BEFORE THE POLLUTION CONTROL HEARINGS BOARD
IN AND FOR THE STATE OF WASHINGTON

UNITED STATES DEPARTMENT OF
ENERGY, AND CENTRAL PLATEAU
CLEANUP COMPANY, LLC,

Appellants,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 22-

NOTICE OF APPEAL

Pursuant to Chapter 43.21B RCW, Chapter 34.05 RCW, and Chapter 371-08 WAC, the United States Department of Energy (DOE), and the Central Plateau Cleanup Company, LLC (CPCCo), by and through their attorneys James A. Tupper, Jr., and Tupper Mack Wells PLLC, Grace King (DOE) and Monica Sheets (DOE), and Christopher Page (CPCCo), hereby appeal the Department of Ecology modification of Resource Conservation and Recovery Act (RCRA) Permit WA789008967 issued on December 6, 2021.

I. Appealing Parties

1.1 Appealing Parties:

Owner and Operator
U.S. Department of Energy
Hanford Site
P.O. Box 550
Richland, WA 99352
(509) 376-7395
II. Identification of Parties


2.2 State of Washington, Department of Ecology, Respondent.

NOTICE OF APPEAL
III. Decisions Under Appeal

Ecology issued Modification No. 8C.2021.1F to RCRA Permit No. WA789008967 ("Modification") on December 6, 2021, with an effective date of January 6, 2022. Attached as Exhibit A. The conditions and addenda for the Modification are available online at: Hanford Dangerous Waste Permit Modification | Washington State Department of Ecology

IV. Grounds for Appeal

4.1 The closure requirements imposed by Ecology in its Permit Modification to Part V of the Hanford Facility Resource Conservation and Recovery Act Permit, Dangerous Waste Portion, Revision 8C, for the Treatment, Storage, and Disposal of Dangerous Waste, WA789008967, to add Closure Unit Group 27, 277-T Building; Closure Unit Group 28, 277-T Outdoor Storage Area; Closure Unit Group 29, 271-T Cage; Closure Unit Group 30, 211-T Pad; and Closure Unit Group 39, 2401-W Waste Storage Building establish unreasonable closure standards and sampling requirements.

4.2 The Appellants originally submitted closure plans for the units included in the Modification in 2013 in accordance with the Consent Agreement and Final Order issued by the U.S. EPA. Since 2013 considerable state and federal resources were expended to develop and document closure strategies for these units. In October 2017 the Appellants and Ecology reached agreement on closure performance standard values and exposure pathways for soil sampling. Ecology provided formal acceptance of the Appellants’ proposed closure strategy for treating concrete surfaces to a clean debris surface, using the 277-T Building unit as an example (17-NWP-150). Ecology had also provided concurrence with the sufficiency of the Appellants’ review of facility operating records. On June 19, 2018, Ecology confirmed that the closure strategy for the units was approved and that the closure plans could move forward with formal transmittal.

4.3 The Appellants submitted revised closure plans to Ecology for the units covered in the Modification in August and November 2018. In December 2018, after the Appellants had...
formally transmitted the revised closure plans with the understanding that agreement on all 
closure performance standard issues had been achieved, Ecology verbally informed the 
Appellants that it no longer agreed with the closure strategies for these units. In place of previous 
agreements, Ecology stated that waste management records were insufficient and proposed new 
closure strategies. Ecology requested that the Appellants revise and resubmit the closure plans to 
reflect Ecology’s new position on closure standards. The Appellants informed Ecology that they 
would not be making the closure plan revisions to incorporate Ecology’s additional sampling 
strategies, as there was no reasonable basis for the additional work to demonstrate clean closure 
at these particular closing units.

4.4 Ecology changed multiple elements of the sampling strategy required to 
demonstrate clean closure in the Modification including the number of samples, location of 
samples, and sampling media. The Modification requirements are not based on regulatory 
requirements, agency guidance, and are otherwise unreasonable. The Appellants contest 
Ecology’s changes to the strategy for achieving clean closure at the T Plant and CWC closing 
units for the reasons identified in the statement of facts.

V. Statement of Facts

5.1 Ecology has exceeded its authority and otherwise acted unreasonably to change 
the closure plan including the closure standards and sampling requirements for units covered by 
the Modification.

5.2 The sampling proposed by the Appellants was based on defensible, documented, 
explainable professional judgment as the owner and operators of the Hanford Facility. The 
Appellants conducted a review of facility operating records consisting of thousands of pages to 
confirm what dangerous waste was stored at each unit and if there were any spills or releases 
associated with that dangerous waste storage. Furthermore, the Appellants offered to include 
Ecology in this records review effort, but the offer was declined.

