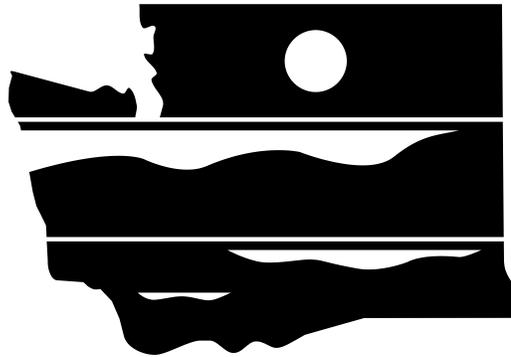


Corrective Action Class 3 Permit Modification of the Site-Wide Permit II.Y Conditions

Responsiveness Summary



DEPARTMENT OF
ECOLOGY
State of Washington

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RESPONSIVENESS SUMMARY

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Introduction

The Department of Ecology (Ecology) opened public comment on a proposed Class 3 modification of the Hanford Site-Wide Permit II.Y condition on May 3, 2010 and completed the public comment period on June 18, 2010. Two sets of comments were received. Ecology made no changes as a result of the comments, and has made its final permit decision.

The two sets of comments were from the Confederated Tribes and Bands of the Yakama Nation (Yakama Nation) the Heart of America Northwest (HoANW), respectively. The two sets of comments expressed several very similar concerns. Ecology has addressed both comment sets in a single responsiveness summary because of the similarity of the comments.

Addressing Concern of Less Stringent Cleanup Standards and Evaluation of Remedy Criteria

The Corrective Action Decision/Record of Decision (CAD/ROD) approach does not replace Resource Conservation and Recovery Act (RCRA) corrective action under Washington's Hazardous Waste Management Act (HWMA) with a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) remedial action. Under the CAD/ROD approach, the very same HWMA corrective action decision as under the current permit will be made independently by Ecology employing the corrective action standards of Washington's Dangerous Waste Regulations, Washington Administrative Code (WAC) 173-303-64620(4). Under these standards, corrective action must "be consistent with" certain identified provisions in Washington's Model Toxics Control Act (MTCA) implementing rules, including meeting WAC 173-340-350 for site characterization, WAC 173-340-360 for the selection of cleanup actions, and WAC 173-340-700 through -760 for cleanup standards.

The CAD/ROD approach will, however, add a CERCLA decision alongside Ecology's independent corrective action decision. This addition will provide for clear cleanup jurisdiction over all constituents released to the environment, including radionuclides. Under the Tri-Party Agreement (TPA), Ecology will be the lead regulatory agency for the CAD/ROD documents and will evaluate all decisions to determine that WAC 173-303-64620(4) standards are met. New text in the TPA's Action Plan requires that investigative and remedy selection documents assess satisfaction of HWMA corrective action standards. While EPA alone has authority to sign a CERCLA Record of Decision (ROD) (a matter it cannot delegate), Ecology alone will issue the corrective action decision (CAD). In the event of a dispute, Ecology retains the ultimate discretion to "decouple" its CAD from a ROD.

The WAC 173-340-360(3)(f) citation gives the criteria used to evaluate and select the best remedy alternative. These criteria include protectiveness, permanence, cost, effectiveness over the long term, management of short-term risks, technical and administrative implementability, and consideration of public concerns. The criteria in MTCA are very similar to the CERCLA 9 criteria.

Addressing Concern of Elimination of Corrective Action from the Site-Wide Permit

Corrective action will still be incorporated into (and become enforceable under) the Site-Wide Permit via the II.Y condition, satisfying the RCRA and HWMA requirement that the permit specify requirements and a schedule for corrective action. The Site-Wide Permit will list all of the Operable Units in the Part IV section (corrective action portion), and no units are being “removed” from the permit. Indeed, the incorporation approach proposed for RCRA-CERCLA past practice units (R-CPPs, re-designated from RCRA past practice units [RPPs]) is identical to the manner in which the TPA’s corrective action requirements and schedules for RPPs have been incorporated into the permit since the year 2000:

The requirements and schedules related to investigation and cleanup of R-CPP units currently in place under the HFFACO [Hanford Federal Facility Agreement and Consent Order], as amended, and in the future developed and approved under the HFFACO, as amended, are incorporated into this Permit by this reference and apply under this Permit as if they were fully set forth herein. (Proposed Permit Condition II.Y.2.b.i.)

