HANFORD SITE AIR OPERATING PERMIT NO. 00-05-006
ATTACHMENT 3: OUTDOOR BURNING REGULATIONS PRIMARILY ENFORCED BY THE BENTON CLEAN AIR AGENCY
STATEMENT OF BASIS

CHANGE CONTROL LOG

Change Control Logs ensure that changes to this permit are performed in a methodical, controlled, coordinated, and transparent manner. Each permit file will have its own change control log with a modification history table. The "**Modification Number**" represents Ecology's method for tracking the different versions of the permit. This log will serve as an up to date record of modifications and version history of the permit.

Modification History Table

Modification Date	Modification Number

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ATTENTION: The Hanford Site Air Operating Permit is broken into multiple documents and attachments/sections. The Statement of Basis for Attachment 3 is not enforceable.

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LIST OF ABBREVIATIONS FOR THE STATEMENT OF BASIS FOR ATTACHMENT 3

Ecology is establishing the following abbreviations for common terms used within this Statement of Basis. They will not be further defined within this document.

Whenever possible, the same abbreviations will be used in the other documents which make up this Air Operating Permit. Consistency will not always be possible, due to wide range of sources which establish applicable requirements for the Hanford Site. Please consult the appropriate List of Abbreviations for each document when reviewing.

AOP	Air Operating Permit
BCAA	Benton Clean Air Agency
BFCCAA	Benton Franklin Counties Clean Air Authority
CFR	Code of Federal Regulations
Ecology	Washington State Department of Ecology
RCW	Revised Code of Washington
Statement	Statement of Basis
DOE-RL	United States Department of Energy, Richland Operations
WAC	Washington Administrative Code

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BACKGROUND

This Statement of Basis (Statement) is issued by Washington State Department of Ecology (Ecology) as a separate supporting reference document for Attachment 3. This Statement sets forth the legal and factual basis for the Attachment 3 conditions and is not intended for enforcement purposes. [Washington Administrative Code (WAC) 173-401-700(8)]

Attachment 3 addresses enforceable regulatory requirements at the Hanford Site for outdoor burning enforced by BCAA. In 1994, Ecology delegated outdoor burning regulatory responsibilities to Benton Franklin Counties Clean Air Authority (BFCCAA), which later became Benton Clean Air Agency (BCAA). The text of the March 11, 1994, delegation letter from Ecology to BFCCAA is provided in this Statement (Enclosure 1).

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

1. BFCCAA was renamed Benton Clean Air Authority in January 1995 due to reorganization. The organization's name was further revised on September 20, 2007, from Authority to Agency.
2. BCAA relocated and is currently located at 526 South Steptoe Street, Kennewick, Washington, 99336.
3. "Open burning" was renamed "outdoor burning" in March 2000 by revising WAC 173-425.

The March 11, 1994, delegation letter also delegated asbestos handling regulatory responsibility to BCAA. However, BCAA relinquished asbestos regulatory responsibility at the Hanford Site in 2016. Effective December 1, 2016, Ecology assumed responsibility and regulatory authority to ensure compliance with 40 Code of Federal Regulations (CFR) Part 61, Subpart M, *National Emission Standard for Asbestos*, at the Hanford Site. A copy of the letter acknowledging BCAA's relinquishment of asbestos regulatory authority, 16-NWP-205, is also provided as Enclosure 2.

At the Hanford Site, BCAA enforces WAC 173-425 and BCAA Regulation 1, Article 5, regarding Outdoor Burning. Attachment 3 of the Air Operating Permit (AOP) identifies the BCAA outdoor burning requirements.

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ATTACHMENT 3: OUTDOOR BURNING REGULATIONS PRIMARILY ENFORCED BY THE BENTON CLEAN AIR AGENCY STATEMENT OF BASIS

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1.0 OUTDOOR BURNING REGULATIONS

This section of Attachment 3 identifies the delegation of outdoor burning responsibility to BCAA and establishes both WAC 173-425 and BCAA Regulation 1, Article 5, as applicable requirements for this AOP.

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ENCLOSURE 1:
THE 1994 DELEGATION LETTER FROM ECOLOGY TO BENTON FRANKLIN COUNTIES CLEAN AIR AUTHORITY FOR ASBESTOS HANDLING AND OUTDOOR BURNING

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March 11, 1994

David A. Lauer, Director
Benton-Franklin Counties
Clean Air Authority
650 George Washington Way
Richland, WA 99352-4289
Dear Mr. Lauer:

Re: Delegation of Asbestos and Open Burning Regulatory Responsibility

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

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

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

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

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

1. The BFCCAA will continue to serve the role that your agency currently has as the recipient of asbestos notifications required under 40 CFR 61.145(b).
2. Ecology does not grant BFCCAA the authority to collect permit fees. The BFCCAA must decide for itself whether to collect such fees based on its regulatory authority.
3. Your agency will be responsible for permitting and inspecting fire training areas, and open burning at the Hanford Site.
4. Your agency will be lead for enforcing the regulations regarding demolition by burning and for gaining compliance with the state open burning regulations at the Hanford Site. Mr. Dave Nylander of our Kennewick Office needs to be contacted by your office on these issues.

Please be advised that Ecology can withdraw this delegation at any time. However, we will not exercise this option without providing prior notice to BFCCAA. 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. Therefore, we

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request that your office inform Mr. Dave Nylander of our Kennewick Office, prior to taking any final permitting or enforcement actions at Hanford.