5.3 In accordance with applicable closure requirements, Appellants conducted a
visual inspection of each unit to further determine the number and location of samples based on
conditions observed in the field. During the visual inspection, the Appellants looked for signs of
a spill or release in accordance with applicable EPA and Ecology guidance documents. The
Appellants looked for visible stains (EPA QA/G-5S, Section 4.7), areas with loose containment
or separated joints (EPA QA/G-5S, Section 4.7), and cracks or other openings that could allow
the release of a dangerous waste (Ecology Publication #94-111). Where any such signs were
observed, indicating a pathway for potential contamination to spread, they were identified as
sampling locations.

5.4 Ecology performed an inspection of the units in November of 2018, five years
after the Appellants’ visual inspections were performed. Ecology revised the sampling strategy
for soil without any evidence that leaks or spills of dangerous or mixed waste occurred, or that
there was a viable pathway. Ecology then issued closure plans that include additional sampling
locations without justification via records or observations from the visual inspection consistent
with signs for contamination spread identified in applicable EPA and Ecology guidance
documents. There is no sound technical or scientific basis for Ecology’s “professional judgment”
in the absence of this information.

5.5 Ecology has unlawfully and unreasonably applied multiple closure performance
standards in the Modification. The closing units are comprised of a variety of surfaces, including
concrete, asphalt, and gravel. Closure performance standards were based on Model Toxics
Control Act (WAC 173-340) Method B soil cleanup levels for unrestricted land use. For the
concrete sampling media added in Ecology’s sampling design, Ecology applied the same MTCA
(WAC 173-340) Method B soil cleanup levels to the concrete media. MTCA soil cleanup
standards do not apply to concrete. Concrete should meet the clean debris surface standard
defined in Table 1 of 40 CFR 268.45, and should not have to meet additional closure
performance standards if no contamination is observed. Appellants further contend that the
accepted physical extraction criteria of removing 0.6 cm of concrete as provided in the
Appellants' closure plan is more defensible and less subjective than random concrete chip sampling as provided in the Modification.

5.6 Ecology unlawfully and unreasonably changed the closure plans through the Modification after Appellants finalized and submitted the closure plans. Appellants have been in discussion with Ecology since the closure plans were first submitted in 2013, and the closure strategy has evolved dramatically since that time. After the final closure plans were submitted to Ecology in August 2018, Ecology changed the closure strategy again, and shared their revised closure strategies in December 2018. The Appellants informed Ecology that they would defend the closure strategies agreed to in the submitted final closure plans, and that they would not make additional changes. Ecology responded by informing the Appellants that they would rewrite the closure plans themselves to incorporate the strategy changes they deemed appropriate. For the next eighteen months, Ecology revised the closure plans and eventually issued them in a draft Modification.

5.7 The current RCRA permit per permit condition II.K.6 allows for Deviations from a unit closure plan required by unforeseen circumstances encountered during closure activities, which do not impact the overall closure strategy, but provide equivalent results, shall be documented in the unit-specific Operating Record and made available to Ecology upon request, or during the course of an inspection. These deviations will also be documented in the Independent Qualified Registered Profession Engineers certification of closure. There is no justification for a 24-hour notice of changes.

5.8 Appellants reserve the right to add additional grounds for an appeal of the Modification at the time of the prehearing conference in this matter and as allowed under the rules of practice for the board.

VI. Relief Sought

Appellants respectfully request that the Board grant the following relief:

1. Enter a stay of the Modification pending final resolution of this appeal.
2. Enter an order invalidating the Modification.

3. Such other and further relief as the Board deems appropriate.

Respectfully submitted this 5th day of January 2022.

Tupper Mack Wells PLLC

/s/ James A. Tupper, Jr.
James A. Tupper, Jr. WSBA No. 16873
Douglas S. Morrison, WSBA No. 18769

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U.S. Department of Energy

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Attorneys for U.S. Department of Energy
DECLARATION OF SERVICE

I declare on oath that on this date I filed the foregoing Notice of Appeal and attached Exhibits with the Pollution Control Hearings Board by electronic mail to:

pchb-shbappeals@eluho.wa.gov

and by mailing the original and one (1) copy, via first-class registered U.S. Mail, postage prepaid, addressed as follows:

Pollution Control Hearings Board
P. O. Box 40903
Olympia, WA 98504-0903
eluho@eluho.wa.gov

I further declare that I served a copy of this appeal on the Department of Ecology by mailing the same via U.S. Mail, postage prepaid, addressed as follows:

Department of Ecology
Attn: Appeals Processing Desk
300 Desmond Drive, SE
Lacey, WA 98503

Signed at Seattle, Washington, this 5th day of January, 2022.

s/Susan Barragan
Susan Barragan, Legal Assistant
Re: Final Class 3 Permit Modification 8C.2021.1F to the Hanford Facility Resource Conservation and Recovery Act Permit, Dangerous Waste Portion, Revision 8C, for the Treatment, Storage, and Disposal of Dangerous Waste, Part V, Closure Unit Group 27, 277-T Building; Closure Unit Group 28, 277-T Outdoor Storage Area; Closure Unit Group 29, 271-T Cage; Closure Unit Group 30, 211-T Pad; Closure Unit Group 37, 221-T Sand Filter Pad; Closure Unit Group 39, 2401-W Waste Storage Building; and Closure Unit Group 41, 221-T Railroad Cut, WA789008967

References: See page 5

Dear Brian T. Vance and Scott Sax:

This letter issues the Department of Ecology's (Ecology) final permit decision on the draft 8C.2018.6D permit modification (Reference 1), now issued as the final 8C.2021.1F permit modification.

