 15.

[2] "Permitting Authority and Permitting Agencies – for the Hanford Site AOP, Ecology is the permitting authority as defined in WAC 173-401-200(23). Ecology, Health and BCAA are all permitting agencies with Ecology acting as the lead agency. Health and BCAA authorities are described in the Statements of Basis for Attachments 2 and 3." *Statement of Basis For Hanford Site Air Operating Permit No. 00-05-006 2013 Renewal*, June, 2012, at 2.; The term "permitting agency" is an invention of the draft Hanford Site AOP. A "permitting agency" possesses no power or authority derived from either statute or regulation.

[3] "[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; . . .[and] (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)

[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." RCW 70.98.050 (1)

[5] 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, *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.**

Radionuclides are listed in CAA § 112 (b) as *hazardous air pollutants*. Because radionuclides are identified as *hazardous air pollutants*, 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 the draft Hanford Site AOP radionuclides are regulated in *Attachment 2* (License FF-01) in accordance with RCW 70.98, the *Nuclear Energy and Radiation Act* (NERA) rather than in accordance with 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 thereunder. (*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 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 40 C.F.R. 70, and is not enforceable by Ecology, the issuing permitting authority.

Comment 3: (general AOP structure, *Attachment 2*, License FF-01): **The state regulatory structure under which *Attachment 2* (License FF-01) is issued prohibits public comment. Prohibiting public comment is contrary to the CAA. The U.S. Congress codified both a public right to comment and a public right to request a hearing on all draft Title V permits (AOPs). (*See* in CAA § 502 (b)(6); 42 U.S.C. 7661a (b)(6)). These rights are implemented by 40.C.F.R. 70.7 (h), by the *Washington Clean Air Act* (RCW 70.94.161 (2)(a) & (7)), and by WAC 173-401-800.**

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 hearing[1]. However, RCW 70.98, the statute under which License FF-01 is issued, does not allow for public comments or public hearings. [*See* RCW 70.98.080.] Revised Code of Washington (RCW) 70.98.080 (2) specifically exempts licenses pertaining to Hanford from any pre-issuance requirements[2]. Indeed, *Attachment 2* was both issued and became effective on February 23, 2012, absent the opportunity for any CAA-required pre-issuance actions.

Furthermore, Ecology, the sole permitting authority, has no statutory authorization to demand that Health provide either the required 30-day opportunity for public comment or the opportunity to request a public hearing for License FF-01. 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)

Absent statutory authorization, Ecology can neither enforce RCW 70.98 or the regulations adopted thereunder, nor can Ecology modify RCW 70.98 or the regulations adopted thereunder to provide for public comments 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 RCW 70.98 and the regulations adopted thereunder. [*See* RCW 70.98.050 (1)] Even Health cannot modify RCW 70.98 to allow for public comments or public hearings required by the CAA.

While the U.S. Supreme Court (Court) concluded federal environmental statutes cannot convey injury to a public interest sufficient to constitute injury in fact, this Court does recognize injury in fact resulting from denial of a procedural right accorded to protect an individual's concrete interests[3]. The opportunity to comment is a procedural right accorded to protect an individual's concrete interest. This right is conveyed by statute, CAA § 502 (b)(6) [42 U.S.C. 7661a (b)(6)]. Denying this commenter the opportunity to mitigate the cumulative adverse impacts from exposure to radionuclides through submission of public comments or from receiving benefit from public comments submitted by others seems consistent with the Court's criteria for procedural standing. After all, radionuclides are regulated under the CAA as *hazardous air pollutants*, and EPA considers all exposure to radionuclides above background to adversely impact human health[4].

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[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)]; 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

[2] "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)

[3] Procedural standing applies to litigants "to whom Congress has accorded a procedural right to protect his concrete interests.. . .[W]hen a litigant is vested with a procedural right, that litigant has standing if there is some possibility that the requested relief will prompt the injury-causing party to reconsider the decision that allegedly harmed the litigant." *Mass. v. EPA*, 549 U.S. 497, 498, 127 S. Ct. 1438, 167 L.Ed.2d 248 (2007)

[4] "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 (last visited Aug. 2, 2012)

Comment 4: (general AOP structure, *Attachment 2*, License FF-01): **The state regulatory structure under which *Attachment 2* (License FF-01) is issued does not recognize the right of a public commenter to judicial review in State court, as required in the CAA. The U.S. Congress codified a right afforded to any person who participated in the public comment process to seek judicial review in State court of the final permit action. (*See* in CAA § 502 (b)(6); 42 U.S.C. 7661a (b)(6)[1]). This right is implemented by 40 C.F.R. 70.4(b)(3)(x) and (xii)[2], and by WAC 173-401-735 (2)[3] .**

Attachment 2 (License FF-01) contains terms and conditions regulating 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 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. (*See* 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.

[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, *Attachment 2*, License FF-01): **The CAA waiver of sovereign immunity applies solely to the CAA and to regulations implementing the CAA. The CAA waiver cannot be extended to requirements created pursuant to RCW 70.98, the *Nuclear Energy and Radiation Act* (NERA), a Washington State statute that is independent of the CAA, unenforceable under the CAA, inconsistent with the CAA, and enforceable solely by a state agency not authorized to either implement or to enforce the CAA.**

Because there is no applicable waiver of sovereign immunity, requirements created and enforced pursuant to RCW 70.98, the *Nuclear Energy and Radiation Act* (NERA), and the regulations adopted thereunder are not enforceable against the U.S. Department of Energy.

Sovereign immunity can be waived only by the U.S. Congress in legislation that clearly defines the specific extent of the waiver. The waiver cannot be expanded beyond the specific language and must be strictly interpreted in favor of the sovereign.

> The Supreme Court declared that a waiver of sovereign immunity must be unequivocally expressed in statutory text and may not be implied or inferred; it must be construed strictly in favor of the sovereign and not read for more than what the language strictly allows. (31) . . . Where a waiver would subject federal facilities to regulation under state law, the rule requiring the waiver to be unambiguous applies with special force. "Because of the fundamental importance of the principles shielding federal installations and activities from regulation by the State, an authorization of state regulation is found only when and to the extent there is a 'clear congressional mandate,' 'specific congressional action' that makes this authorization of state regulation 'clear and unambiguous.'" (33) . . . Moreover, the Supreme Court has commented sovereign immunity may only be waived by congressional legislation and that an agent of the federal government cannot waive sovereign immunity. (35)
>
> Harry M. Hughes, Federal sovereign immunity versus state environmental fines, 58 A.F. L. Rev. 207, 214-15 (2006) (available at http://www.afjag.af.mil/shared/media/document/AFD-081009-009.pdf)

While the CAA does contain a waiver of sovereign immunity [CAA § 118; 42 U.S.C. 7418], this waiver applies solely to the CAA. The CAA waiver of sovereign immunity cannot be extended beyond the CAA by any federal agency or department, including the EPA or the U.S. Department of Energy (DOE). Neither can the EPA, or DOE, or the Washington State Legislature, or Health, extend the CAA waiver of sovereign immunity to RCW 70.98, a Washington State statute that is independent of the CAA, inconsistent with the CAA, unenforceable under the CAA, and enforceable solely by a state agency not authorized to either implement or to enforce the CAA.

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(31) *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33-34 (1992); *Department of Energy v. Ohio*, 503 U.S. 607, 615, 619, 627 (1992); *Lane v. Pena*, 518 U.S. 187, 192 (1996); see also *Hancock v. Train*, 426 U.S. 167 (1976).

(33) *Hancock v. Train*, 426 U.S. 167, 179 (1976) (footnotes omitted).

(35) *Stanley v. Schwalby*, 162 U.S. 255, 270 (1896) ("It is a fundamental principle of public law, affirmed by a long series of decisions of this court, and clearly recognized in its former opinion in this case, that no suit can be maintained against the United States, or against their property, in any court, without express authority of Congress."). See *Belknap v. Schild*, 161 U.S. 10 (1895) (indicating that an agent of the federal government may not waive the immunity from suit held by the federal government). Administrative regulations cannot waive federal sovereign immunity. *Mitzelfelt v. Department of Air Force*, 903 F.2d 1293, 1296 (10th Cir. 1990) (citing *United States v. Mitchell*, 463 U.S. 206, 215-16 (1983)).

Comment 6: (general AOP structure, payment of permit fees): **Revise the draft Hanford Site AOP to require the permittee pay all permit fees in accordance with 40 C.F.R. 70, the *Washington Clean Air Act*, and WAC 173-401.**

Each of the three (3) attachments in the draft Hanford Site AOP requires the permittee pay fees pursuant to different authorities. Permit fees for *Attachment 1* are assessed and payable in accordance with WAC 173-401-620 (2)(f)[1], RCW 70.94.162 (1), WAC 173-401-930(3), 40 C.F.R. 70.6 (a)(7), and 40 C.F.R. 70.9. *Attachment 2* fees are required pursuant to WAC 246-247-065, WAC 246-254-120 (1)(e), and WAC 246-254-

170, while *Attachment 3* requires fee payment in accordance with a memorandum of agreement (MOA) between the permittee and the Benton Clean Air Agency (BCAA).

Only the fee assessment and collection process cited in *Attachment 1* complies with requirements in 40 C.F.R. 70, the *Washington Clean Air Act* (RCW 70.94), and WAC 173-401.

[1] "The permittee shall pay fees as a condition of this permit in accordance with the permitting authority's fee schedule." WAC 173-401-620 (2)(f); The fee schedule is subject to review by the public [WAC 173-401-900 (1) -920 (1)(c)] and is based, in large part, on the tons/year of certain pollutants emitted [*see* WAC 173-401-200 (27) and 40 C.F.R. 70.2 *Regulated pollutant (for presumptive fee calculation)*]

Comment 7: (general AOP structure, *Attachment 2*, License FF-01, Section 1; referencing by subject, partial delegation to enforce the radionuclide NESHAPs): **EPA's partial delegation of authority to Health to enforce the radionuclide NESHAPs overlooks restrictions in administrative law that prohibit a regulation from changing a statute. Specifically, EPA overlooked non-discretionary requirements in CAA § 502 (b)(5)(A) and (E)[1] [42 U.S.C. 7661a (b)(5)(A) and (E)] when it codified 40 C.F.R. 61.04 (c)(10)[2].**

In plain language, the U.S. Congress requires that permitting authorities SHALL have all necessary authority to issue and enforce permits containing all CAA applicable requirements. [CAA § 502 (b)(5)(A) and (E); 42 U.S.C. 7661a (b)(5)(A) and (E)] EPA regulation changes this plain statutory language by prohibiting Washington State permitting authorities from acting on a subset of CAA applicable requirements, the radionuclide NESHAPs. [40 C.F.R. 61.04 (c)(10)] The Washington State Department of Health (WDOH) is not a permitting authority yet EPA regulation grants only this agency the ability to enforce the radionuclide applicable standards required by section 112 of the CAA [42 U.S.C. 7412]. Enacting regulation [40 C.F.R. 61.04 (c)(10)] excluding Washington State permitting authorities from issuing Title V permits containing all CAA-applicable requirements and from enforcing all CAA-applicable requirements contained in Title V permits directly contridicts CAA § 502 (b) [42 U.S.C. 7661a (b)].

[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; . . .[and] (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), (emphasis added)

[2] "WDOH [Washington State Department of Health] is only delegated the Radionuclide NESHAPs. Other NESHAPs will be enforced by Washington State Department of Ecology and local air agencies, as applicable." 40 C.F.R. 61.04 (c)(10) n. 15.

Comment 8: (general AOP structure, *Attachment 2*, public comment): **All public involvement requirements were overlooked when *Attachment 2* was issued as final on February 23, 2012[1].**

The CAA grants the right for public involvement on requirements developed pursuant to the CAA regarding control of pollutants regulated in accordance with the Act[2]. Public involvement under the CAA is limited to only those applicable requirements

that are federally enforceable (i.e. enforceable by EPA and the public). However, in granting Health partial authority to enforce the radionuclide NESHAPs, EPA interprets CAA § 116 [42 U.S.C. 7416] as requiring Health treat applicable requirements derived from the radionuclide NESHAPs as federally enforceable, even if there is a more stringent "state-only enforceable"[3] requirement.

> "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)

Even though requirements in *Attachment 2* are issued pursuant to WAC 246-247, most of those requirements retain federal enforceability in accordance with CAA § 116 [42 U.S.C. 7416].

Additionally, Ecology's regulation provides that no permit or permit renewal can be issued absent public involvement[4]. Provide the opportunity for public involvement on *Attachment 2*.

