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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
3100 Port of Benton Blvd • Richland, WA 99352 • (509) 372-7950

August 25, 2005

TO: Polly Zehm
Deputy Director, Department of Ecology

FROM: Mike Wilson
Program Manager, Nuclear Waste Program

SUBJECT: Memorandum of Understanding Between Washington State Department of Health
and Washington State Department of Ecology Regarding Hanford Radioactive
Air Emissions

Attached for your approval and signature is a Memorandum of Understanding (MOU) between the Washington State Department of Health (Health) and the Washington State Department of Ecology (Ecology) regarding radioactive air emissions. This MOU is an update to a 1993 MOU and is intended to address changes in regulations and departmental programs affecting radioactive air emissions over the last 12 years.

Health and Ecology share responsibilities for the control of radioactive air emissions pursuant to state and federal statutes. Each agency has authority to set standards for and to regulate radioactive air emissions in accord with Chapters 70.94 and 70.98 of the Revised Code of Washington (RCW). In December 1993, an MOU was signed by Eric Slagle, Assistant Secretary of Health, and for Ecology by Dan Silver and D. J. Patin Assistant Directors of Waste Management and Central Programs and Enforcement, respectively. The MOU was designed to aid coordination between the agencies and to avoid conflicting regulatory requirements for radioactive air emissions at the Hanford facility. A recent review concluded that the original 1993 MOU requires update to reflect changes in regulatory requirements and air programs of both Ecology and Health.

The content of this updated MOU has been reviewed and concurred by the Ecology staff in the Air Quality Program, the Nuclear Waste Program, and the Attorney General's Office, and has been executed by the Department of Health.

If you have questions, please contact Ron Skinnarland at (509) 372-7924.

Thank you.

cc: Al Conklin, DOH
John Schmidt, DOH
Leslie Seffern, AGO
Doug Hendrickson, Ecology
Laura Lowe, Ecology
Steve Moore, Ecology
Ron Skinnarland, Ecology
Oliver Wang, Ecology



Ms. Polly Zehm
August 25, 2005

bcc: Ecology NWP Central Files
 NWP Reader Files



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

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AUG 22 2005
Department of Ecology

August 11, 2005

Steve Moore
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

DOH CONTRACT #N14256

Steve:

Enclosed are three originals of the proposed contract between Ecology and Health related to the respective roles and responsibilities of the two agencies in coordinating activities concerning Hanford Site Radioactive Air Emissions. Please and have an authorized representative sign all three, retain one copy for your files and return two of the originals to me at the address above.

Ann Thompson, Contracts Manager
Office of Contracts & Procurement

Enclosures

cc: Al Conklin, MS: 47827

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

DOH Contract #N1256

PURPOSE

This Memorandum of Understanding (MOU) is between the Washington State Department of Health (Health) and the Washington State Department of Ecology (Ecology) under authorities granted within Chapters 43.70, 43.21A, 70.94, and 70.98 of the Revised Code of Washington (RCW). The purpose of this MOU is to clarify the respective roles of Health and Ecology in the issuance and administration of air operating permits and the performance of new source reviews at Hanford. It recognizes Health as the state agency responsible for public health protection and the primary agency responsible for regulation of Hanford facility radioactive air emissions (except as provided in Clause 5 of Ecology's Roles and Responsibilities). It recognizes Ecology as the agency responsible for environmental protection as described in this MOU, including both nonradioactive air and radioactive air issues with specific responsibilities for radionuclides outlined below.

BACKGROUND

Health and Ecology share responsibility for the control of radioactive air emissions pursuant to state and federal statutes. Both agencies have authority to set standards for and to regulate radioactive air emissions per RCW 70.94 and RCW 70.98.

This MOU is designed to aid coordination between the agencies, and to avoid conflicting regulatory requirements for radioactive air emissions at the Hanford facility. This MOU defines the respective roles of Health and Ecology in the regulation of Hanford Site radioactive air emissions, including the determination of compliance, radioactive air emissions control technology standards and the performance of new source review.