Ecology incorporated the final 8C.2021.1F permit modification in Part V of the Hanford Facility Resource Conservation and Recovery Act Permit, Dangerous Waste Portion, Revision 8C, for the Treatment, Storage, and Disposal of Dangerous Waste (Site-wide Permit). The following Closure Unit Groups (CUGs) were incorporated: Central Waste Complex (CWC) CUG-39, 2401-W Waste Storage Building, and T Plant Complex (T Plant) CUG-27, 277-T Building; CUG-28, 277-T Outdoor Storage Area; CUG-29, 271-T Cage; CUG-30, 211-T Pad; CUG-37, 221-T Sand Filter Pad; and CUG-41, 221-T Railroad Cut. In accordance with Washington Administrative Code (WAC) 173-303-840(8)(b), these T Plant and CWC CUGs are effective January 6, 2022.
The Permittees are the United States Department of Energy (USDOE) as owner/operator and Central Plateau Cleanup Company LLC as co-operator. This Class 3 permit modification was required in response to the Environmental Protection Agency Consent Agreement and Final Order (CAFO) against the USDOE for violations of the Resource Conservation and Recovery Act of 1976 (RCRA) program at the Hanford Facility's Solid Waste Operations Complex (Reference 2). The Permittees requested a Class 3 Permit Modification on October 11, 2013 (Reference 3), for the CAFO units and on October 18, 2013 (Reference 4), for the non-CAFO units. The Permittees submitted revised closure plans for 211-T Pad (CUG-30), 277-T Building (CUG-27), 271-T Cage (CUG-29), and 2401-W Waste Storage Building (CUG-39) DWMUs on August 9, 2018 (Reference 5) and for 221-T Sand Filter Pad (CUG-37), 277-T Outdoor Storage Area (CUG-28), and 221-T Railroad Cut (CUG-41) on November 1, 2018 (Reference 6). The Permittees provided additional supplemental information to support these closure plans on October 15, 2018 (Reference 7).

The CAFO units include 277-T Outdoor Storage Area (CUG-28); 271-T Cage (CUG-29); 211-T Pad (CUG-30); 221-T Sand Filter Pad (CUG-37); and 2401-W Waste Storage Building (CUG-39). The non-CAFO units include 277-T Building (CUG-27) and 221-T Railroad Cut (CUG-41).

The Addenda provided for each of the unit groups include the Addendum H, Closure Plan and the Unit-Specific Permit Conditions.

As required by WAC 173-303-840(3)(d), Ecology held a 45-day public comment period from June 8, 2020, through July 24, 2020 (Reference 1). Ecology reopened the public comment period from September 21, 2020, through November 4, 2020 (Reference 8). Ecology received 830 public comments during the public comment period.

Ecology reviewed the comments, and a Response to Comments document is on the enclosed DVD (Ecology Publication 21-05-027) and on Ecology's publication website at https://apps.ecology.wa.gov/publications/summaries/2105027.html.


The permit modification is also on the enclosed DVD. A DVD is located at the Hanford Public Information Repositories in Richland, Spokane, and Seattle, Washington, as well as Portland, Oregon. A hard copy and DVD is on file at the locations listed below:

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

United States Department of Energy  
Administrative Record  
2440 Stevens Center Place  
Richland, Washington 99354
Individuals can request copies of the DVD and hard copies by contacting Ecology’s Resource Center at (509) 372-7950.

In accordance with WAC 173-303-830(4)(f)(ii), Ecology’s decision to grant or deny a Class 3 Permit Modification request under this section may be appealed under the permit appeal procedures of WAC 173-303-845.

Your Right to Appeal

You have a right to appeal this permit modification to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Permit. The appeal process is governed by Chapter 43.21B of the Revised Code of Washington (RCW) and Chapter 371-08 of the WAC. “Date of receipt” is defined in RCW 43.21B.001(2).

To appeal you must do all of the following within 30 days of the date of receipt of this Permit:

- File your appeal and a copy of this Permit with the PCHB (see addresses in this letter). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Permit 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 of the RCW and Chapter 371-08 of the WAC.