[1] The public involvement period for the remainder of the draft Hanford Site AOP did not begin until June 4, 2012, several months after Health's final action on *Attachment 2*.
[2] *See* CAA § 502 (b)(6) [42 U.S.C. 7661a (b)(6)], 40 C.F.R. 70.7 (h), and CAA § 116.
[3] *See* WAC 173-401-625; While WAC 173-401-625 (2) does exempt "state-only" enforceable requirements from EPA and affected states review, this paragraph does not exempt "state-only" enforceable requirements from public review.
[4] "A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:. . . (c) The permitting authority has complied with the requirements for public participation under WAC 173-401-800;" WAC 173-401-700; *See also* '"Final permit" means the version of a chapter 401 permit issued by the permitting authority that has completed all review procedures required by this chapter and 40 CFR §§ 70.7 and 70.8.' WAC 173-401-200 (15)

Comment 9: (general AOP structure, *Attachment 3*): **The regulatory structure under which *Attachment 3* is constructed does not allow Ecology, the sole permitting authority, to enforce WAC 173-425 (outdoor burning), 40 C.F.R. 61 Subpart M, and requirements contained in the Benton Clean Air Agency (BCAA) Regulation 1, Articles 5 and 8. Under the draft Hanford Site AOP, only the BCAA can enforce 40 C.F.R. 61 Subpart M and BCAA Regulation 1, Articles 5 and 8[1]. In the context of the draft Hanford Site AOP, BCAA is merely a "permitting agency" and not a permitting authority.**

Absent the authority to enforce all applicable requirements Ecology cannot comply with CAA § 502 (b)(5)(A) and (E)[2] [42 U.S.C. 7661a (b)(5)(A) and (E)], and 40 C.F.R. 70.9 and 70.11 (a). Neither can Ecology comply with state and federal requirements that Ecology have authority to issue a permit containing all applicable requirements [*see* WAC 173-401-100 (2), -600, -605, -700 (1); CAA § 502 (b)(5)(A); 42 U.S.C. 7661a (b)(5)(A); 40 C.F.R. 70.1 (b), -70.3 (c), -70.6 (a), and -70.7 (a)].

[1] "At the Hanford Site, BCAA enforces Washington Administrative Code 173-425 and BCAA Regulation 1, Article 5, regarding Outdoor Burning. BCAA also enforces 40 Code of Federal Regulations Part 61, Subpart M, on National Emission Standards for Asbestos and BCAA Regulation 1, Article 8, on

Asbestos." *Statement of Basis For Hanford Site Air Operating Permit No. 00-05-006 Renewal 2 (2013), Attachment 3: Benton Clean Air Authority Permit*, June 2012, at 1. And: "BCAA will inform Ecology prior to taking any final permitting or enforcement actions related to Hanford Site activities." *Attachment 3, Number: 00-05-006 Renewal 2(2013)*, June 2012, at 1.

[2] "[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; . . .[and] (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), emphasis added]

Comment 10: (general AOP structure, *Attachment 2*, License FF-01): **Provide a complete draft Hanford Site AOP, including *Attachment 2*, to EPA and all affected states, including recognized Tribal Nations, for pre-issuance review as required by 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. Further, provide for the disposition of any resulting comments and any other required follow-on actions.**

Attachment 2 (License FF-01) of the draft Hanford Site AOP contains terms and conditions regulating 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 the CAA and 40 C.F.R. 70. 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 permitting authority, has no statutory power to require that Health provide for review by EPA and affected states for FF-01, a license issued in accordance with NERA, nor does Ecology have the statutory authority to address comments pertaining to FF-01 should any be provided.

Because the issuance process required by NERA for License FF-01 does not provide for EPA and affected state review, *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. Highlighting this deficiency, *Attachment 2* was issued and became effective on February 23, 2012, absent the opportunity for any CAA-required pre-issuance reviews. The pre-issuance review process for all other portions of the draft Hanford Site AOP began on June 4, 2012, several months after Health's final action on *Attachment 2*.

Comment 11: (general AOP structure; Section 9, Appendix B, *Statement of Basis for Standard Terms and General Conditions*, pgs. 30-50): **The regulatory structure under which radionuclides are addresses in *Attachment 2* (License FF-01) of the draft Hanford Site AOP will not allow for compliance with the AOP revision requirements of *Appendix B*, 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 terms and conditions regulating 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 the CAA and 40 C.F.R. 70. As a result, the AOP revision processes required by *Appendix B*, 40 C.F.R. 70.7, and WAC 173-401-720 through 725 cannot be met.

Appendix B addresses AOP revisions through a prescriptive, 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 thereunder.

Under *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 authority[1]. 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 *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)

II. Standard Terms and General Conditions

Comment 12: (Standard Terms and General Conditions, pg. 10 of 57): **The building locations for 748 and 712 are on Northgate Drive, probably in the 900 block.**

Neither is located on Jadwin Ave. as stated on page 10.

Comment 13: (Standard Terms and General Conditions, pgs. 10 & 11 of 57): **Change the statement at the bottom of page 10 to reflect that 40. C.F.R. 70.2 and WAC 173-401-200 (19) both require use of SIC codes in accordance with the *Standard Industrial Classification Manual*, 1987[1]. On page 11 please supply the proper SIC codes for the Hanford Site.**

[1] '"Major source" means any stationary source (or any group of stationary sources) that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control) belonging to a single major industrial grouping . . . (i.e., all have the same two-digit code) as described in the *Standard Industrial Classification Manual*, 1987.' WAC 173-401-200 (19); *See also* the definition of "major source" in 40 C.F.R. 70.2. ". . . belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987."

Comment 14: (Standard Terms and General Conditions, pg. 11 of 57) **Include all applicable SIC codes, such as those codes applicable to boilers and laboratories.**

For example, laboratories are regulated in both *Attachment 1*[1] and in *Attachment 2*[2] of this draft Hanford Site AOP. However, codes applicable to laboratories (SIC: 8734 and NAIC: 541380) have been overlooked. List all applicable SIC codes.

[1] Emission unit EP-325-01-S is a laboratory. Also, *Attachment 1* includes the following quote: "Some emission units are unlikely sources of visible emissions and are not expected to exceed applicable opacity limit based on past operating experience and/or expected process behavior. These can include research and development laboratories, analytical laboratories,. . ." *Attachment 1* at ATT 1-75 and -76 (emphasis added)

[2] The following are examples of laboratories regulated in *Attachment 2*: Emission Unit IDs: 62 and 63 that include the Analytical Laboratory Building (696-W-1), the Radiochemistry Laboratory (696-W-2), and the Mobile Laboratory Storage Facility (6269); Emission Unit ID: 175, the Radiological Calibrations Laboratory (318 Building); and Emission Unit ID: 254, the 222-S Laboratory.

Comment 15: (Standard Terms and General Conditions, pg. 11 of 57): **All facilities determined to be support facilities (using established criteria[1]) need to be included in the AOP.**

The facilities listed as "excluded" based on a lease with DOE-RL or DOE-ORP overlook contractual relationships between DOE-RL or DOE-ORP and their various contractors. Facilities where work is performed on DOE's behalf to satisfy contractual obligations should NOT be automatically excluded because such facilities are not directly leased by DOE-RL or DOR-ORP. DOE-RL and DOE-ORP only provide funding and oversight. Nearly all regulated air emissions result from actions, or the lack of actions, by various contractors and/or sub-contractors working on behalf of DOE-RL and DOE-ORP. The exclusions should be edited as follows:

> Examples of facilities excluded at the time of permit renewal in 2012 are the following:
>
> . . .
>
> - all Energy Northwest facilities ~~unless leased to DOE-RL or DOE-ORP~~ as <u>not determined to be a</u> support facility
> - all Port of Benton facilities unless ~~leased to DOE-RL or DOE-ORP~~ as <u>not determined to be a</u> support facility
>
> . . .

[1] "[P]ollutant-emitting activities are generally considered part of a single stationary source when these activities are (1) part of the same industrial grouping (as determined by applicable SIC codes), (2) contiguous or adjacent, and (3) under common control. In several guidance documents, EPA has recognized that one or more of these criteria can be satisfied when an emissions unit is a "support facility" or serves in a supporting role for a primary activity at a nearby location." Letter from Ms. JoAnn Heiman, Chief, Air Permitting and Compliance Branch, EPA Region 7, to James Pray, Brown, Winick, Graves, Gross, Baskerville and Schoenebaum, P.L.C., Des Moines, Iowa, Dec. 6, 2004. These criteria are further explained in Section 2.0 (pgs. 8 & 9 of 50) of the *Statement of Basis* associated with *Standard Terms and General Conditions*.

Comment 16: (Standard Terms and General Conditions, Section 4.6, pg. 12 of 57): **Clarify *Section 4.6*. Federally enforceable requirements are those that are required under the CAA, or any of its applicable requirements, including under CAA § 116 [42 U.S.C. 7416].**

For example, standard permit terms required by WAC 173-401-620 are federally enforceable. Both 40 C.F.R. 70.6(b) and WAC 173-401-625 state that all terms and conditions of a Title V permit are federally enforceable except those designated as "state-only", and that "state-only" requirements are those requirements that are not required under the CAA or any of its applicable requirements. Thus almost all requirements in Sections 4.0 and 5.0[1] are federally enforceable and apply to all draft Hanford Site AOP attachments; *Attachment 1*, *Attachment 2*, and *Attachment 3*.

Also, where both a federal requirement and a state (or local) requirement apply to the same source, both must be included in the AOP, regardless of whether one is more stringent than the other[2]. In particular, this requirement is overlooked in *Attachment 2*. Radionuclides are a *hazardous air pollutant* listed under CAA § 112 [42 U.S.C. 7412]. Radionuclides do not cease to be federally regulated under the CAA simply because they are also regulated by Washington State. Compliance with requirements in the CAA[3] cannot be avoided by claiming federal requirements implemented through a state regulation are no longer federal requirements.

Please clarify *Section 4.6*.

[1] Such as "Duty to comply" (§ 5.1), "Permit actions" (§ 4.10), "Permit fees" (§ 5.3), "Inspection and entry" (§ 5.2), "Permit appeals" (§ 4.12), etc.

[2] "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)

[3] For example, requirements that are "state-only" enforceable (i.e., not enforceable by the Administrator of EPA and citizens under the CAA) are not subject to pre-issuance reviews by the public (40 C.F.R. 70 only), EPA, and affected state(s). ["[T]the 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. Terms and conditions so designated are not subject to the EPA and affected states review requirements of WAC 173-401-700 through 173-401- 820." WAC 173-401-625 (2); "[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. Terms and conditions so designated are not subject to the requirements of §§ 70.7, 70.8, or of this part, other than those contained in this paragraph (b) of this section." 40 C.F.R. 70.6 (b)(2), public participation is required by 40 C.F.R. 70.7 (h)]

Comment 17: (Standard Terms and General Conditions, Section 4.12, pg. 13-14 of 57): **Specify the appeal process applicable to AOP 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 Health[1]. Health is not a permitting authority nor does Health have the legal ability to issue an AOP in accordance with RCW 70.94, the CAA, and 40 C.F.R. 70.

Identify the appeal process 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 18: (Standard Terms and General Conditions, Section 5.3, pg. 16-17 of 57): **Revise *Section 5.3* to reflect that Health is not a permitting authority and therefore does not have the legal ability to either assess or collect AOP related fees.**

Whether Health can assess and collect AOP-related fees is a well-argued issue that was settled in 2007 in partial resolution of *PCHB No. 07-012*. The settlement agreement was authored by Ecology's Assistant Attorney General with Health's concurrence, and was issued as a PCHB Order on May 17, 2007,.

> "The motion is based upon a series of commitments outlined in the April 30, 2007 letter, some of which involve commitments by the Washington State Department of Health (Health) and will affect Health's billing arrangement with Respondent U.S. Department of Energy (Energy). Health has reviewed the motion, including the commitments set forth in the letter, and is in agreement with the letter's contents." Andrea McNamara Doyle, presiding, *PCHB 07-012, Order Dismissing Legal Issues 10-13 and Ecology's Cross Motion on Fees*, 5/17/07

Under this PCHB order, Health commits to collect fees only for "non- air operating permit costs".

The legal basis for the settlement language is that Health is not a permitting authority, and therefore has no authority under the *Washington Clean Air Act* (RCW 70.94) or 40 C.F.R. 70 to assess and collect AOP-related fees.

However, even if Health overlooks the PCHB order and underlying primary authorities, Ecology is obligated to enforce the agreed-to language. An AOP cannot vacate a PCHB order. Furthermore, Ecology cannot issue a permit that contravenes any applicable requirements, including applicable fee requirements. [Applicable fee requirements include those codified in 40 C.F.R. 70.6 (a)(7)[1], 40 C.F.R. 70.9, RCW 70.94.162[2], and WAC 173-401-620 (2)(f)[3].]

Lastly, it is doubtful Health can overcome the very significant impediment posed by federal sovereign immunity. No administrative regulation can waive federal sovereign immunity[4], nor is it likely the CAA waiver of sovereign immunity can be extended to a fee collection regulation that is independent of the CAA, inconsistent with the CAA, unenforceable under the CAA, and enforceable solely by a state agency not authorized to implement the CAA.