NOTE: This document does not affect the delegation from the U.S. Environmental Protection Agency (EPA) of the National Emission Standards for Hazardous Air Pollutants Program.

RECITALS

Chapter 70.94 RCW and Chapter 173-401 Washington Administrative Code (WAC), administered by Ecology, establish a comprehensive air operating permit program in Washington State consistent with the requirements of Title V of the federal Clean Air Act (42 U.S.C. 7401, et seq.). All sources subject to these laws and regulations must have a permit to operate that assures compliance by the source with all applicable requirements.

Chapter 70.98 RCW and chapter 246-247 WAC, administered by Health, establish radioactive air emission requirements. These requirements are "applicable requirements" under Ecology's WAC 173-401-200.

Air emissions, including radioactive air emissions, at the Hanford Site must be covered under an air operating permit. The U. S. Department of Energy (USDOE) is required to submit two copies of its air operating permit application, one to Health for the licensing of radionuclides, and one to Ecology for the permitting of nonradioactive air emissions. Health will issue a radionuclide air emission license (hereinafter "radioactive air emissions license" or "license") for USDOE, which will be incorporated into the air operating permit issued by Ecology as an applicable requirement in accordance with the interagency procedures outlined below. A permit will be issued by Ecology with Health as a signatory reviewer and issuer of the radioactive air emissions license portion of the permit.

Health and Ecology will work with USDOE to establish a schedule of application submittals. All air operating permits for the Hanford facility will be issued by Ecology and reviewed by Health. All future re-openings, revisions and renewals of permits will follow the same process as outlined in this MOU.

NOTE: Wherever practicable, the provisions of this MOU shall apply to new source review, as well as to air operating permits.

DEFINITIONS

The definitions of terms contained in Chapters 173-400 and 173-401 WAC are incorporated by reference, unless otherwise defined here. Unless a different meaning is clearly required by context, the following words and phrases, as used in this MOU, shall have the following meanings:

"Compliance determination" refers to the process whereby Health verifies how and whether a specific source meets standards set by Ecology in Chapter 173-480 WAC.

"License" or "radioactive air emissions license" refers to the document issued by Health in accordance with Chapter 246-247 WAC that prescribes the relevant control requirements for radionuclide air emissions.

“Permit” or “operating permit” refers to the document issued by Ecology to USDOE in accordance with Chapter 173-401 WAC, chapter 70.94 RCW, and Title V of the federal Clean Air Act (42 U.S.C. 7401, et seq.). The operating permit gathers in one document all air emission limitations and requirements that apply to a given source.

“Primary or Primarily” - While both Ecology and Health have authority to regulate radionuclide air emissions under Chapters 70.94 RCW and 70.98 RCW, respectively, “primary” exercise of that authority means that, unless extenuating circumstances exist (for example, see Clauses 5 and 6 in the Joint Rules and Activities section), Health will be responsible for the particular activity.

“Standard,” without further description, refers to any requirement established by Ecology through revision of Chapter 173-480 WAC that limits the quantity, rate or concentration of emissions of air pollution on a continuous basis including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under Chapter 173-480 WAC.

RESPECTIVE ROLES AND ACTIVITIES OF ECOLOGY AND HEALTH

The parties to this MOU describe their responsibilities as follows:

Ecology

1. Ecology issues the air operating permit.
2. Ecology is the state agency responsible for federal and state regulation of nonradioactive hazardous air pollutants at Hanford.
3. Ecology is the point of contact for issues and questions involving nonradioactive air emissions.
4. Ecology is the state agency responsible for determining requirements related to control technologies for nonradioactive air emissions.
5. Ecology sets air quality and emission standards for radioactive air emissions in Chapter 173-480 WAC.¹

¹Addition of this clause clarifies that the vehicle anticipated to be the primary way for Ecology to regulate is through the establishment of standards by the rule revision process and does not eliminate any powers that Ecology may have to regulate if Health fails to perform. The Joint Responsibilities section refers to scenarios in which Ecology may exercise its authority in other ways.

