

**BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON**

HEART OF AMERICA NORTHWEST,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondent,

and

UNITED STATES DEPARTMENT OF  
ENERGY,

Intervenor-Respondent.

PCHB No. 22-073

SETTLEMENT AGREEMENT

Respondent State of Washington, Department of Ecology (Ecology), represented by Attorney General Robert W. Ferguson and Assistant Attorneys General Kelly Wood, Jenna Slocum, and Caroline Cress; Appellant Heart of America Northwest (HOANW), represented by Counsel Gerry Pollet; and Intervenor-Respondent U.S. Department of Energy (DOE), represented by Acting Chief Counsel Mark Silberstein and attorneys Matthew Henjum and Robert Lamilla, submit this Settlement Agreement (Agreement) to the Pollution Control Hearings Board (Board) as a full and final settlement of the above-referenced appeal, and request that the Board dismiss the appeal with prejudice.

## I. BACKGROUND

On September 26, 2022, HOANW filed a Notice of Appeal before the Board challenging an August 25, 2022 Agreed Order (AO) between Ecology and DOE (together with HOANW, collectively referred to as the “Parties”). The AO governs the response to and mitigation of the release of mixed waste from leaking single-shell tanks 241-B-109 and 241-T-111 (collectively “Leaking Tanks”). The AO establishes a schedule to implement near-term corrective actions and to undertake long-term leak response planning and development as needed to effectively respond to the release from these Leaking Tanks and any future leaking single-shell tanks at the Hanford Site.

On March 21, 2023, the Parties participated in Board-facilitated mediation and reached an agreement in principle to resolve the matter. The Parties now agree to resolve the appeal of the AO through the Agreement outlined below.

## II. SETTLEMENT AGREEMENT

The Parties desire to resolve the dispute and thereby avoid the cost and time associated with further litigation. The Parties, without admitting fault or liability, therefore, stipulate and agree as follows:

### A. SCOPE

1. This Agreement constitutes the entire agreement between the Parties and settles all issues and legal challenges raised in the appeal.
2. This Agreement applies only to the resolution of the appeal and does not in any way change, alter, or modify the AO between DOE and Ecology, nor does this Agreement create any rights for any third parties who are not parties to this matter.

3. This Agreement applies to and is binding upon the Parties, their agents, employees, successors in interest, and assigns.

**B. RESOLUTION OF THE APPEAL**

DOE, and to the extent applicable Ecology, agree to conduct the following actions, as indicated:

1. **System Plan Evaluation**

Section V.E.1 of the AO requires DOE to conduct an evaluation of the practicability of accelerating retrieval schedules for the Leaking Tanks as part of the Tri-Party Agreement’s System Plan 10 process (Evaluation). Pursuant to Section V.E.1.ii.d of the AO, one component of the Evaluation will rely on modeling to demonstrate the relative practicability of various timeframes for the retrieval of the Leaking Tanks. Pursuant to Sections V.E.1.ii.b–c of the AO, the Evaluation will also document DOE’s technical evaluation of various infrastructure and technology developments that could accelerate the removal of waste from the Leaking Tanks and/or mitigate residual tank leakage risks.

The Parties agree that pursuant to Sections V.E.1.ii.b–c of the AO, the Evaluation will include an evaluation of the practicability of deploying certain technologies for selective removal of the liquid fraction of the tank waste (i.e., “partial liquid retrieval” or removal of “drainable liquids”) from the Leaking Tanks. Specifically, this part of the Evaluation will consider options for use of the following technologies or processes: (1) enhanced salt well pumping and (2) In-Tank Pretreatment System (ITPS). This part of the Evaluation will also consider the treatment and disposal pathway for the removed liquid waste, specifically including mobile options such as transport of the removed liquid waste by truck (e.g., for placement into an existing double-shell tank or for treatment).

## **2. Third-Party Technical Review**

Prior to the delivery of the Evaluation to Ecology (currently required by December 2023), DOE and its tank farm contractor will hold a one-day technical review workshop (Workshop) with individuals with relevant expertise from the Pacific Northwest National Laboratory (PNNL).