[1] "Each permit issued under this part shall include . . . (7) [a] provision to ensure that a part 70 source pays fees to the permitting authority consistent with the fee schedule approved pursuant to § 70.9 of this part." 40 C.F.R. 70.6 (a) (emphases added)

[2] "The department [of Ecology] and delegated local air authorities are authorized to determine, assess, and collect, and each permit program source shall pay, annual fees . . ." RCW 70.94.162 (1); "The

responsibility for operating permit fee determination, assessment, and collection is to be shared by the department [Ecology] and delegated local air authorities . . ." RCW 70.94.162 (3)

[3] "The permittee shall pay fees as a condition of this permit in accordance with the permitting authority's fee schedule." WAC 173-401-620 (2)(f); The fee schedule is subject to review by the public [WAC 173-401-900 (1) -920 (1)(c)] and is based, in large part, on the weight (tons/year) of certain pollutants emitted [*see* WAC 173-401-200 (27) and 40 C.F.R. 70.2 *Regulated pollutant (for presumptive fee calculation)*]

[4] "For one thing, administrative regulations cannot waive the federal government's sovereign immunity." *Mitzelfelt v. Department of Air Force*, 903 F.2d 1293, 1296 (10th Cir. 1990) (citing *United States v. Mitchell*, 463 U.S. 206, 215-16 (1983).

Comment 19: (Standard Terms and General Conditions, Section 5.11.4, pg. 24 of 57): **Replace the certification language in *Section 5.11.4* with language required by 40 C.F.R. 70.5 (d) and WAC 173-401-520, and enforce the required language in accordance with the CAA. Certification language specified in this draft Hanford Site AOP must both comply with the requirements of the CAA and be enforced pursuant to the CAA.**

Health oversteps by requiring certification in accordance with 18 U.S.C. 1001. This federal statute (18 U.S.C. 1001) generally prohibits lying to or concealing information from a federal official for the purpose undermining the functions of federal governmental departments and federal agencies[1]. Health is a product of the Washington State Legislature and is limited in authority to that specified in Washington State statute[2]. Health has zero authority to modify or to otherwise re-focus either the applicability of or the enforcement of a federal statute.

[1] 'We believe that the conduct Congress intended to prevent by § 1001 was the willful submission to federal agencies of false statements calculated to induce agency reliance or action . . ..' *Brandow v. U.S.*, 268 F.2d 559, 565 (9th Cir. 1959) quoting *United States v. Quirk*, 167 F. Supp. 462, 464 (D.C.E.D.Pa. 1958)

[2] "[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 20: (Standard Terms and General Conditions, Section 5.17, pgs. 28 and 29 of 57): **Revise *Section 5.17* to address the *Tailoring Rule* [75 Fed. Reg. 31,514 (June 3, 2010)] as implemented by 40 C.F.R. 70 and WAC 173-401.**

Section 5.17 overlooks greenhouse gas (GHG) emissions as regulated air pollutants under the CAA, 40 C.F.R. 70, and WAC 173-401.

In *Massachusetts v. EPA* the U.S. Supreme Court found EPA was compelled to determine whether or not greenhouse gas (GHG) emissions cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision.

> "Under the Act's clear terms, EPA can avoid promulgating regulations only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do. . . . The statutory question is whether sufficient information exists for it to make an endangerment finding. . . . EPA must ground its reasons for action or inaction in the statute." *Mass v. EPA*, 549 U.S. 497, 501, 127 S.Ct. 1438, 1444, 167 L.Ed.2d 248 (2007)

EPA subsequently determined there was sufficient information available to conclude GHG emissions do endanger public health and public welfare.

> "The Administrator finds that six greenhouse gases taken in combination endanger both the public health and the public welfare of current and future generations.. . . These Findings are based on careful consideration of the full weight of scientific evidence and a thorough review of numerous public comments. . ." 74 Fed. Reg. 66,496 (December 15, 2009)

In accordance with EPA's 2009 endangerment finding, EPA completed rule making to regulate GHG emissions as an applicable requirement under the CAA and 40 C.F.R. 70. The resulting *Tailoring Rule*[1] regulates greenhouse gas (GHG) emissions for sources with a Title V permit as of January 2, 2011.

> "For the first step of this *Tailoring Rule*, which will begin on January 2, 2011, . . . title V requirements will apply to sources' GHG emissions only if the sources are subject to. . .title V anyway due to their non-GHG pollutants." 75 Fed. Reg. 31,514 (June 3, 2010)
>
> . . .
>
> "Sources with title V permits must address GHG requirements when they apply for, renew, or revise their permits. These requirements will include any GHG applicable requirements (e.g., GHG BACT requirements from a PSD process) and associated monitoring, recordkeeping and reporting. . ." *Id.* (emphasis added)

The Hanford Site already has a Title V permit, and that Title V permit is undergoing renewal. Renewal of the Hanford Site Title V permit must thus consider GHG emissions.

The *Tailoring Rule* further requires use of short tons (2,000 lb/ton) as the standard unit of measurement for GHG emissions.

> "We are finalizing our proposal to use short tons because short tons are the standard unit of measure for both the PSD and title V permitting programs and the basis for the threshold evaluation to support this rulemaking." *Id. at* 31,532 (emphases added)

The *Tailoring Rule* also included revisions to 40 C.F.R. 70 needed to fulfill its obligation to classify GHGs as an air pollutant subject to regulation under Title V of the CAA. Ecology modified WAC 173-401 in late 2010[2] to maintain consistency with the revised *Part 70*.

> 'The purpose of this rule making is to incorporate EPA's requirements for reporting greenhouse gases into the state air operating permit regulation, chapter 173-401 WAC. Ecology revised the definition of "major source" and added the definition of "subject to regulation." This adoption keeps several hundred small sources out of the federal permitting program.'
> 10-24 Wash. St. Reg. 114 (Dec. 1, 2010)

GHG emissions are now federally enforceable, and must be considered in this draft Hanford Site AOP. Please revise *Section 5.17* and all other sections referencing GHGs.

[1] 75 Fed. Reg. 31,514 (June 3, 2010)
[2] WAC 173-401-200 (19)(b) & -200 (35)

Comment 21: (Standard Terms and General Conditions, Table 5-1, pg. 45 of 57): **Please clarify the reason 40 CFR 61 Subpart Q, "National Emission Standards for Radon Emissions from Department of Energy Facilities" is shown as inapplicable.**

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.

Comment 22: (Standard Terms and General Conditions, general comment): **Provide any federal regulatory analog for all WAC 246-247 citations appearing in this document and in *Attachment 2* as required by CAA § 116 [42 U.S.C. 7416], WAC 173-401-625 and 40 C.F.R. 70.6 (b).**

EPA has determined CAA § 116 [42 U.S.C. 7416] requires Health to include both the "state-only" enforceable requirement plus the federally enforceable analog, regardless of which is the more stringent[1]. In the *Standard Terms and General Conditions* portion of the draft Hanford Site AOP, WAC 246-247 citations absent a federal analog include: WAC 246-247-080(11) in *Section 5.2.3*; WAC 246-247-080(1) and WAC 246-247-080(9) in *Section 5.2.5*; WAC 246-247-080(10) in *Section 5.4*; WAC 246-247-080(6) in *Sections 5.6.2e, 5.8.2.1.2,* and *5.10.1a*; WAC 246-247-075(9) and WAC 246-247-040 in *Section 5.12*; and WAC 246-247-080(5) in *Section 5.16*.

[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)

III. Attachment 1

Comment 23: (*Attachment 1*, missing schedule of compliance, pg. ATT 1-38): **Supply a schedule of compliance as required by 40 C.F.R. 70.6(c)(3) and WAC 173-401-630 (3) for CAA-applicable requirements to control fugitive dust through conditions in yet-to-be-prepared "Construction Phase Fugitive Dust Control Plan(s)", condition 8.1, pg. ATT 1-38. Also, provide the public with the opportunity to review the schedule of compliance, the dust control plan(s), and any resulting applicable requirements incorporated into the AOP, pursuant to 40 C.F.R. 70.7 (h) and WAC 173-401-800.**

According to condition 8.1, federally enforceable requirements controlling fugitive dust [WAC 173-401-040 (9)(a)] will not exist until specific dust control plans for the Waste Treatment Plant (WTP) construction site and the Marshaling Yard are developed and implemented. An identical condition appears on page ATT 1-64 of the version of the AOP issued on December 29, 2006[1]. In the 2006 AOP revision and in this 2012 draft AOP revision Ecology overlooked the requirement for a schedule of compliance, required in situations where a source cannot be in compliance with all applicable requirements at the time of permit issuance. Such applicable requirements

include requirements controlling fugitive dust. The permittee continues to perform fugitive dust-generating work at both locations, absent any assurance such activities will comply with specific requirements resulting from the yet-to-be- prepared dust control plans. There appears to be no urgency to complete the plans required since 2006; a situation highly likely to continue absent CAA-required actions by Ecology.

Under the CAA, Ecology has a non-discretionary duty to issue an AOP that complies with all applicable requirements. A sources not in compliance with all applicable requirements at the time of permit issuance is required to adhere to a schedule of compliance in accordance with 40 C.F.R. 70.6(c)(3) and WAC 173-401-630 (3).

[1] Because the requirement to prepare "Construction Phase Fugitive Dust Control Plan(s)" is an unfulfilled federally enforceable condition from 2006, the application submitted for this 2012 draft AOP is required to contain a schedule of compliance pursuant to 40 C.F.R. 70.5 (c)(8)(iii)(C) and WAC 173-401-510 (2)(h)(iii)(C). The permittee's application is deficient in this regard.

IV. Attachment 2

Comment 24: (*Attachment 2*, general): **Address federally enforceable requirements as specified in WAC 173-401-625 and 40 C.F.R. 70.6 (b).**

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*[1];
- 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)[2].

The Washington State Department of Health (Health) cannot seek to avoid federal enforceability by incorporating federal requirements by reference (*see* WAC 246-247-035[3]) 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)[4]), limitations on emissions (WAC 246-247-040(5)[5]),

and the need to follow WAC 246-247 requirements, including federal regulations incorporated by reference (WAC 246-247-060(5)[6]; *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 under 40 C.F.R. 70.6.

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. 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)

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.

Treat federally enforceable requirements as specified in WAC 173-401-625 and 40 C.F.R. 70.6 (b).

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[1] *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.

[2] "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).

[3] "(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

[4] "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)

[5] "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)

[6] "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 25: (*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 and that appear in the annual compliance certification report required by 40 C.F.R. 70.6 (c)(5) and WAC 173-401-615 (5).**

The licensee/permittee is required by 40 C.F.R. 70.6 (c)(5) and WAC 173-401-615 (5) to annually certify compliance status (either continuous or intermittent) with each term or condition in the permit that is the basis of the certification. Absent some specified criteria, neither the licensee/permittee nor the public can determine what constitutes continuous compliance and how continuous compliance can be demonstrated. Without such criteria, the public, including this commenter, is denied the ability to attempt to impact any insufficient compliance demonstration requirement.

Comment 26: (*Attachment 2*, treatment of CERCLA activities): **Pursuant to CAA § 502 (b)(5)(A) [42 U.S.C. 7661a (b)(5)(A)], 40 C.F.R. 70[1], and WAC 173-401[2], include in *Attachment 2* all requirements to capture and report radionuclide air emissions, even those emissions from activities conducted in accordance with the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA). Also include any specific stop-work triggers.**

The Washington State Department of Health (Health) already requires air monitoring plans with stop-work triggers[3] for activities at CERCLA units. Incorporate requirements from these plans into *Attachment 2*.

Compliance with the dose standard required by 40 C.F.R. 61 Subpart H cannot be met without considering all radionuclide air emissions, including those radionuclide emissions resulting from CERCLA characterization and remediation activities. Activities conducted pursuant to CERCLA are exempt from the requirement to obtain a permit. However, Health cannot use the absence of a permit to excuse the impact CERCLA activities have on the offsite dose to the maximally exposed individual. In any case, once free of the CERCLA unit boundary CERCLA-generated radionuclide air emissions become subject to monitoring, reporting, and recordkeeping requirements of the CAA. Include in *Attachment 2* all requirements to capture and report radionuclide air emissions and all stop-work triggers.

[1] *See* 40 C.F.R. 70.1 (b), -70.3 (c), -70.6 (a), and -70.7 (a)

[2] *See* WAC 173-401-100 (2), -600, -605, and -700 (1).

[3] For example, *Air Monitoring Plan for the Remediation of the 618-10 Burial Ground Trenches January 2012*, PLN-0010, Rev. 0, 1/30/2012

Comment 27: (*Attachment 2*, general): **Track and report the total potential radionuclide emissions allowed from individual emission units specified in *Attachment 2, Enclosure 1 Emission Unit Specific License*; include potential radionuclide emissions from emission units regulated under the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA).**

The sum of allowable potential emissions from emission units regulated in License FF-01 alone exceeds 10 mrem/yr to the maximally-exposed member of the public.