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

Sincerely,

Original signed by Dru Butler

Dru Butler
Program Manager
Nuclear Waste Program

DB:BK:db

cc: James Bauer, DOE-RL

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ENCLOSURE 2:
THE 2016 LETTER FROM ECOLOGY TO BENTON CLEAN AIR AGENCY ACKNOWLEDGING THE RELINQUISHMENT OF ASBESTOS REGULATORY RESPONSIBILITY AND DELEGATION OF OUTDOOR BURNING REGULATORY RESPONSIBILITY

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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

November 30, 2016 16-NWP-205

Ms. Robin Bresley Priddy
Benton Clean Air Agency
526 South Steptoe Street
Kennewick, Washington 99336

Re: Relinquishment of Asbestos Regulatory Responsibility from the Benton Clean Air Agency and Delegation of Outdoor Burning Regulatory Responsibility

References: See page 3

Dear Ms. Priddy:

Asbestos and outdoor burning regulatory responsibility at the Hanford Site was delegated to the Benton Clean Air Agency (BCAA) in a letter, dated March 11, 1994, from the Department of Ecology (Ecology) (Reference 1). BCAA informed Ecology it was relinquishing asbestos regulatory responsibility at the Hanford Site in a letter to Ecology, dated November 3, 2016 (Reference 2). Ecology acknowledges this relinquishment and will assume responsibility to regulate asbestos at the Hanford Site.

Ecology exercised preemptive authority for all regulatory functions at Hanford, based upon Revised Code of Washington (RCW) 70.105.240. Ecology remains reluctant to assume preemptive responsibility in areas where local government is clearly qualified to accomplish such regulatory responsibilities and where it is more appropriate for Ecology to delegate such responsibility. In the letter, dated March, 11, 1994, Ecology deemed it appropriate to delegate asbestos and outdoor burning regulations at the Hanford site to the BCAA.

Ecology will assume regulatory authority to ensure compliance with 40 CFR Part 61, Subpart M, National Emission Standard for Asbestos, effective December 1, 2016. This is at the request of BCAA and not Ecology exercising preemptive authority under RCW 70.105.240. If BCAA would like to resume regulatory authority of asbestos in the future, please notify Ecology to discuss reestablishment of the delegation.

The BCAA retains the delegated authority to ensure compliance with Washington Administrative Code 173-425, Outdoor Burning, and any applicable local regulations in regards to Outdoor Burning at the Hanford Site.

16-NWP-205

To finalize the relinquishment of asbestos authority from BCAA, Ecology recommends that BCAA and the United States Department of Energy – Richland Operations Office discontinue the *Memorandum of Agreement Relating to Removal of Asbestos Materials and Demolitions on the Hanford Site* as it is currently written. Ecology is not a party to the Memorandum of Agreement, has no authority over the agreement, and is not bound by the agreement.

As specified in the March 11, 1994 letter, the following statements still apply to the delegation of outdoor burning regulatory responsibility:

- Ecology does not grant BCAA the authority to collect permit fees. BCAA must decide for itself whether to collect such fees based on its regulatory authority.
- BCAA will be responsible for permitting and inspecting fire training areas, and open burning at the Hanford Site.
- BCAA will be lead for enforcing the regulations regarding demolition by burning and for gaining compliance with the state open burning regulations at the Hanford Site. The Nuclear Waste Program needs to be contacted by BCAA on these issues.

Please be advised that Ecology can withdraw this delegation at any time. However, Ecology will not exercise this option without providing prior notice to BCAA. In addition, Ecology believes 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. Therefore, Ecology requests that BCAA inform the Nuclear Waste Program prior to taking any final permitting or enforcement actions at Hanford.

If you have any questions, please contact Philip Gent, Lead Air Engineer, at (509) 372-7983 or philip.gent@ecy.wa.gov.

Sincerely,

Alexandra K. Smith
Program Manager
Nuclear Waste Program

lb/tkb

cc: See page 3

16-NWP-205

References:

1. Letter dated March 11, 1994, from Dru Butler, Ecology, to David Lauer, Benton-Franklin Counties Clean Air Authority, "Delegation of Asbestos and Open Burning Regulatory Responsibility"
2. Letter dated November 3, 2016, from Robin Bresley Priddy, BCAA, to Alex Smith, Ecology, "Relinquishment of Role in Asbestos Program from the Benton Clean Air Agency to the Department of Ecology"

cc electronic:
Dennis Faulk, EPA
Rhonda Snoddy, EPA
Dennis Bowser, USDOE-ORP
Bryan Trimberger, USDOE-ORP
Eric Faust, USDOE-RL
Robin Priddy, BCAA
Reed Kaldor, MSA
Jon Perry, MSA
Ken Niles, ODOE
Lilyann Bauder, Ecology
Philip Gent, Ecology
Daniel Heuston, Ecology
Ron Skinnarland, Ecology
Alex Smith, Ecology
Environmental Portal
Hanford Facility Operating Record
USDOE-ORP Correspondence Control
USDOE-RL Correspondence Control

cc: Rod Skeen, CTUIR
Gabriel Bohnee, NPT
Russell Jim, YN
Steve Hudson, HAB
Administrative Record
NWP Central File

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