- i.** The general purpose of the Workshop is for DOE, and its contractor(s), to present a technical review of the details of the technologies considered in the Evaluation and how DOE assessed those technologies.
- ii.** In advance of the Workshop, DOE and its contractor(s) will prepare technical briefing slides for use during the Workshop.
- iii.** In addition to the individuals with expertise from PNNL, Dr. Stephen F. Agnew will be invited to participate in the Workshop and DOE, and/or its contractor(s), will share the technical briefing slides (which should include adequate detail related to assumptions or supporting calculations, and may be reflected in slide notes) with him in advance of the Workshop. Dr. Agnew may share those slides and materials with other experts and Appellant.
- iv.** DOE will coordinate with Dr. Agnew and Ecology in selecting a mutually agreeable date for the Workshop. Dr. Agnew may choose to attend the Workshop in person or remotely, via telephone or a video-conferencing platform.
- v.** If Dr. Agnew is not available to participate due to unforeseen circumstances, Appellant may nominate an alternative person with relevant expertise to participate subject to approval by DOE and Ecology.
- vi.** Ecology may also choose to participate in the Workshop.

### **3. Explanatory Statements as to Scope of the AO**

The following explanatory statements are intended to clarify certain requirements of the AO and how they relate to existing requirements under the Tri-Party Agreement and/or the Sitewide Permit. These explanatory statements do not modify, alter, or change the AO in any way, but rather are provided to give additional clarity to HOANW and the public regarding certain requirements in the AO.

#### **i. Explanatory Statement #1, Sequencing**

This explanatory statement is intended to clarify the sequence and relationship between the SST System Leak Response Plan required by Section V.A of the AO and the Evaluation being conducted under AO Section V.E.1. Within 30 days after the effective date of this Agreement, Ecology will publish this explanatory statement on its publicly available website and share the link with the Hanford Advisory Board.

#### **Statement:**

The Agreed Order requires the U.S. Department of Energy (Energy) to conduct certain studies or evaluations and submit permit application material relating to responding to leaking single-shell tanks (SSTs), including a Leak Response Plan and a practicability evaluation. These two key deliverables are described below.

- Energy is to prepare and submit to Ecology for review a proposed “Leak Response Plan” in August 2023. This will be incorporated into the Hanford Sitewide Permit renewal, Revision 9A (Rev. 9 permit). This will be a generic plan for the entire SST system. Federal and state rules require a “contingency plan” for responding to leaks as part of a permit.

- After Ecology reviews the Leak Response Plan, it will be included in the draft Rev. 9 Permit public comment period, anticipated to begin in February 2024.
- To assist the public in reviewing and providing informed comments on the Leak Response Plan, the public will be able to review the results of a separate evaluation required by the Agreed Order. This evaluation, which is described in more detail below, will consider the practicability of using certain processes or equipment for near-term removal of liquid wastes from tanks B-109 and T-111.
- In December 2023, Energy is due to submit the results of an evaluation of the practicability of accelerating retrieval schedules for the leaking tanks B-109 and T-111. The term retrieval generally refers to removal of waste from a tank in preparation for tank closure.
- Among other elements, the evaluation must consider various infrastructure and technology developments that could potentially accelerate the removal of waste from tanks B-109 and T-111 and/or mitigate residual tank leakage risks. This evaluation is due in December 2023 pursuant to the Tri-Party Agreement (Milestone M-062-40).
- The evaluation due in December 2023 will also evaluate the practicability of deploying certain technologies for selective removal of the liquid fraction of the tank waste (referred to as partial liquid retrieval or removal of drainable liquids) from the leaking tanks. The inclusion of this element of the evaluation was clarified pursuant to a settlement agreement with Heart of America Northwest.
- Specifically, this element of the evaluation will consider options for use of the following technologies or processes:

- Enhanced salt well pumping
  - In-Tank Pretreatment System (ITPS).
- This part of the evaluation will also consider the treatment and disposal pathway for the removed liquid waste, specifically including mobile options such as transport of the removed liquid waste by truck to a double-shell tank, treatment facility, or other option.
- Ecology and the public will have access to the results of Energy’s evaluation when reviewing and commenting on the draft Rev. 9 permit and Leak Response Plan in 2024.

**Additional information on the evaluations and studies included in the Agreed Order:**

The Agreed Order (AO) requires Energy to develop a general SST System Leak Response Plan to enable a timely response to any future leaking SSTs. Energy must submit the Leak Response Plan for incorporation into Revision 9A of the Hanford Sitewide Permit (Rev. 9) as part of the contingency plan for the SST System. The Leak Response Plan must set forth a suite of potential leak response actions and interim actions that could be implemented in response to future leaking tanks, including estimates for what generally constitutes “the earliest practicable time” for initiation and completion of each potential response action. The Leak Response Plan must also establish the process that Ecology and Energy will use in the event of a new leak to determine which response actions to implement on a case-by-case basis.