V. Attachment 3

Comment 28: (*Attachment 3*, fees): **The fee assessment process used by the Benton Clean Air Agency (BCAA) to collect dollars from the Department of Energy in *Attachment 3* of this draft AOP is contrary to 40 C.F.R. 70, RCW 70.94, and WAC 173-401. Because, in the context of this draft AOP, the BCAA is not a permitting authority[1] the BCAA is thus ineligible to determines, assess, or collect AOP fees. [*See* 40 C.F.R. 70.6 (a)(7), 40 C.F.R. 70.9, RCW 70.94.162 (1) and (3), WAC 173-401-620 (2)(f), and WAC 173-401-930(3).]**

Only a permitting authority is allowed to determine, assess, and collect AOP fees. In this draft AOP, BCAA is not the permitting authority but merely a "permitting agency". Because BCAA is not a permitting authority it cannot participate in the fee collection process prescribed in 40 C.F.R. 70 and in the *Washington Clean Air Act* (RCW 70.94). Even if the BCAA were considered a permitting authority rather than a "permitting agency", BCAA would be limited to collecting fees only in accordance with the BCAA fee schedule[2] developed in accordance with 40 C.F.R. 70.9 and WAC 173-401 *Part X*, rather than in accordance with a memorandum of agreement (MOA).

Under 40 C.F.R. 70 and the *Washington Clean Air Act* the permittee (U.S. DOE) is required to pay permit fees only in accordance with the permitting authority's fee schedule[3]. Because the MOA was not developed pursuant to a fee schedule, the *Attachment 3* fee collection mechanism cannot comply with either 40 C.F.R. 70 or the *Washington Clean Air Act*. Non-compliance results whether or not BCAA is considered a permitting authority rather than just a "permitting agency".

Furthermore, Ecology, the permitting authority, can only issue a permit that is in compliance with all applicable requirements[4], including the requirement to pay permit fees in accordance with 40 C.F.R. 70.9, RCW 70.94.162, and WAC 173-401.

[1] "Permitting Authority and Permitting Agencies – for the Hanford Site AOP, Ecology is the permitting authority as defined in WAC 173-401-200(23). Ecology, Health and BCAA are all permitting agencies with Ecology acting as the lead agency. Health and BCAA authorities are described in the Statements of Basis for Attachments 2 and 3." *Standard Terms and Conditions, Statement of Basis*, at 2.; The term "permitting agency" is an invention of the draft Hanford Site AOP. A "permitting agency" possesses no power or authority derived from either statute or regulation.

[2] "Each permitting authority shall develop by rule a fee schedule allocating among its permit program sources the costs of the operating permit program. . ." RCW 70.94.162 (1); The fee schedule is subject to review by the public [WAC 173-401-900 (1) -920 (1)(c)] and is based, in large part, on the tons/year of

certain pollutants emitted [*see* WAC 173-401-200 (27) and 40 C.F.R. 70.2 *Regulated pollutant (for presumptive fee calculation)*]

[3] "Each permit issued under this part shall include . . . (7) [a] provision to ensure that a part 70 source pays fees to the permitting authority consistent with the fee schedule approved pursuant to § 70.9 of this part." 40 C.F.R. 70.6 (a); "The permittee shall pay fees as a condition of this permit in accordance with the permitting authority's fee schedule." WAC 173-401-620 (2)(f)

[4] "A permit, permit modification, or renewal may be issued only if all of the following conditions have been met: . . . (iv) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this part" 40 C.F.R. 70.7 (a)(1); "Each permit shall contain terms and conditions that assure compliance with all applicable requirements at the time of permit issuance." WAC 173-401-600 (1)

Comment 29: (*Attachment 3*, general, missing applicable requirements): **Include applicable requirements from the dust control plan required by BCAA Administrative Order of Correction, No. 20030006. EPA has concluded CAA-applicable requirements include conditions resulting from a judicial or administrative process resulting from the enforcement of "applicable requirements" under the CAA. Such conditions must be included in title V permits[1].**

On March 12, 2003, BCAA issued a Notice of Violation, (NOV), No. 20030006 to Bechtel National, Inc. (BNI) for failure to control particulate matter [WAC 173-400-040(2), 2002] and fugitive dust [WAC 173-400-040(8)(a), 2002] [2]. This NOV was based on serial observations of a BCAA inspector that occurred on February 20, 2003, on February 21, 2003, on March 5, 2003, on March 7, 2003, and again on March 11, 2003. On March 12, 2003, BCAA issued an Administrative Order of Correction, (Order), No. 20030006, based on the NOV. Under the Order, BNI was required to submit and implement a dust control plan for the Marshalling Yard. BNI subsequently developed a Marshalling Yard-specific plan (Plan). This Plan was submitted to BCAA on March 21, 2003.

However, when preparing *Attachment 3* BCAA overlooked applicable requirements contained in BNI's Plan along with appropriate monitoring, reporting, and recordkeeping conditions. Please update *Attachment 3*[3] to include all applicable requirements contained in the Plan.

[1] "EPA believes that, because CDs [consent decrees] and AOs [administrative orders] reflect the conclusion of a judicial or administrative process resulting from the enforcement of "applicable requirements" under the Act, all CAA-related requirements in such CDs and AOs are appropriately treated as "applicable requirements" and must be included in title V permits, regardless of whether the applicability issues have been resolved in the CD." *In the Matter of CITGO Refining and Chemicals Company L.P.*, Petition Number VI-2007-01, at 12 (May 28, 2009). Available at: http://www.epa.gov/region07/air/title5/petitiondb/petitions/citgo_corpuschristi_west_response2007.pdf

[2] Dust is an air pollutant pursuant to WAC 173-400-030(3) (2002). Additionally, prevention of fugitive dust pursuant to WAC 173-400-040(8) (2002) is part of the EPA-approved state implementation plan (SIP), and therefore a federally enforceable requirement.

[3] The BNI Plan was developed pursuant to a BCAA administrative order, an order to which Ecology is not a party. Thus, *Attachment 3* is the appropriate location for this Plan, and the BCAA is the appropriate agency to enforce the Plan. Ecology retains separate statutory authority to enforce fugitive dust and particulate matter independent of the BCAA-BNI administrative order.

VI. Statements of Basis

Comment 30: (Statement of Basis (SOB) for Standard Terms and General Conditions, page 1 of 50): **Include the Ecology – Health interagency agreement in the *Statement of Basis*. A *Statement of Basis* (SOB) is required by 40 C.F.R. 70.7 (a)(5) and WAC 173-401-700 (8).**

At the bottom of page 1 (one) of the SOB for *Standard Terms and General Conditions*, Ecology makes the following statement:

> "The interagency agreement between Ecology and Health . . . [is] documented in the Appendices to this Statement [of Basis]."

However, this agreement is missing. The Ecology and Health interagency agreement also does not appear in the *Statement of Basis for Attachment 1* or in the *Statement of Basis for Attachment 2*.

Ecology, the permitting authority, is required by 40 C.F.R. 70.7 (a)(5) and WAC 173-401-700 (8) to "provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions)." (40 C.F.R. 70.7 (a)(5)) This requirement cannot be met when Ecology fails to include the agreement under which Ecology and Health define their respective roles and responsibilities in coordinating activities concerning Hanford Site radionuclide air emissions.

Comment 31: (SOB for Standard Terms and General Conditions, page 1 of 50, general: Ecology and Health interagency agreement): **The Ecology and Health interagency agreement is not the product of legislation and thus it cannot be used to transfer regulatory authority over Hanford's radionuclide air emissions from Health to Ecology.**

Attachment 2 (License FF-01) of the draft Hanford Site AOP is created pursuant to RCW 70.98, *The Nuclear Energy and Radiation Act* (NERA), and WAC 246-247, a regulation adopted under NERA. NERA grants only Health the authority to enforce RCW 70.98 and the regulations adopted thereunder.

> "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).
>
> . . .
>
> "Rules and regulations set forth herein are adopted and enforced by the department [Health] pursuant to the provisions of chapter 70.98 RCW which:
>
> > (a) Designate the department as the state's radiation control agency having sole responsibility for the administration of the regulatory, licensing, and radiation control provisions of chapter 70.98 RCW. . ." (emphasis added) WAC 246-247-002 (1).

No interagency agreement can replace plain language in a statute or revise a regulation.

Comment 32: (SOB for Standard Terms and General Conditions, page 1 of 50, general: Ecology and Health interagency agreement): **Because the Ecology and Health interagency agreement is not the product of rulemaking, this agreement cannot change regulation or statute, and cannot be used to transfer regulatory authority between or among agencies.**

Specifically:

- the interagency agreement cannot be used to grant Ecology authority to subject License FF-01 to requirements of WAC 173-401, or to requirements of 40 C.F.R. 70;
- the interagency agreement cannot approve Health as a permitting authority under the CAA and 40 C.F.R. 70; and
- the interagency agreement cannot grant Ecology the authority to enforce the radionuclide NESHAPs.

Comment 33: (SOB for Standard Terms and General Conditions, page 2 of 50, term "permitting agency"): **Clarify the term "permitting agency" is an invention of the Hanford Site AOP.**

As used in the draft Hanford Site AOP, the term "permitting agency" has no basis in relevant statute or regulation, nor does a "permitting agency" possess any power or any authority derived from either statute or regulation.

Comment 34: (SOB for Standard Terms and General Conditions, page 8 of 50, general: Ecology and Health interagency agreement): **Change the discussion on support facilities to reflect that both 40 C.F.R. 70.2 (*major source* definition) and WAC 173-401-200 (19) require use of the *Standard Industrial Classification Manual*, 1987, rather than the North American Industry Classification System.**

Comment 35: (SOB for Standard Terms and General Conditions, Section 5.17, page 18 of 50, greenhouse gases): **The *Tailoring Rule* is completely overlooked in *Section 5.17*. Greenhouse gases (GHGs) became subject to regulation under Title V of the CAA (and elsewhere within the CAA) effective January 2, 2011.**

Beginning on January 2, 2011 regulation of GHG emissions is required for sources with a Title V permit. Pursuant to the *Tailoring Rule* [75 Fed. Reg. 31,514 (June 3, 2010)], GHG emissions are now regulated as an applicable requirement under 40 C.F.R. 70 for any source with an existing Title V permit. The required unit of measurement for GHG emissions is short tons (2,000 lb/ton).

The *Tailoring Rule* has been overlooked throughout the draft Hanford Site AOP and in all antecedent documentation provided to the public to support renewal of the Hanford Site AOP. Please correct this oversight and re-start the public review clock.

Comment 36: (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 radioactive air emissions in the draft Hanford Site AOP pursuant to *The Nuclear Energy and Radiation Act* (NERA) rather than in accordance with 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. One of the CAA pollutants the Hanford Site is required to control is radionuclides. However, in the draft Hanford Site AOP radionuclide applicable requirements 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 pollutant in a CAA-required permit?

Comment 37: (Statement of Basis (SOB) for *Attachment 1*): **In accordance with 40 C.F.R. 70.7 (a)(5) and WAC 173-401-700 (8), provide the legal and factual basis for determining the 200W 283-W Water Treatment Plant, a facility previously subject to the requirements of 40 C.F.R. 68 (Chemical Accident Prevention Provisions), is no longer subject to these requirements.**

Requirements developed pursuant to CAA § 112 (r)(7) [42 U.S.C. 7412 (r)(7)] are applicable requirements under both WAC 173-401[1] and 40 C.F.R. 70[2]. There must be some basis for choosing to eliminate several such federally applicable requirements.

[1] "Applicable requirement" means all of the following as they apply to emissions units in a chapter 401 source. . . (a) The following provisions of the Federal Clean Air Act (FCAA): . . .(iv) Any standard or other

requirement under section 112 (Hazardous Air Pollutants) of the FCAA, including any requirement concerning accident prevention under section 112 (r)(7) of the FCAA' WAC 173-401-200 (4)(a)(iv)
[2] "*Applicable requirement* means all of the following as they apply to emissions units in a part 70 source . . . (4) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act" 40 C.F.R. 70.2

Comment 38: (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 39: (Statement of Basis for *Attachment 2*, Section 7.0; pg. 19): **Correct the definition of ARARs to read "applicable or relevant and appropriate requirements".**

["However, the actions taken must meet the substantive requirements of applicable or relevant and appropriate" ~~regulations~~ requirements (ARARs)]

Comment 40: (Statement of Basis for *Attachment 2*, Section 7.0; pg. 19): **In accordance with 40 C.F.R. 70.7 (a)(5) and WAC 173-401-700 (8), provide the legal and factual basis for capturing all radionuclide air emissions that contribute to the offsite dose to the maximally exposed individual.**

The discussion in *Section 7.0* regarding the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA) overlooks the duty to measure and report all radionuclide air emissions, and to abide by the dose standard in 40 C.F.R. 61 Subpart H (Subpart H). The Washington State Department of Health (Health) is correct; actions conducted pursuant to CERCLA are exempt from the requirement to obtain a permit. However, Health errs if it assumes regulation pursuant to CERCLA vacates the dose standard in Subpart H. This standard cannot be ignored, whether or not radionuclide air emissions result from CERCLA characterization or remediation activities. Even if the CERCLA process at Hanford disregards measurement and reporting of radionuclide air emissions, Health's considerable regulatory authority and responsibility to enforce Subpart H is undiminished at the boundary to every CERCLA unit.