1. To file your appeal with the Pollution Control Hearings Boards

Mail appeal to: OR Deliver your appeal in person to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, Washington 98504-0903

The Pollution Control Hearings Board
1111 Israel Road, Southwest, Suite 301
Tumwater, Washington 98501

2. To serve your appeal on the Department of Ecology

Mail appeal to: OR Deliver your appeal in person to:

The Department of Ecology
Appeals Processor
PO Box 47608
Olympia, Washington 98504-7608

The Department of Ecology
Appeals Processor
300 Desmond Drive Southeast
Lacey, Washington 98503
3. **Send a copy of your appeal to:**

   Kelly Elsethagen  
   Department of Ecology  
   Nuclear Waste Program  
   3100 Port of Benton Boulevard  
   Richland, Washington 99354

If there are any questions, please contact Kelly Elsethagen, Project Manager, at kelly.elsethagen@ecy.wa.gov or (509) 372-7923 or Debra Alexander, Hanford Facility Revision 8C Dangerous Waste Permit Coordinator, at debra.alexander@ecy.wa.gov or (509) 372-7896.

Sincerely,

Stephanie Schleif
Deputy Program Manager  
Nuclear Waste Program

cc: See page 6
Enclosure
References:

1. Letter 20-NWP-090-Reissue, dated June 3, 2020, "Proposed Class 3 Permit Modification 8C.2018.6D to the Hanford Facility Resource Conservation and Recovery Act Permit, Dangerous Waste Portion, Revision 8C, for the Treatment, Storage, and Disposal of Dangerous Waste, Part V, Closure Unit Group 27, 277-T Building; Closure Unit Group 28, 277-T Outdoor Storage Area; Closure Unit Group 29, 271-T Cage; Closure Unit Group 30, 211-T Pad; Closure Unit Group 37, 221-T Sand Filter Pad; Closure Unit Group 39, 2401-W Waste Storage Building; and Closure Unit Group 41, 221-T Railroad Cut, WA7890008967"


3. Letter 13-ESQ-0074, dated October 11, 2013, "Response to Consent Agreement and Final Order Concerning (CAFO) the Submittal of Closure Plans for Closing Dangerous Waste Management Units (DWMUs)"

4. Letter 14-ESQ-0003, dated October 18, 2013, "Submittal of Additional Closure Plans for Closing Dangerous Waste Management Units (DWMUs) at the T-Plant Complex"


8. Letter 20-NWP-153, dated September 17, 2020, "Reopening of the Public Comment Period for Proposed Class 3 Permit Modification 8C.2018.6D to the Hanford Facility Resource Conservation and Recovery Act Permit, Dangerous Waste Portion, Revision 8C, for the Treatment, Storage, and Disposal of Dangerous Waste, Part V, Closure Unit Group 27, 277-T Building; Closure Unit Group 28, 277-T Outdoor Storage Area; Closure Unit Group 29, 271-T Cage; Closure Unit Group 30, 211-T Pad; Closure Unit Group 37, 221-T Sand Filter Pad; Closure Unit Group 39, 2401-W Waste Storage Building; and Closure Unit Group 41, 221-T Railroad Cut, WA7890008967"
cc electronic w/o enc:
  Dave Bartus, EPA
  David Einan, EPA
  Kaylin Burnett, USDOE
  Duane Carter, USDOE
  Lori Huffman, USDOE
  Mostafa Kamal, USDOE
  Tony McKarns, USDOE
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  Daniel Pearson, USDOE
  Brian Stickney, USDOE
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  Robert Bullock, CPCCo
  Marc Jewett, CPCCo
  Curt Clement, HMIS
  Jon Perry, HMIS
  Darci Teel, HMIS
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Lauren Jenks, WDOH
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Randy Treadwell, WSDA
Allyson Brooks, WSDAHP
Cindy Preston, WSDNR
Gonzaga University Foley Center Library
Portland State University Library, Government Information
University of Washington Suzzallo Library, Government Publications
USDOE Public Reading Room, CIC Environmental Portal
Hanford Administrative Record, Hanford Site-wide Permit
Hanford Facility Operating Record
BNI Correspondence Control
CPCCo Correspondence Control
EPA Region 10 Hanford Field Office, Correspondence Control
HMIS Correspondence Control
PNNL Correspondence Control
USDOE Correspondence Control
WRPS Correspondence Control

cc electronic w/enc and DVD:
  Tim Hamlin, EPA
  Lori Huffman, USDOE
  Tony McKarns, USDOE
  Sheila Davis, BNI
  Brittany Sparks, BNI
  Mason Murphy, CTUIR
  Jack Bell, NPT
  Rex Buck Jr., Wanapum

cc w/enc, DVD and hard copy:
  Hanford Administrative Record:
    Hanford Site-wide Permit

cc w/enc, hard copy:
  NWP Library: Hanford Site-wide Permit