Health

1. Health is the state agency primarily responsible for regulation of Hanford Site radionuclide air emissions (except as provided in Clause 5 of Ecology's Roles and Responsibilities). This responsibility does not alter, in any way, existing statutory authorities of Health or Ecology.
2. Health is the state agency primarily responsible for evaluating airborne radionuclide emissions, including during new source reviews, and the agency responsible for the issuance of a radionuclide license that will be incorporated into the Hanford Air Operating Permit consistent with such evaluations.
3. Health is the point of contact for issues and questions pertaining to the regulation of Hanford Site radioactive air emissions.
4. Health is the state agency primarily responsible for evaluating airborne radioactive emissions in order to verify that offsite doses comply with applicable human health standards, and that site worker exposures from radionuclide air emissions are as low as reasonably achievable.
5. Health is the state agency primarily responsible for the implementation of state and federal requirements for radioactive air emission control technology, using EPA guidance for "top down" Best Available Control Technology (BACT). In Health's regulations the BACT process has been adapted to radionuclides and called BARCT in accordance with Chapter 173-480 WAC.
6. Health establishes control requirements for radionuclides for Hanford in a license, issued under Chapter 246-247 WAC, that is incorporated into the air operating permit for Hanford.

JOINT ROLES AND ACTIVITIES OF THE DEPARTMENTS OF ECOLOGY AND HEALTH

The parties to this MOU recognize and agree to the following:

1. A staff point of contact for each agency will be identified for each Hanford Site new source or source modification to ensure that both agencies' interests are maintained, and to ensure that requirements placed on Hanford facilities are compatible.
2. If it can be demonstrated by Ecology that there will be risk to the public or to the environment without the use of technology different than that proposed by Health, Ecology may request that Health implement the different technology. Health will consider Ecology's request and justify its conclusion on whether to implement the requested technology. If the two parties cannot agree, the issue shall be referred to the General Dispute Resolution Process outlined in this MOU.

3. Both Ecology and Health are committed to cooperation and the sharing of pertinent information in order to aid compliance with applicable regulations, and to ensure protection of both human health and the environment.
4. In accordance with RCW 70.94.162(1) and §502(b)(3) of the federal Clean Air Act Amendments of 1990, air operating permit fees will cover all costs involved in administering the Operating Permit Program with respect to sources of air emissions. Health will bill Energy and collect fees separately, in accordance with Chapter 246-254 WAC, for all costs incurred by Health in regulating the radionuclides portions of the air operating permit. Ecology's permit program costs will include permit administration costs and development and oversight costs associated with Health's regulatory activities. Ecology will also bill USDOE and collect fees separately for all costs incurred by Ecology in the setting of standards and regulation of radionuclide air emissions, as well as for all costs incurred by Ecology in regulating nonradioactive air emissions. Health and Ecology will avoid billing USDOE for overlapping costs regarding the Hanford facility. There will be separate costs for separate duties under separate authorities.
5. Both Ecology and Health have identical enforcement authority under Chapter 70.94 RCW, and access to all applicable areas of the Hanford facility for inspections by both or either of the agencies will be a condition of the permit. Health will assume primary responsibility for inspection and enforcement actions that involve only radionuclides at Hanford, including the issuance of notices of violations and any administrative or judicial proceedings that stem from such actions. Ecology will have responsibility for inspection and enforcement actions that involve only nonradionuclides at Hanford, including the issuance of notices of violations and any administrative or judicial proceedings that stem from such actions. Wherever inspections or enforcement actions involve both radionuclide and nonradionuclide air emissions at Hanford, both agencies will share responsibility, including responsibility for issuance of notices of violations and any administrative or judicial proceedings that stem from such actions. However, in all instances of suspected violation, the agencies will confer before a notice of violation is issued (unless an imminent and substantial threat to the environment or human health exists - see below). The EPA will have enforcement authority over all federally enforceable portions of the permit.