Revise *Section 7.0* to reflect Health's authority to require air monitoring plans with stop-work triggers for all CERCLA activities and the Department of Energy's obligation to abide by the dose standard in Subpart H at all times. After all, radionuclide air emissions are the only emissions addressed in the Hanford Site AOP considered so

hazardous that neither EPA nor Health recognizes a regulatory *de minimis* nor does either agency recognize a health-effects *de minimis* above background.

Comment 41: (Statements of Basis for *Attachment 2* and *Attachment 3*, fees): **Contrary to 40 C.F.R. 70.7 (a)(5) and WAC 173-401-700 (8), the permitting authority overlooked the legal and factual basis for assessing and collecting permit fees associated with *Attachment 2* and with *Attachment 3* using regulations not supported by the CAA, 40 C.F.R. 70.9, RCW 70.94.162, and WAC 173-401.**

In the draft Hanford Site AOP the permittee is required to pay permit fees associated with *Attachment 2* pursuant to WAC 246-247-065, WAC 246-254-120 (1)(e), and WAC 246-254-170, while *Attachment 3* requires permit fee payment in accordance with a memorandum of agreement (MOA) between the permittee and the Benton Clean Air Agency (BCAA). None of these fee payment requirements comply with the federally approved permit fee payment requirements codified in 40 C.F.R. 70.9, RCW 70.94.162, and WAC 173-401.

What is the factual and legal basis for requiring the permittee to pay CAA-required fees in a CAA-required permit contrary to requirements of the CAA?

Comment 42: (Statements of Basis): **In accordance with 40 C.F.R. 70.7 (a)(5) and WAC 173-401-700 (8), provide the legal and factual basis for omitting public participation for *Attachment 2*, even though *Attachment 2* contains federally enforceable requirements. Public participation is required by 40 C.F.R. 70.7 (h) and WAC 173-401-800.**

Health issued *Attachment 2* as final effective February 23, 2012. Public participation for the remainder of the draft Hanford Site AOP did not begin until June 4, 2012, several months after Health's final action on *Attachment 2*.

Comment 43: (Statement of Basis for *Attachment 3*): **In accordance with 40 C.F.R. 70.7 (a)(5) and WAC 173-401-700 (8), provide the legal and factual basis for the Bechtel National, Inc., dust control plan.**

[*See* Administrative Order of Correction, No. 20030006, issued on March 12, 2003.]

VII. Application, public review file, and overlooked emission units

Comment 44: (Application oversight): **Contrary to 40 C.F.R. 70.5 (c) and WAC 173-401-510 (1), the Hanford Site AOP application did not address the *Tailoring Rule* [75 Fed. Reg. 31,514 (June 3, 2010)]. It is also not apparent calculations in the application considered all six (6) CO_2 equivalents comprising the regulated air pollutant defined as greenhouse gases (GHGs).**

Beginning on January 2, 2011 regulation of GHG emissions is required for sources with a Title V permit. Pursuant to the *Tailoring Rule*, GHG emissions are regulated as an applicable requirement under 40 C.F.R. 70 for any source with an existing Title V permit[1]. The specified unit of measurement is short tons[2].

Both 40 C.F.R. 70.5 (c) and WAC 173-401-510 (1) require that ". . . [a]n application may not omit information needed to determine the applicability of, or to impose, any applicable requirement,. . ." [40 C.F.R. 70.5 (c); WAC 173-401-510 (1)] and further that "[a] permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit. . ." 40 C.F.R. 70.5 (c)(3)(i); WAC 173-401-510 (2)(c)(i). GHG emissions have been a regulated air pollutant under the CAA, 40 C.F.R. 70, and WAC 173-401 since early 2011.

Please update the application with all required information and re-start public review with a complete application.

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[1] "For the first step of this *Tailoring Rule*, which will begin on January 2, 2011, . . . title V requirements will apply to sources' GHG emissions only if the sources are subject to. . .title V anyway due to their non-GHG pollutants." 75 Fed. Reg. 31,514 (June 3, 2010)

[2] "We are finalizing our proposal to use short tons because short tons are the standard unit of measure for both the PSD and title V permitting programs and the basis for the threshold evaluation to support this rulemaking." *Id.* at 31,532 (emphases added)

Comment 45: (Application oversight): **Contrary to 40 C.F.R. 70.5 (c) and WAC 173-401-510 (1), the Hanford Site AOP application did not contain a schedule of compliance required by 40 C.F.R. 70.5 (c)(8)(iii)(C) and WAC 173-401-510 (2)(h)(iii)(C) for preparation of "Construction Phase Fugitive Dust Control Plan(s)", an AOP applicable requirement overlooked since 2006.**

Please update the application with all required information and re-start public review with a complete application.

Comment 46: (Public review file deficiencies): **Provide a complete public review file as required by 40 CFR 70.7(h)(2), and WAC 173-401-800, and restart public review. A complete public review file includes all information used by Ecology and Health in the permitting process.**

EPA's interpretation of certain language in 40 CFR 70.7(h)(2) is captured as a finding in case law. According to the appellate court decision 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)

With this EPA interpretation in mind, relevant information used it in the permitting process, but overlooked in the public review file, minimally includes "Ecology's responses and resolution of the site's informal advance comments on the draft AOP sections."[1] Because "[m]ost comments and changes [were] [ ] accepted. . ."[2] there can be no question Ecology used these comments in the permitting process. Even issues raised in Hanford Site comments and rejected by Ecology are a source of information used in the permitting process; as are Ecology's reasons for rejecting the comments.

Also overlooked is relevant information used by Health to arrive at conditions appearing in License FF-01. This information includes the EPA-DOE memorandum of understanding (MOU):

> *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.

This MOU is the basis for implementing federally enforceable NESHAP requirements regulating radionuclide air emissions, including emission units designated as "minor".

> "This effort has been undertaken to assure uniform and consistent interpretation of the NESHAP provisions for radionuclides at DOE facilities and EPA regional offices." *Id.* at 1

The MOU addresses various monitoring, testing, and QA requirements of 40 C.F.R. 61.93 (Subpart H); acceptable protocols for periodic confirmatory measurements; eligible requirements for exemption from submitting an application for any new construction or modification within an existing facility; an agreement the dose standard of 40 C.F.R. 61, Subpart H applies to emissions from diffuse sources such as evaporation ponds, breathing of buildings and contaminated soils; and many other aspects regarding regulation of radionuclide air emissions at DOE facilities like the Hanford Site. *Attachment 2* could not have been prepared without using information in the MOU, yet this MOU does not appear in the public review file.

Ecology additionally overlooked documentation relied on to eliminate 40 C.F.R. 68 (Chemical Accident Prevention Provisions) as an applicable requirement in this draft Hanford Site AOP renewal. In the current AOP, the 200W 283-W Water Treatment Plant is subject to several paragraphs of 40 C.F.R. 68.

Also, the version of *Attachment 2* presented to the public for review could not have been prepared without the dispositions to Hanford Site comments. These pre-public review comments and dispositions need to be included in the public review file.

Please update the public review file to include all information used by the agencies in the permitting process and re-start the public review clock.

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[1] Thomas G. Beam, *Radioactive/Air Toxics Schedule Interface Meeting Summary*, Apr. 11, 2012, at 4a
[2] *Id.*

Comment 47: (Public review file deficiencies): **The public review file is missing other key documents and agreements used by Ecology and Health in the permitting process. Provide a complete public review file as required by 40 CFR 70.7(h)(2), and WAC 173-401-800, and restart public review.**

The following documents used by the permitting authority and Health are missing from the public review file:

- The Ecology-Health interagency agreement referenced on page 1 of 50 of the Statement of Basis (SOB) for Standard Terms and General Conditions. This

agreement is the foundation upon which Ecology has constructed the draft Hanford Site AOP.

- NESHAPs delegation notice: *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). This *Federal Register* notice specifies the CAA authorities delegated to Health, those authorities retained by EPA, and EPA's interpretation of CAA §116[1]. Health used this partial delegation to create License FF-01, but overlooked some of the restrictions.
- The "Construction Phase Fugitive Dust Control Plan(s)" required in condition 8.1, page ATT 1-38 of *Attachment 1*, and any associated schedule of compliance. The plans provide the basis for compliance with federally enforceable fugitive dust requirements implemented in accordance with WAC 173-401-040 (9)(a).
- The renewal application and application update were overlooked. Both the Hanford Site AOP renewal application and application update were omitted from the public review file transmitted by Ecology to the official information repository at Washington State University, Consolidated Informtion Center. While this commenter was able to obtain a copy of the application through a *Freedom of Information Act* (FOIA) request and a copy of the application update through a request pursuant to the *Public Records Act* (PRA), requiring the use of FOIA and the PRA to obtain relevant material used by the permitting authority in the permitting process does not comply with 40 CFR 70.7(h)(2) and WAC 173-401-800.

[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)

Comment 48: (Public review file deficiencies.): **The public review file is missing the Administrative Order of Compliance (#20030006) issue by BCAA to Bechtel National, Inc., and the dust control plan for the Marshalling Yard required by this Administrative Order.**

These documents are the basis for CAA-applicable requirements BCAA must include in *Attachment 3*[1]. Please update the public review file to include all information used by BCAA in the permitting process and re-start the public review clock.

[1] "EPA believes that, because CDs [consent decrees] and AOs [administrative orders] reflect the conclusion of a judicial or administrative process resulting from the enforcement of "applicable requirements" under the Act, all CAA-related requirements in such CDs and AOs are appropriately treated as "applicable requirements" and must be included in title V permits, regardless of whether the applicability issues have been resolved in the CD." *In the Matter of CITGO Refining and Chemicals Company L.P.*, Petition Number VI-2007-01, at 12 (May 28, 2009). Available at: http://www.epa.gov/region07/air/title5/petitiondb/petitions/citgo_corpuschristi_west_response2007.pdf

Comment 49: (Overlooked emission unit): **Overlooked in *Attachment 2* (License FF-01) of this draft Hanford Site AOP is The Environmental Assessment Services (EAS) environmental radio-laboratory.**[1]

The EAS environmental radio-laboratory should be added to Hanford's AOP as a support facility. Pacific Northwest National Laboratory (PNNL) recently transitioned Hanford's Environmental Monitoring Program (EMP) to EAS. Transfer of this substantial workscope to EAS means the Hanford Site[2] is the source for most of EAS's income. The Hanford Site also imposes restrictions on EAS employee conduct and on certain employee activities. Additionally, the Hanford Site is the source of the bulk of EAS's radionuclide air emissions; this because of the increase analyses of radionuclide-contaminated samples originating from the Hanford Site.

EAS is located adjacent to the Hanford Site. Additionally Hanford Site procedures and protocols control:

- how EAS conducts its sampling and analyses activities;
- what specialized training is required to access the Hanford Site and certain sampling areas; and
- the need to conduct background investigations on EAS employees required to gain access to the Hanford Site, including the need to impose a code of conduct for EAS employee's activities on and off the Hanford Site.

The EAS environmental laboratory should be considered a support facility under 40 C.F.R. 70 and WAC 173-401, because:

- The Hanford Site has a substantial financial interest in EAS, accounting for a majority of EAS's income. (Absent Hanford and the associated tax-payer dollars, it is very doubtful enough funding would be available to sustain an environmental radio-laboratory; nor would sufficient interest exist to drive characterization of radionuclides in the local environment.);
- the EAS environmental radio-laboratory is located adjacent to the Hanford Site, easily accessed via short-distance travel on public roads;
- Hanford Site protocols control EAS sampling and analytical laboratory processes and analytical procedures;
- Radio-analyses conducted at EAS either were performed at another Hanford Site laboratory (e.g. PNNL EMP program) or could be performed at another Hanford Site radio-laboratory (e.g. 222-S, WSCF, etc.)
- The Hanford Site specifies EAS employee conduct, training, site access requirements, and even controls which EAS employees are allowed on the Hanford Site.

EAS is effectively under Hanford Site's common control. EAS is located adjacent to the Hanford Site, and EAS is a radio-laboratory like several other radio-laboratories on the Hanford Site. Incorporate EAS into Hanford's AOP as a support facility.

[1] This comment is submitted under the theory the Department of Energy (DOE) is solely responsible for all radionuclide pollutants originating from the Hanford Site, and that DOE is the sole distribution point for tax-payer dollars funding all characterization and clean-up activities on the Hanford Site. Whether companies under contract with DOE act as the actual contractual interface with EAS is irrelevant, DOE

retains ultimate control and ultimate responsibility. This theory is supported by the fact the U.S. DOE is identified as the permittee for the Hanford Site AOP and by the definition of "responsible official" as it applies to certification requirements for all CAA-required submissions. ['"Responsible official" means. . . a principal executive officer of a federal agency . . . having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA)' WAC 173-401-200 (29)(c) & 40 C.F.R. 70.2]

[2] As used here, Hanford Site includes the Department of Energy (DOE) and all companies under contract with DOE that perform work on the Hanford Site and receive tax-payer dollars through DOE, either directly or indirectly.

