

SETTLEMENT AGREEMENT re: WASHINGTON v. BODMAN,

Civil No. 2:03-cv-05018-AAM

January 6, 2006

I. INTRODUCTION

The Department of Energy's (DOE) and the Washington State Department of Ecology's (Ecology) shared interest in the effective cleanup of the Hanford Site provides an opportunity to resolve the litigation involving the Hanford Solid Waste EIS. The overarching goal of this Settlement Agreement is to resolve the litigation and improve the relationship between DOE and Ecology to be more cooperative and collaborative. This Agreement is intended to resolve Ecology's groundwater analysis concerns in the HSW EIS and to provide an approach to analyze waste management actions at the Hanford Site. It is important to Ecology and DOE that ongoing waste management operations and progress on tank waste treatment and closure continue. It is important to DOE that some off-site waste can be sent to Hanford for treatment, storage and disposal, recognizing the legal and policy objections of the State of Washington. The actions described in the following paragraphs are intended to satisfy applicable NEPA and SEPA requirements so that waste management and tank farm clean up work can continue and future permit actions are supported.

II. AGREEMENT

1. The parties agree that the existing scope of the Hanford Tank Closure EIS (TC EIS) (currently under development) will be expanded to provide a single, integrated groundwater analysis that will cover all of the waste types addressed in the Hanford Solid Waste EIS (HSW EIS) alternatives and cumulative impact analyses. The expanded TC EIS will be renamed the "Tank Closure and Waste Management EIS" (TC&WM EIS).
2. Pending finalization of the TC&WM EIS, the HSW EIS will remain in effect to support ongoing waste management activities at Hanford (including off-site waste transportation such as TRU and TRUM shipments to WIPP), in combination with other applicable Hanford Site NEPA and CERCLA documents, permits and approvals; provided, that pending finalization of the TC&WM EIS, DOE will not rely on the groundwater analysis in the HSW EIS for decision-making. When completed, the TC&WM EIS will supersede the HSW EIS. As a Cooperating Agency, Ecology will actively participate in the preparation of the TC&WM EIS as described in the *Memorandum of Understanding ("Cooperating Agency MOU" or "MOU") Between the U.S. Department of Energy and Washington State Department of Ecology for the Hanford Site Tank Closure & Waste Management EIS ("TC&WM EIS")*, dated January 6, 2006. The Cooperating Agency MOU has concurrently been developed by the parties and describes the cooperative relationship, roles, and responsibilities of the parties for purposes of preparing the TC&WM EIS.
3. Where feasible and appropriate, the TC&WM EIS will incorporate information from the HSW EIS that is not affected by the revised or updated analyses that will be performed in the TC&WM EIS, to create a single, comprehensive EIS addressing proposed tank closure

and solid waste management activities for the Hanford Site. Such incorporation will be direct (as opposed to by reference) so that a single, integrated document is available for both public and agency reference. As mutually agreed to by the parties, the TC&WM EIS will update, revise, or re-analyze various resource areas from the HSW EIS, including providing quality assurance review as appropriate, to make them current and reflect the latest waste inventories and analytical assumptions being used for purposes of analysis in the TC&WM EIS. All updated analyses would, as appropriate, be included in the revised quantitative cumulative impact analysis in the TC&WM EIS.

4. DOE will utilize and apply the existing TC EIS procedures and requirements in expanding the scope of the current groundwater analyses in the expanded TC&WM EIS. These procedures and requirements include documentation of EIS team qualifications, required training or reading logs, and implementation of applicable provisions of DOE Order 451.1B, Chg. 1.
5. With Ecology's participation as a Cooperating Agency and consistent with the MOU, DOE will undertake additional public scoping of the expanded groundwater and other revised analyses to be included within the TC&WM EIS.
6. Ecology will remain a "Cooperating Agency" (as defined and described by 40 C.F.R. § 1501.6 and 40 C.F.R. § 1508.5) on the TC&WM EIS, just as it has been to date on the TC EIS.
7. The parties acknowledge that a revised MOU acceptable to both parties has been developed that replaces the current Ecology/DOE (ORP) Cooperating Agency MOU in place for the TC EIS. This revised MOU is a separate but related document entered into by the parties concurrent with this Settlement Agreement. The MOU expresses the likely benefits of the cooperative relationship between the agencies, and provides a full, open, and meaningful role for Ecology in the document's development. It also preserves Ecology's ability to express technical or policy points of view in a Foreword to the TC&WM EIS. The MOU provides a process for addressing such views for inclusion in the TC&WM EIS. In some cases, this process may result in additional sensitivity analyses. In the MOU, the parties also agree that periodic quality control reviews of data used to model impacts will be done and will incorporate "lessons learned" and recommendations from DOE's recent review of data quality and control issues in the HSW EIS. Finally, the MOU makes clear that Ecology's role as a Cooperating Agency does not mean that Ecology or the State of Washington agree, either from a technical or policy basis, with the scope of all waste management alternatives analyzed in the TC&WM EIS, or with the substance of all decisions DOE might make following finalization of the TC&WM EIS. While the MOU is a separate document from this agreement, the concepts captured in the MOU, as identified above, are material consideration for Ecology and DOE to enter into this Settlement Agreement.