If in Ecology's judgment it can be demonstrated that there is risk to the public or to the environment from radioactive air emissions, Ecology will consult with Health. If Health fails to adequately address Ecology's concerns, the Dispute Resolution process outlined in this document will be followed, beginning at the section manager level. If a dispute arises as to which agency is responsible for enforcement, the dispute resolution procedures outlined in this MOU shall be followed, except as provided in Clause 6 of the Joint Roles and Activities Section. No enforcement action on the issue under consideration may be taken by either party until the full dispute resolution procedures have been followed, except as provided in Clause 6 of the Joint Roles and Activities Section.

6. If either agency recognizes an imminent and substantial threat to human health or the environment, that agency may take steps to mitigate the problem, then consult the other agency, and if warranted, follow the dispute resolution process.

7. Under the timeline requirements for operating permit issuance, Health will handle all radioactive air emissions license procedures, and Ecology will handle all air operating permit issuance procedures and requirements as per this MOU. Ecology will submit notices of permit issuance, modifications, and renewals to the Permit Register as required under WAC 173-401-805. The two agencies will hold joint hearings and will jointly assure proper notice of hearings. The two agencies will jointly prepare responses to public comments. Ecology will submit notices, comments, and the proposed permit to EPA.
8. Under the timeline requirements for operating permit issuance, permitting authorities have 180 days between the time a completeness determination is made and the time when the Draft Permit or Renewal is due. Under this MOU, each agency (Ecology and Health) shall submit to the other a Draft of its license or portion of a Hanford Operating Permit within 90 days after the date that a completeness determination is due or made. Each will then have 30 days to send comments to the other agency. Each agency will then have 30 days to respond to the comments and revise the license or the original Draft Permit. Each agency will have discretion to consider comments received after the 30-day comment period has expired. If a disagreement exists or one agency believes the other agency's response to the comments is insufficient, the issue shall follow the dispute resolution process outlined in this MOU, but in no event shall the deadlines for permit submittals to the EPA be missed.

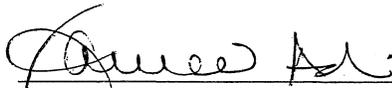
GENERAL RESOLUTION OF DISPUTES

Both agencies recognize the time constraints that are involved with meeting the operating permit deadlines under the federal Clean Air Act and commit to resolving disputes as expeditiously as possible. Disputes arising from the implementation of this MOU will be resolved at the lowest level possible utilizing standard agency chains of command. Elevation to Ecology's Deputy Director and Health's Assistant Secretary for Environmental Health shall occur only after all reasonable efforts at the Program and Division level have failed or after two weeks after a comment period deadline has passed, whichever comes first. If the dispute still cannot be resolved at the Assistant Director and Assistant Secretary levels, the dispute shall be referred to the Director of Ecology and the Secretary of Health. If the dispute cannot be resolved at the highest agency levels within one week, the dispute shall be referred to the Governor's Office in accordance with RCW 43.17.330. Both agencies shall refrain from issuing a final determination until all disputes are resolved, but in no event shall the deadlines for permit submittals to the EPA be missed.

EFFECTIVE DATE, MODIFICATION, AND TERMINATION

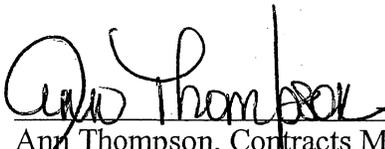
This Memorandum of Understanding shall be effective upon signature by the parties, may be amended in writing by mutual consent, and may be terminated by either party after giving 30 days notice to the other party.

Signatures:



Janice Adair, Assistant Secretary
Environmental Health
Washington State Department of Health

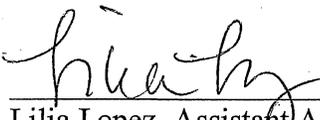
Date 18 Aug 05



Ann Thompson, Contracts Manager
Washington State Department of Health

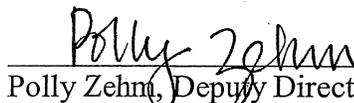
Date 8/19/05

Approved as to Form



Lilia Lopez, Assistant Attorney General
Washington State Department of Health

Date 8/18/05



Polly Zehn, Deputy Director
Washington State Department of Ecology

Date 9/14/05