Comment 50: (Overlooked emission unit): **Overlooked in *Attachment 2* (License FF-01) of this draft Hanford Site AOP 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. 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; 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 51: (Application oversight, overlooked emission unit, and public review file deficiency; 618-11): **The 618-11 Burial Ground is completely overlooked in the draft Hanford Site AOP. This burial ground is also overlooked in the AOP application and in information contained in the public review file.**

The 618-11 Burial Ground contains a huge curie inventory with an accompanying significant potential-to-emit; yet this source of diffuse and fugitive radionuclide air emissions is completely overlooked. While the 618-11 Burial Ground may someday be characterized and remediated in accordance with the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA)[1], this burial ground is presently a source of CAA-regulated hazardous air pollutants and is immediately subject to requirements of the CAA. Such requirements include monitoring, reporting, and recordkeeping. Update the application and the draft AOP, and restart the public review clock.

[1] Actions taken pursuant to CERCLA are exempt from the requirement to obtain a permit. However, regulating air pollutants pursuant to CERCLA cannot excuse any contributions to the offsite dose to the maximally exposed individual.

Comment 52: (Application oversight, overlooked emission unit, and public review file deficiency): **Address all emission units contained in the annual radionuclide air emissions reports required by 40 C.F.R. 61 Subpart H in the Hanford Site AOP and in all required antecedent documentation.**

For example, the 618-10 Burial Ground is contained in the calendar year 2010 annual radionuclide air emissions report (DOE/RL-2011-12, Revision 0) but is not contained in the draft Hanford Site AOP. All emission units with the potential-to-emit any CAA-regulated air pollutant must appear in the Hanford Site AOP. Even emission units remediated under the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA)[1] should be addressed, perhaps in a separate table akin to an inapplicable requirements table, if for no other reason than to assure that no contributor to the offsite dose to the maximally exposed individual has been overlooked. Update the application and the draft AOP, and restart the public review clock.

[1] Actions taken pursuant to CERCLA are exempt from the requirement to obtain a permit.

Comment 53: (General): **The permitting authority cannot seek to amend, modify, or otherwise revise the Hanford Site AOP that expired on December 31, 2011. Any new or modified terms or conditions can only become effective in the final permit issued at the conclusion of the current renewal effort. Until the final 2013 renewal AOP is issued, the permittee must abide by all conditions in the 2006-2011 version.**

Content in the 2006-2011 Hanford Site AOP was locked on December 31, 2011, when this AOP expired. The permittee can continue to operate under this AOP version because it submitted a timely application and Ecology did not request additional information to correct the application oversights. However, Ecology is precluded from making any changes to the 2006-2011 AOP, even very minor changes associated with an administrative amendment.

VIII. Response to comments

Comment 54: (Response to comments, general): **Respond to all significant comments above pertaining to federally enforceable applicable requirements in accordance with the federal *Administrative Procedures Act* (APA) (5 U.S.C. 500 *et. seq.*).**

Unlike the Washington State *Administrative Procedures Act* (RCW 34.05) the federal APA requires a response to all significant comments. According to the EPA, failure to respond to significant comments is itself subject to petition under section 505(b)(2) of the CAA [42 U.S.C. 7661d (b)(2)] and 40 C.F.R. 70.8(d)[1].

Courts have determined "significant comments" to be those that raise significant problems; those that can be thought to challenge a fundamental premise; and those that are relevant or significant. [*State of N.C. v. F.A.A.*, 957 F.2d 1125 (4th Cir. 1992); *MCI WorldCom, Inc. v. F.C.C.*, 209 F.3d 760 (D.C. Cir. 2000); *Texas Office of Public Utility Counsel v. F.C.C.*, 265 F.3d 313 (5th Cir. 2001), cert. denied, 535 U.S. 986, 122 S. Ct. 1537, 152 L. Ed. 2d 464 (2002) and *Grand Canyon Air Tour Coalition v. F.A.A.*,

154 F.3d 455 (D.C. Cir. 1998)]. (*After* Dietz, Laura Hunter, J.D., et. al., *Federal Procedure for Adoption of Rules, Response to comment*, 2 Am. Jur. 2d Administrative Law § 160, April 2010)

Please respond to all significant comments pertaining to federally enforceable applicable requirements in accordance with the federal *Administrative Procedures Act*.

---

[1] "[T]he opportunity to comment is meaningless unless the agency responds to significant points raised by the public." (citation omitted) *Home Box Office v. FCC*, 567 F.2d 9, 35-36 (D.C. Cir. 1977). EPA expanded on this dictum, stating "It is a general principle of administrative law that an inherent component of any meaningful notice and opportunity for comment is a response by the regulatory authority to significant comments." *In the Matter of Onyx Environmental Services*, Petition V-2005-1 (February 1, 2006) at 7 citing *Home Box Office v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977) [*See* also *In the Matter of Kerr-McGee, LLC, Fredrick Gathering Station*, Petition-VIII-2007 (February 7, 2008) at 4; *In the Matter of CITGO Refining and Chemicals Company L.P.*, West Plant, Corpus Christi, Texas, Petition-VI-2007-1 (May 28, 2009) at 7.]

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DEPARTMENT OF ECOLOGY
NWP - RICHLAND

January 3, 2013

Central Files
File Name:
Cross Reference:

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:

Thank you for the second opportunity to review the draft Hanford Site Air Operating Permit (AOP) renewal. Enclosed are my comments. I hope you find these comments useful in implementing a public involvement process consistent with Ecology's regulation. I also hope you find the comments useful in crafting a proposed AOP that complies with the *Clean Air Act* and the *Washington Clean Air Act*.

Respectfully,

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
P. Goldman, Earthjustice

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Comments below include any associated footnote(s).

Comment 55: **All comments submitted to Ecology during the first comment period (June 4, 2012, through August 3, 2012) are incorporated by reference.**

On August 2, 2012, this commenter submitted 54 comments on the draft Hanford Site AOP renewal. Because "[t]he AOP and statement of basis for this [second] comment period are exactly the same as presented in the first comment period"[1, 2], these 54 comments still apply. Also, comments contained in this commenter's August 2, 2012, transmittal letter still apply.

[1] Ecology publication 12-05-016 (https://fortress.wa.gov/ecy/publications/publications/1205016.pdf) (emphasis copied from original)
[2] "The only change from then to now is that Ecology is making the permit application, its supplement, and supporting material available." (http://www.ecy.wa.gov/programs/nwp/commentperiods.htm)

Comment 56: (*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, however, grant Health certain enforcement authority for licenses issued in accordance with RCW 70.98 and the rules adopted thereunder.[1] *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 70.98.422 (1)

Comment 57: (*Statements of Basis*, general enforcement authority, reference Comment 36) **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 radioactive air emissions in the draft Hanford Site AOP renewal pursuant to RCW 70.98, *the Nuclear Energy and Radiation Act* (NERA) rather than in accordance with WAC 173-400 and the federal *Clean Air Act* (CAA).**

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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. One of the CAA pollutants the Hanford Site is required to control is radionuclides. However, in the draft Hanford Site AOP radionuclide terms and conditions are developed and enforced pursuant to NERA rather than in accordance with WAC 173-400 and Title V of the CAA.

Ecology adopted the Radionuclide NESHAPs by reference into its state regulations[1]. These regulations apply statewide[2]. Through the EPA authorization of Ecology as a Part 70 permit issuing authority, Ecology has authority under the CAA to implement and enforce the Radionuclide NESHAPs against sources, such as the Hanford Site, when the Radionuclide NESHAPs are included in the Part 70 permits Ecology issues. Furthermore, terms and conditions developed by Ecology pursuant to the Radionuclide NESHAPs are federally enforceable, even though EPA has not delegated enforcement of these NESHAPs to Ecology[3].

Had Ecology chosen to regulate radionuclides in this draft Hanford Site AOP renewal pursuant to WAC 173-400, this draft AOP renewal would comply with Title V of the CAA.

Pursuant to 40 C.F.R. 70.7 (a)(5) and WAC 173-401-700 (8), supply the legal and factual basis for regulating radionuclides in this draft Hanford Site AOP renewal through terms and conditions developed under the authority of NERA rather than through terms and conditions created in accordance with WAC 173-400 and Title V of the CAA.

[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 provisions of this chapter shall apply statewide." WAC 173-400-020 (1)
[3] "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). *See also* WAC 173-401-625 and CAA § 116 [42 U.S.C. 7416].

Comment 58: (Standard Terms and Conditions, Section 4.4, and Section 2.0, and SOB for Standard Terms and Conditions pg. 9 of 50) **Add UniTech Services Group, formerly Interstate Nuclear Services (INS), to the Hanford Site AOP.**

This laundry has a "direct contract with DOE-RL to provide laundry service for RL, ORP and site contractors; including both regulated (rad) and nonregulated, garments, as well as face masks."[1] All work UniTech Services Group performs is for DOE, whether DOE's Idaho National Environmental Engineering Laboratory, DOE's Sandia National Laboratory, or DOE's Hanford Site.[2] Because "DOE is considered the owner and operator of Hanford"[3], because 100 percent of the work performed by UniTech Services Group is for DOE, and because UniTech Services Group is locate adjacent to DOE's Hanford Site, this laundry is a part of DOE's Hanford major stationary source.

[1] email from Tom Beam, MSA, to Phil Gent, Ecology, *RE: AOP Question*, Feb. 13, 2012.
[2] *Statement of Basis For Hanford Site Air Operating Permit No. 00-05-006 2013 Renewal*, pg. 9 of 50
[3] *Standard Terms and General Conditions, Hanford Site Air Operating Permit 2013 RENEWAL*, Section 4.4

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Comment 59: (Public review process) **Provide the public with the full comment period required by WAC 173-401-800 (3).**

Public notice for the second round of public review on the draft Hanford Site AOP renewal was published in the December 2, 2012, issue of the *Tri-City Herald*. A similar notice was also published in the December 10, 2012, edition of the *Permit Register* (Volume 13, Number 23). Both notices state the public review period for the draft Hanford Site AOP renewal extends from "3 December, 2012, to 4 January, 2013". This period does not comply with regulation. According to WAC 173-401-800 (3):

> ". . .[the] comment period begins on the date of publication of notice in the *Permit Register* or publication in the newspaper of largest general circulation in the area of the facility applying for the permit, **whichever is later**. . ." (emphasis is mine) WAC 173-401-800 (3).

The "**whichever is later**" date between December 2, 2012, and December 10, 2012, is December 10, 2012. Thus, the public comment period should have begun no sooner than December 10, 2012, rather than on December 3, 2012, and should have extended for a minimum of thirty (30) days thereafter. The requirements for public involvement cannot be met when the thirty (30) day comment period begins BEFORE the date of publication of notice in the *Permit Register*.

Restart public involvement following the process required by WAC 173-401-800 (3).

Comment 60: (Incomplete public review file. *See* comments 45, 46, 47, and 48.) **Provide a complete public review file as required by 40 CFR 70.7(h)(2), and WAC 173-401-800, and restart public review. A complete public review file includes all information used by Ecology, Health, and BCAA in the permitting process.**

Ecology states the only change between the first and second public comment periods is the documentation provided to the public[1], yet Ecology overlooks most of the missing information identified in comments 45, 46, 47, and 48. Material used in the permitting process must be furnished to support public review. Please provide the public with ALL information Ecology, Health, and BCAA used in the process of creating the draft Hanford Site AOP renewal.

Quoting from comment 46 above:

> 'EPA's interpretation of certain language in 40 CFR 70.7(h)(2) is captured as a finding in case law. According to the appellate court decision 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)'

Relevant information used in the permitting process but once again not provided to the public to support review of the draft Hanford Site AOP renewal includes, but is not limited to, the following:

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- The Ecology-Health interagency agreement, referenced on page 1 of 50 of the Statement of Basis (SOB) for Standard Terms and General Conditions, - This agreement is NOT included in the draft permit renewal or in any SOB even though Ecology states it is included.

  > "The interagency agreement between Ecology and Health . . . [is] documented in the Appendices to this Statement." SOB for Standard Terms and General Conditions, at 1

  Giving credit to this quote, Ecology minimally failed to provide the public with an interagency agreement Ecology recognizes as significant to the permitting process. Ecology's failure to include the interagency agreement ". . .in the Appendices to this Statement" also indicates the Statement of Basis is not complete. *See* comment 47.

- Administrative Order number 20030006, dated March 12, 2003, and resulting dust control plan submitted to BCAA on March 21, 2003 – Information provided the public is insufficient because it does not contain either the administrative order (AO) or the resulting dust control plan. EPA has determined an AO reflects the conclusion of an administrative process resulting from the enforcement of "applicable requirements" under the CAA. (See Washington State SIP and WAC 173-400-040 (9)(a)) Thus, all CAA-related requirements in an AO are appropriately treated as "applicable requirements" and must be included in title V permits. (*See* Comment 29, footnote 4.)