8. Pending finalization of the TC&WM EIS and the publication of appropriate Record(s) of Decision in the *Federal Register*, and as may be further limited by applicable law, the parties agree that DOE will not import offsite LLW/MLLW or Transuranic waste to the Hanford Site, except as permitted in the existing stipulations that have been agreed upon with the State and entered as orders of the court in the *Washington v. Bodman* litigation, provided that the exemptions that are included in the stipulations for LLW and MLLW shall also be applied to TRU and TRUM waste. These exemptions include:
 - a) Naval reactor compartments, reactor core barrels, reactor closure heads, and pumps from Puget Sound Naval Shipyard or Pearl Harbor Naval Shipyard that may contain LLW or MLLW;
 - b) Demolition wastes from the Emergency Decontamination Facility at Kadlec Hospital in Richland;
 - c) Materials resulting from DOE-related work at Battelle Pacific Northwest National Laboratory's facilities in Richland, Washington;
 - d) Materials from treatability studies conducted off-site on waste samples from the Hanford Site's underground tanks;
 - e) Samples of wastes from Hanford;
 - f) Materials shipped from Hanford for off-site treatment and returned to Hanford for later disposition; and
 - g) Materials shipped from Hanford for off-site disposal, but returned to Hanford because the materials failed to meet Waste Acceptance Criteria or otherwise could not be disposed of at the intended disposal site.
9. With respect to current pending permit modifications for operational treatment, storage, and disposal (TSD) units (*e.g.*, T-Plant), Ecology will satisfy Washington's State Environmental Policy Act (SEPA) requirements in making permit modification decisions by relying on a SEPA checklist submitted with the modification application that combines material drawn from the HSW EIS (which has been subject to quality assurance review, as appropriate) and additional material submitted by DOE with the SEPA checklist.

III. STIPULATION AND DISMISSAL OF ACTION

In consideration of the agreements herein, the State agrees to dismiss without prejudice its claims alleging violations of the National Environmental Policy Act (NEPA) set forth in the complaint in *Washington v. Bodman*, Civil No. 2:03-cv-05018-AAM. The United States agrees to the

dismissal, subject to agreement on an appropriate stipulation. The State agrees to file an agreed upon Stipulation within ten days of the Parties' approval of this Agreement.

The Parties agree to request in the Stipulation that the Court enter a final judgment as to the HWMA/RCRA claims in *Washington v. Bodman*, Civil No. 2:03-cv-05018-AAM. The Parties agree that this final judgment will give rise to DOE's contingent obligations under the Tri-Party Agreement's M-91 milestone series.

IV. EFFECTIVE DATE

This Agreement shall be effective after completion of all of the following: the signature by the State and the United States on this Agreement; filing the Stipulation with the Court; the Court's dismissal of the NEPA claims and entry of final judgment as to the claims under the HWMA/RCRA.

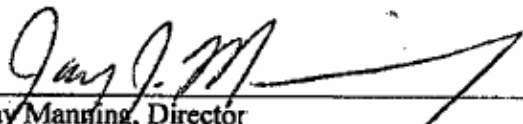
V. ATTORNEY'S FEES

Each party shall bear its own costs and fees associated with the *Washington v. Bodman* litigation through the date of dismissal and entry of judgment.



Ines Triay (EM-3), Office of Environmental Management
U.S. Department of Energy


DATED: 1/6/06



Jay Manning, Director
Washington State Department of Ecology

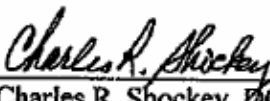
DATED: 1/6/06

APPROVED AS TO FORM:



Andrew A. Fitz, WSB #22169
Assistant Attorney General
Attorney for Plaintiff

DATED: 1/06/06



Charles R. Shockey, DC Bar # 914879
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DATED: 1/6/06