The proposed Leak Response Plan is to be submitted by Energy to Ecology in August 2023 under Section V.A.1 of the AO.

Prior to Ecology completing its internal review and sharing its comments on the Leak Response Plan, and before the draft Leak Response Plan is presented for public comment, Energy

will be preparing an evaluation of the practicability of accelerating retrieval schedules for leaking tanks B-109 and T-111. Among other elements, the evaluation must consider various infrastructure and technology developments that could potentially accelerate the removal of waste from tanks B-109 and T-111 and/or mitigate residual tank leakage risks. This evaluation is due in December 2023 pursuant to the Tri-Party Agreement (Milestone M-062-40).

Pursuant to a settlement agreement with Heart of America Northwest, this evaluation will also evaluate the practicability of deploying certain technologies for selective removal of the liquid fraction of the tank waste (i.e., “partial liquid retrieval” or removal of “drainable liquids”) from leaking tanks B-109 and T-111. Specifically, this part of the evaluation will consider options for use of the following technologies or processes:

- Enhanced salt well pumping
- In-Tank Pretreatment System (ITPS)

This part of the evaluation will also consider the treatment and disposal pathway for the removed liquid waste, specifically including mobile options such as transport of the removed liquid waste by truck.

Ecology and the public will have the results of the evaluation of accelerating retrieval schedules and the practicability of these technologies for removing drainable or leakable liquids from B-109 and T-111 in December 2023 to utilize in reviewing and commenting on the Leak Response Plan. The public comment period on Rev. 9 of the Hanford Sitewide Permit, including the Leak Response Plan, is anticipated to occur in 2024.

Energy must complete the Evaluation by December 2023 pursuant to the Tri-Party Agreement (Milestone M-062-40). Energy will make the evaluation publicly available before the draft SST System Leak Response Plan will be published for public review and comment as part of



the Rev. 9 permitting process, as explained above. Accordingly, Ecology and the public will have the opportunity to review and consider the results of the evaluation prior to the public review and comment process on the SST System Leak Response Plan.

**ii. Explanatory Statement #2, Monitoring**

Within 30 days after the effective date of this Agreement, DOE and Ecology will prepare an explanatory statement to clarify the relationship between the existing leak detection and monitoring program for the Leaking Tanks and the leak detection and monitoring requirements of the AO, Section V.F, and Ecology will publish this explanatory statement on its publicly available website.

**C. REMEDIES**

In the event that DOE or Ecology violate the terms of this Agreement, HOANW may pursue all remedies available by law. DOE and Ecology reserve all applicable rights and defenses available by law.

**D. PRESS RELEASES AND OTHER DOCUMENTS**

Any document related to this Agreement prepared by any of the Parties, such as a press release, shall be identified as resulting from a settlement between the Parties.

**E. DISMISSAL OF APPEAL**

The Parties consent to the submission of this Agreement to the Board and request that, based upon a full and final settlement having been reached, the Board dismiss this appeal with prejudice. The Parties further agree to bear their own costs and attorneys' fees, including any expert witness costs, associated with this appeal.

**F. EFFECTIVE DATE**

This Agreement shall become effective upon the Board's issuance of an order dismissing the appeal with prejudice.

**G. DURATION**

This Agreement shall remain in effect until DOE submits to Ecology the Evaluation being conducted by DOE as required by the AO, Section V.E.1, and as described in Section II.B.1 of this Agreement. However, the Explanatory Statements shall remain posted on Ecology's website through, at least, the conclusion of the public comment period on the SST System Leak Response Plan or until such time as Ecology determines, in its sole discretion, that the information may be removed from its website. This paragraph does not change or alter any of the timelines or durations set forth in the AO between DOE and Ecology.

**H. DRAFTING**

The Parties agree and acknowledge that each party participated in the drafting of this Agreement and, therefore, the Parties shall be deemed to have jointly drafted this Agreement. No presumption shall arise favoring or disfavoring any party by virtue of authorship of all or part of this agreement.

**I. EXECUTION**

This Agreement may be executed in any number of original counterparts and may be executed by facsimile and/or electronically. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

**J. SIGNATORIES AUTHORIZED**

The undersigned representatives for the Parties certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Agreement and to legally bind such party thereto.

ROBERT W. FERGUSON  
Attorney General



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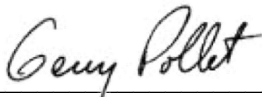
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Dated: May 10, 2023

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