  Furthermore, neither the AOP renewal application nor the draft Hanford Site AOP renewal is complete. The application not complete because it does not contain all information needed to determine all applicable requirements contrary to 40 C.F.R. 70.5 (c), 40 C.F.R. 70.5 (c)(3)(i), WAC 173-401-510 (1), and WAC 173-401-510 (2)(c)(i). The Hanford Site AOP renewal is also not complete because it does not contain applicable requirements resulting from the AO and dust control plan as required by 40 C.F.R. 70.7 (a)(1)(iv) and WAC 173-401-600 (1). *See* comments 25 (footnote 1), 43, and 48.

- "Construction Phase Fugitive Dust Control Plan(s)", required by condition 8.1, on page. ATT 1-38. The requirement to prepare "Construction Phase Fugitive Dust Control Plan(s)" first appeared in the AOP version issued as final in 2006. If the plan(s) have been prepared sometime during the intervening six (6) years, then Ecology has no option but to include them in the public review file. On the other hand, if the plan(s) have not been prepared then Ecology has no option but to require a schedule of compliance. A sources not in compliance with all applicable requirements at the time of permit issuance is required by 40 C.F.R. 70.6(c)(3) and WAC 173-401-630 (3) to adhere to a schedule of compliance that is at least as stringent as any judicial consent decree or administrative order [40 C.F.R. 70.5 (c)(8)(iii)(C),WAC 173-401-510 (h)(iii)(C)]. The plan(s) or schedule of compliance are required to meet federally enforceable requirements implemented through the Washington State SIP and WAC 173-400-040 (9)(a). *See* comments 23 and 47.

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- The *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

  This memorandum of understanding (MOU) is necessary to provide the public with the terminology and an understanding of the concepts required to evaluate compliance with 40 C.F.R. 61, subpart H. Without this MOU, *Attachment 2* could not have been prepared, nor can terms and conditions in *Attachment 2* be properly evaluated with respect to compliance with the radionuclide NESHAPs applicable to Hanford. Thus, the MOU is used in the permitting process. *See* comments 24 and 46.

In accordance with 40 CFR 70.7(h)(2) and WAC 173-401-800, please provide the public with all information used in the permitting process and re-start public review.

[1] "A comment period for this permit was also held June 4 -- August 3, 2012. The only change from then to now is that Ecology is making the permit application, its supplement, and supporting material available." http://www.ecy.wa.gov/programs/nwp/commentperiods.htm

Comment 61: (Incomplete application. *See* comments 44 and 60) **Provide a complete application as required by 40 C.F.R. 70.5 (c) and WAC 173-401-510 (1), and re-start public review.**

Required items missing from the Hanford Site AOP renewal application include, but are not limited to, the following:

- Statements required by 40 C.F.R. 70.5 (8)(iii)(A)[1] & (B)[2] and WAC 173-401-510 (h)(iii)(A) & (B) (*See also* comment 60, second and third bullets.)
- Emission rates, including those for greenhouse gas (GHG) emissions, expressed in tons per year (tpy) as required by 40 C.F.R. 70.5 (c)(3)(iii)[3] and WAC 173-401-510 (2)(c)(iii) – (*See* comments 44 and 20.)
- All newly regulated internal combustion engines, including those of less than 500 HP now regulated pursuant to 40 C.F.R. 63, subpart ZZZZ as required by 40 C.F.R. 70.5 (c)[4] and WAC 173-401-510 (1). *See* comment USDOE-37:

  "Three additional newly regulated stationary source internal combustion engines of less than 500 HP have been identified that were inadvertently omitted from the Hanford Site AOP Renewal Application (including the supplemental application document) . . ." comment USDOE-37[5], copy obtained through the *Public Records Act*)

The permittee also has a nondiscretionary duty to supplement and correct its application, to include information pertaining to any new applicable requirements.

"In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit." 40 C.F.R. 70.5 (b) & WAC 173-401-500 (6)

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Likewise, Ecology has a duty to provide the public with a complete application (in addition to all information used in the permitting process) to support public review.

Please comply with 40 C.F.R. 70.5 (c) and WAC 173-401-510 (1) by providing a complete application and re-start public review.

[1] "For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements." 40 C.F.R. 70.5 (8)(iii)(A)

[2] "For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis." 40 C.F.R. 70.5 (8)(iii)(B)

[3] "Emissions rate in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method." 40 C.F.R. 70.5 (c)(3)(iii)

[4] "An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, . . ." 40 C.F.R. 70.5 (c)

[5] When the permittee acknowledges its application is not complete, it will be difficult for Ecology to craft a credible argument to the contrary.

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ECOLOGY
State of Washington

Washington State Department of Ecology
Nuclear Waste Program
Hanford Project

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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:

Thank you for a third (3rd) opportunity to review the draft Hanford Site Air Operating Permit (AOP) renewal. Enclosed are my comments. I hope you find these 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 *Clean Air Act* and the *Washington Clean Air Act*.

Respectfully,

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

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

Comments below include any associated footnote(s).

Comment 62: **All comments submitted to Ecology during the first and second comment periods (June 4, 2012, through August 3, 2012, and December 10, 2012 through January 4, 2013) are incorporated by reference.**

This commenter previously submitted 61 comments in accordance with timeframes specified for earlier public comment periods. All previous comments submitted continue to apply and are incorporated by reference because "[t]he AOP and supporting documents are exactly the same as in the earlier comment periods"[1]. Comments include any associated footnote(s).

[1] *Hanford Air Operating Permit (AOP) Comment Period Extension*, Department of Ecology, Publication No. 13-05-001

Comment 63: (Public review process, *see* comment 59) **Provide the public with an accurate notice of the opportunity to submit comments on the draft Hanford Site AOP renewal along with a minimum of thirty (30) days to provide such comments, as required by 40 C.F.R. 70.7 (h) and WAC 173-401-800.**

Timeline:

December 10, 2012 through January 4, 2013:

Ecology opened a second (2nd) comment period on the draft Hanford Site AOP renewal on December 10, 2012. This comment period extended from December 10, 2012 through January 4, 2013. The second (2nd) comment period was supported by "the permit application, its supplement, and supporting material. . . [1]", information omitted from the initial public review file[2].

January 5, 2013 through January 13, 2013:

No comment period on the draft Hanford Site AOP renewal was open from January 5, 2013 through January 13, 2013.

January 14 to January 25, 2013:

Ecology opened a comment period on the draft Hanford Site AOP renewal from January 14 to January 25, 2013.

In the January 10 edition of the *Permit Register* (Volume 14, Number 1), Ecology explains its rationale for opening a comment period from January 14, 2013 to January 25, 2013, as follows:

> This permit register entry is to extend the comment period listed in the 12/10/2012 permit register of 12/10/2012 to 1/4/2013. This **extension** will run [from] 14 [January] to 25 January, 2013. Combining the 25 days from the 12/10/2012 register with the 14 days on this announcement will provide the public with more than the minimum required 30 days comment period on the draft AOP. (emphasis is mine) *Permit Register* Vol. 14, No. 1. Available at: http://www.ecy.wa.gov/programs/air/permit_register/Permit_PastYrs/2013_Permits/2013_01_10.html

Ecology is thus proposing to combine two (2) comment periods that are separated in time by nine (9) days into a single comment period. Each of the two (2) comment periods is less than thirty (30) days in length. However, when the two (2) comment periods are combined the total length exceeds thirty (30) days. Ecology calls the process of

combining the two (2) comment periods an extension of the first (1st) of these two (2) comment periods.

Ecology mis-understands "extension" as it applies to a comment period that is closed. The word "extension" means "an increase in the length of time"[3]; closed means "to bring to an end"[4]. Ecology can no more increase the number of days of a comment period that has come to an end than it can increase the number of days of a life that has come to an end. Ecology is not increasing the length of time of a comment period that closed on January 4, 2013, by adding days from a comment period that opened more than one (1) week later. Rather Ecology has created a new comment period, one with a distinct starting date (January 14, 2013) and a distinct ending date (January 25, 2013). The sum of one (1) comment period that cannot comply with regulatory requirements plus another comment period that cannot comply with regulatory requirements is two (2) comment periods that cannot comply with regulatory requirements. Ecology's position to the contrary is in error. Each distinct comment period is individually subject to the requirements of 40 C.F.R. 70.7 (h) and WAC 173-401-800.

Ecology's attempt to combine two (2) separate and non-compliant comment periods also overlooks the public notice requirements in 40 C.F.R. 70.7 (h)(1) & (2) and WAC 173-401-800 (1) & (2). Ecology is responsible to accurately convey to the public information regarding any comment period subject to 40 C.F.R. 70.7 (h) or WAC 173-401-800[5]. Ecology's public notices for the December 10 through January 4 comment period made no mention this comment period would be combined with a comment period beginning on January 14 and ending on January 25, 2013. Ecology cannot now reach back in time and edit the December 10, 2012, notice in the *Permit Register* and the December 2, 2012, notice in the *Tri-City Herald* to include the January 14 to January 25, 2013, comment period "extension". Nor can Ecology now add days to the comment period that closed on January 4, 2013.

Provide the public with an accurate notice of the opportunity to submit comments along with a minimum of thirty (30) days in which to do so.

[1] Ecology publication 12-05-016 (https://fortress.wa.gov/ecy/publications/publications/1205016.pdf)
[2] The public review file for the initial comment period (June 4 through August 3, 2012) contained only the permit plus the statements of basis. The permit consisted of the Standard Terms and Conditions, and attachments 1 through 3.
[3] *Merriam-Webster's Dictionary of Law* 181 (1st ed. 2011)
[4] *Id.* at 80.
[5] "It is ecology's . . . goal to ensure that accurate permitting information is made available to the public in a timely manner. The permitting authority is responsible for providing notice of permitting actions that allows sufficient time for comment and for providing enough information to inform the public of the extent of the actions proposed." WAC 173-401-800 (1)

Comment 64: (Incomplete public review file. *See* comments 45, 46, 47, 48, and 60.) **Provide a complete public review file as required by 40 CFR 70.7(h)(2), and WAC 173-401-800, and restart public review. A complete public review file includes all information used by Ecology, Health, and BCAA in the permitting process.**

As affirmed by the court's decision in *Sierra Club v. Johnson*, 436 F.3d 1269, (11th Cir. 2006), the Administrator of EPA, and thus EPA, has determined that the phrase "materials available to the permitting authority that are relevant to the permit decision," in 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. (*Sierra Club v. Johnson*, 436 F.3d 1269, 1284, (11th Cir. 2006)) There is no question Ecology used, "in the permitting process", public comments submitted during previous public comment periods[1], yet Ecology overlooked such comments along with any responses to these comment.

In accordance with 40 CFR 70.7(h)(2) and WAC 173-401-800, please provide the public with ALL information used in the permitting process and re-start public review.

[1] Previous comment periods on this draft Hanford Site AOP renewal are those extending from June 4, 2012, through August 3, 2012, and from December 10, 2012 through January 4, 2013.

Comment 65: (insufficient public review; see comments 1, 3, 8, 10, 30, 42, 44, 46, 47, and 60) **Provide the public with the opportunity to review all portions of a complete draft Hanford Site AOP renewal. *Attachment 2* was issued as final absent any public review. *Attachment 2* also overlooks many federally-applicable requirements as required by CAA § 116 and WAC 173-401-600 (4)[1]. *Attachment 3* was approved well in advance of public review.**

Attachment 2 was issued as final and became effective on February 23, 2012, several months in advance of all required pre-issuance reviews (public review, EPA review, and affected state(s) review). Included in *Attachment 2* are more than 100 notice of construction (NOC) approvals that also bear the approval date February 23, 2012. Many other NOC approvals have an approval date later than 2007. These NOC approvals and all predecessors were issued in accordance with a regulation that does not accommodate any federal *Clean Air Act* (CAA)-required pre-issuance reviews despite containing some federally-enforceable terms and conditions. Most, if not all, of these NOC approvals fail to include analogous federally-enforceable terms and conditions for those shown as "state-only enforceable" as required by CAA § 116 and WAC 173-401-600 (4).

According to the signed and dated title page, *Attachment 3* was approved on 5/16/12, half-a-month in advance of public review and without any EPA and affected state(s) review.

Provide the public with the opportunity to review all portions of the draft Hanford Site AOP renewal.

[1] "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)

Hanford Challenge • 219 1st Ave S. Ste 310, Seattle, WA 98104 206.292.2650 hanfordchallenge.org

January 25, 2013

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

Re: Hanford Challenge Comments on the Hanford Air Operating Permit (AOP)

Dear Mr. Gent,

Hanford Challenge hereby submits comments on the Hanford Air Operating Permit (AOP).

The Hanford Site and numerous facilities surrounding it pose significant risk the human health and the environment due to air emissions. In order to ensure that emissions of radionuclides to the ambient air from Department of Energy facilities shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 10 mrem/yr (as is noted in the permit and required by 40CFR61 Subpart H), the Hanford Air Operating Permit should take into consideration the cumulative dose received by members of the public from the Hanford site and nearby sites excluded from the AOP. These sites include, but are not limited to PermaFix Northwest (PFNW) Richland, Battelle Memorial Institute Richland North facilities, Energy Northwest Applied Process Engineering Laboratory, all Energy Northwest facilities, US Ecology, Inc. commercial low-level radioactive waste burial site, and AREVA NP. Hanford Challenge wants to ensure that compliance is indeed assessed based on the cumulative releases from all area facilities, and not just those considered in the AOP.

Individuals on or near the site who do not work on site must be sufficiently protected and their air quality must be sufficiently monitored. Individuals work, attend school, or travel near potentially dangerous emissions sources. Co-located workers should be considered members of the public, as 10CFR20 requires, and the AOP should acknowledge that co-located workers are considered members of the public and limits and monitoring should be adjusted to assure their protections. Public visitors come through the site, tour the site, work in and around the site, visit the B Reactor and other areas of the site, and pass through uncontrolled areas.

40 CFR61 requires continuous monitoring for radiation releases. Hanford Challenge is concerned by the blanket statement in the AOP that the Department of Ecology may allow a facility to use alternative monitoring procedures or methods if continuous monitoring is not a feasible or reasonable requirement under WAC 246-247-075(4). Hanford Challenge requests that the enforcement agencies ensure the most comprehensive approach to sampling for pollutants of concern and radionuclides is conducted and enforced.

Two significant pollutants of concern in the Hanford Waste Tanks are Dimethyl mercury (a neurotoxin) and N-Nitrosodimethylamine (NDMA – a known carcinogen). These pollutants of

concern are emitted into the air from the Hanford Waste Tanks. Hanford Challenge is concerned by the lack of sampling for dimethyl mercury and lack of real time sampling for NDMA. The AOP should require monitoring for these pollutants of concern to not only protect tank farm workers, but also the co-located public.

Sincerely,

Tom Carpenter, Executive Director

Meredith Crafton, Legal Intern

EXHIBIT H

DEPARTMENT OF
ECOLOGY
State of Washington

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

April 2014
Publication no. 14-05-012

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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Washington State Department of Ecology - www.ecy.wa.gov

- Headquarters, Lacey 360-407-6000
- Northwest Regional Office, Bellevue 425-649-7000
- Southwest Regional Office, Lacey 360-407-6300
- Central Regional Office, Yakima 509-575-2490
- Eastern Regional Office, Spokane 509-329-3400

Ecology publishes this document to meet the requirements of Washington Administrative Code 173-401-800 (3).

If you need this document in a format for the visually impaired, call the Nuclear Waste Program at 509-372-7950. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

Response to Public Comments

Hanford Air Operating Permit

June 30 – August 2, 2013
November 17 – December 20, 2013

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

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References

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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 background[3].

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 1BX), 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 2[1], 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.

PUBLIC COMMENT PERIOD

DEPARTMENT OF ECOLOGY State of Washington

Nuclear Waste Program **June 2013**

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.

DEPARTMENT OF ECOLOGY
State of Washington

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

PUBLIC COMMENT PERIOD

DEPARTMENT OF ECOLOGY State of Washington

Nuclear Waste Program **November 2013**

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.
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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.

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State of Washington

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Branford Price Millar Library
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Claudia Weston (503) 725-4542
westonc@pdx.edu

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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
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Valarie Peery (509) 372-7920
Valarie.Peery@ecy.wa.gov

Washington State University
Consolidated Information Center
2770 Crimson Way
Richland, WA 99352
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Department of Energy
Administrative Record
2440 Stevens Drive, room 1101
Richland, WA 99354
Heather Childers (509) 376-2530
Heather_M_Childers@rl.gov

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.atg.wa.gov/DPY.aspx.

DATED this 10th day of June, 2013

#13-5746 6/23 & 6/23 & 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 Madeleine 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 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 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 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
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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
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spencer@gonzaga.edu

Department of Ecology
Nuclear Waste Program
Resource Center
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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

#13-5804 6/30/2013

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

accepted through our website at: ***http://www.columbiabasin.edu/index.aspx?page=205*** CBC is an EEO/AA Employer. Protected groups are encouraged to apply.

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.columbiabasin.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.

administering governmental programs, planning, public relations or in managing a for-profit operation/enterprise or an equivalent combination of education and experience to provide sufficient evidence of the successful performance of the essential elements of the job such as those listed above. A valid State of Washington driver's license is required.

Apply on-line at: ***www.go2kennewick.com*** Under "Hot Links" click on "Employment Opportunities" then on "Current Job Openings". This recruitment will be open until filled. The City of Kennewick is an Equal Opportunity Employer.

CADWELL

QA-RA Manager

Join the team at Cadwel a world-renowned med cal equipmen manufacturer. As th QA-RA Manager you wi drive the Cadwell Quali Systems covering interna systems and activities. I addition you will lead ou strategy, interactions, an approvals with externa regulatory bodies. A min mum of a bachelor's de gree required. The idea candidate will have proven track record o leading a team in an in tense regulatory enviro ment. Please send resume to: ***cathya@cadwell.com***

careerbuilder | careerbuilder.com

packet. Equal Opportunity Employer/ADA.

until filled

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 suns from November 17 through December 20, 2013.

To submit comments, send them to Philip Gent at 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 Madeleine 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), 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.

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
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

#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 Valicoff
Vice-President - Jim Willard
Director - Dave Minick
Director - Jerry Haak
Director - Mike Miller

#13-6406 11/17 & 11/24/2013

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 retainagebond arising out of said project must make claim with notice to the District and othersaccording 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

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 would permit new auto sales 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

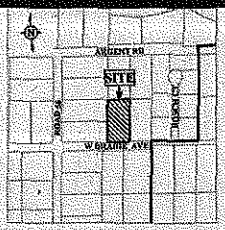
#13-6323 11/10 & 11/17/2013

NOTICE OF 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



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

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

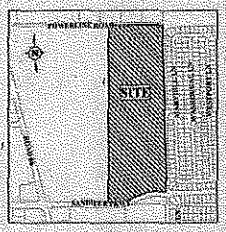
#13-6324 11/10 & 11/17/2013

NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE that Hayden Homes has filed a petition (MF# Z 2013-005) requesting a rezone from RT (Residential Transition) to R-1 (Low-Density Residential) and R-2 (Medium-Density Residential) for approximately 48 acres on the following described property:

Legal:
The east 822 feet of Franklin County tax parcel #116-020-010; lying south of Powerline Road, west of Convention Drive and north of Sandifur Parkway.

Location:
The northwest corner of Sandifur Parkway and Convention Drive



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- 6322 11/10 & 11/17/2013

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

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 George Washington Way, Richland, Washington 99354, until 2:00 pm local prevailing time Tuesday, December 3, 2013, at which time the bids 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 Businesses (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 Improvements 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 bid schedules, including Washington State Sales Tax, as follows:

Bid Schedule 1 - Boat Launch Area Improvements - New Gangway with New 8' Dock System & Removal of Existing Creosote Piles and Installation of New Steel Piles

Bid Schedule 2 - New Boat Basin Gangway Area Improvements including ADA Access replacement of existing wood decking on floats 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

To Place Your Legal Announcement, Call 582-1560

From: Brown, Madeleine (ECY)
To: hanford-Info@listserv.wa.gov
Subject: Advance Notice - Public Comment Period for Hanford Air Operating Perment
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)

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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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Write something...

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Ecology's Hanford Education & Outreach Network updated the

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Public Comment Period: Hanford Air Operating Permit (AOP)

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

Join · 0 people are going

Boost Post

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 occuring.
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 formslly 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.

COPY
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 on was issued 4/1/13, why do we need a permit at all?

also I get Two announcements enclosed. I do not need Two.

Phil Gaff
3100 Port of Benton Blvd
Richland WA 99354

SPOKANE WA 990
24 JAN 2013 PM 1 L

USA

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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 Bluebook[1] 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)

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

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

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

<u>Comments include any associated footnote(s).</u>

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 therein[2]. 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 necessity 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. 70[2], and WAC 173-401[3], 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 NERA[4]. 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-01[5]. 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. 70[2], and WAC 173-401[3], 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.

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[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 173-401-800[4], 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 hearing[6]. 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 requirements[7]. 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.

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[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.

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[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 authority[1]. 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 NESHAPs[1]. These NESHAPs are enforceable state-wide[2]. 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) § 116[1] [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 background[3].**

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 Health[1]. 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 NESHAPs[1], that delegation did not impact the EPA determinations regarding agencies in Washington State authorized to enforce CAA Title V and 40 C.F.R. 70[2]. 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. 70[3].

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. 70.2[1]. 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) Any 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 problem[1]; and
4) neither Health nor EPA recognize either a regulatory *de minimis* or a health-effects *de minimis* for radionuclide air emissions above background[2].

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.

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[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, Chapter~~s~~

> 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 thereunder[1]. *Attachment 2*, Section 3.10, correctly captures Health's authority under RCW 70.94.

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[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 <u>with respect to emissions of radionuclides</u>. 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 delegation[1]. 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 246-247-035[4]) 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.

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[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

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 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

<u>Comments include any associated endnote(s) or footnote(s).</u>

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 rules[1] 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 <u>of general applicability</u>. . ." (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 exhauster 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-enforceable[1] 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 V[1]. 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 emissions[1]. 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 insignificant[4].

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 adopter thereunder, FF-01 is not a rule[1] and has never been subjected to the rulemaking process[2]. 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 70.98[1].
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 WCAA[2], 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 **<u>enforce compliance</u>** 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 <u>enforcement</u> actions.

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[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 H[4]. 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.

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[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@PNSO.SCIENCE.DOE.GOV"; MacAlister, Edward D (Ed); Shattuck, Ann F
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

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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.	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)	Delete the text as indicated below. "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.~~ ~~The following process delineates the steps to remove AOP permitting conditions/certifications for facilities or activities under CERCLA transition:~~ ~~• 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
		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.	~~register will state that the facility's air permits will be discontinued upon onset of remediation activity in the field.~~ • ~~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
Draft Hanford Site Air Operating Permit 00-05-006 Renewal 2, Revision A

Comment Number	Draft AOP Section/Reference	Comment	Recommended Action/ Requested Change
			~~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.~~ • ~~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.	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.

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
Draft Hanford Site Air Operating Permit 00-05-006 Renewal 2, Revision A

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
Draft Hanford Site Air Operating Permit 00-05-006 Renewal 2, Revision A

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.

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
		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
Draft Hanford Site Air Operating Permit 00-05-006 Renewal 2, Revision A

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.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
3100 Port of Benton Blvd • Richland, WA 99354 • (509) 372-7950
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

April 28, 2014 14-NWP-078

Ms. Laurie Kral, Data Manager
Office of Air Quality
United States Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101

Mr. Andy Ginsburg, Administrator
Air Quality Division
Oregon Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Mr. Stuart Harris
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

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 Agency[1] 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. <u>This section does not preclude the department of ecology from exercising its authority under this chapter.</u>"

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,

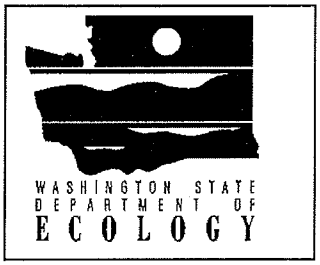
Dennis J. McLerran
Regional Administrator

[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.

Exhibit B

#2



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.

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.

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,

Stuart A. Clark
Air Quality Program Manager
Washington Department of Ecology

Sincerely,

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,

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such challenges are outside of the scope of the Title V operating permits program.

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

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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 Bluebook[1] 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)

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

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

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

<u>Comments include any associated footnote(s).</u>

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 therein[2]. 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 necessity 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.

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[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. 70[2], and WAC 173-401[3], 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 NERA[4]. 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-01[5]. 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. 70[2], and WAC 173-401[3], 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.

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[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 173-401-800[4], 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 hearing[6]. 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 requirements[7]. 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.

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[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.

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[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 authority[1]. 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 NESHAPs[1]. These NESHAPs are enforceable state-wide[2]. 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) § 116[1] [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 background[3].**

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 Health[1]. 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 NESHAPs[1], that delegation did not impact the EPA determinations regarding agencies in Washington State authorized to enforce CAA Title V and 40 C.F.R. 70[2]. 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. 70[3].

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. 70.2[1]. 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) Any 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 problem[1]; and
4) neither Health nor EPA recognize either a regulatory *de minimis* or a health-effects *de minimis* for radionuclide air emissions above background[2].

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.

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[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, Chapter~~s~~

> 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 thereunder[1]. *Attachment 2*, Section 3.10, correctly captures Health's authority under RCW 70.94.

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[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 <u>with respect to emissions of radionuclides</u>. 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 delegation[1]. 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 246-247-035[4]) 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

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 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

<u>Comments include any associated endnote(s) or footnote(s).</u>

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 rules[1] 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 <u>of general applicability</u>. . ." (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 exhauster 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-enforceable[1] 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 V[1]. 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 emissions[1]. 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 insignificant[4].

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 adopter thereunder, FF-01 is not a rule[1] and has never been subjected to the rulemaking process[2]. 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 70.98[1].
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 WCAA[2], 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 **<u>enforce compliance</u>** 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 <u>enforcement</u> actions.

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[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 H[4]. 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.

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[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.**