The only difference from the current approach is that the ultimate corrective action remedy decision will also be made and implemented as a requirement “developed and approved” under the TPA (as incorporated into the permit through the above condition), rather than through a separate permit modification outside of the TPA.

The CAD/ROD approach for R-CPPs would retain the state’s direct exercise of corrective action decision-making authority, with CERCLA jurisdiction exercised concurrently. Ecology believes this approach, which takes into account the unique circumstances at Hanford, is wholly consistent with U.S. Environmental Protection Agency guidance on using other cleanup authorities, including CERCLA, to satisfy RCRA corrective action. See, for example, Memorandum, “Transmittal of the National Enforcement Strategy for RCRA Corrective Action,” OECA/OSWER (April 27, 2010); Memorandum, “Transmittal of Guidance on Enforcement Approaches for Expediting RCRA Corrective Action,” OECA (January 2, 2001); Memorandum, “Coordination between RCRA Corrective Action and Closure and CERCLA Site Activities,” OECA/OSWER (September 24, 1996). The CAD/ROD approach is being applied to TPA “past practice units” only and not to hazardous waste management units that are active, closing, or subject to postclosure requirements. Ecology notes, however, that it is permissible to satisfy closure and postclosure requirements in whole or in part through corrective actions. See, for example, WAC 173-303-610(1)(e).

Addressing Concern of the Elimination of Public Involvement

Since the year 2000, TPA requirements and schedules for CERCLA past practice units (CPPs) have been incorporated into the permit to satisfy the requirement that the permit specify corrective action in all contiguous areas of the Hanford facility. The manner of this incorporation is prospective, with the permit incorporating TPA requirements “currently in place...and in the future developed and approved under the HFFACO.” This approach is taken

so as to not create potential conflict between the permit and the TPA and not potentially conflict with CERCLA's specific timing of review provision. The public participation processes of the TPA and CERCLA fully satisfy RCRA and HWMA requirements. The Tri-Parties have elected to set the duration of public comment under the TPA at 60 days as specified in Ecology's Dangerous Waste Regulations, whereas the CERCLA National Contingency Plan requires just 30 days. Because a CERCLA decision will be made concurrent with a state corrective action decision under the CAD/ROD approach, the CAD/ROD approach employs the same manner of incorporation. To accommodate this approach on the corrective action side, a new process for issuing a corrective action decision (the CAD) has been created under the TPA.

Outside of Hanford, Ecology typically satisfies corrective action through the conditions of an order or consent decree issued under the independent legal authority of MTCA. Just as TPA requirements are incorporated into the Site-Wide Permit through Condition II.Y, the requirements of a MTCA order or decree are incorporated into a hazardous waste facility permit. Ecology takes the position that there is no appeal opportunity of the underlying requirements of a MTCA order when those requirements are incorporated into a hazardous waste facility permit. *See* WAC 173-303-64630(3) ("In the case of facilities seeking or required to have a permit under the provisions of this chapter the department will incorporate corrective action requirements imposed pursuant to the Model Toxics Control Act into permits at the time of permit issuance. *Such incorporation will in no way affect the timing or scope of review of the Model Toxics Control Act action.*") (emphasis added); *see also*, Ecology Corrective Action Program Description, Department of Ecology (January 7, 1994) at 44. In Ecology's view, Site-Wide Permit condition II.Y offers no lesser opportunity for public participation (including appeal) of a TPA corrective action condition than is available with respect to a MTCA condition incorporated into a typical hazardous waste facility permit issued outside of Hanford. Indeed, under WAC 173-303-830, modification or amendment of a corrective action order issued pursuant to MTCA when the MTCA public participation requirements have already been met and the order has already been incorporated into the permit is a Class 1 modification, not a Class 2 or 3 modification. (WAC 173-303-830 Appendix I.N.5.)

Addressing Concern of the Elimination of SEPA Review

Ecology will comply with the State Environmental Policy Act (SEPA) in issuing corrective action decisions for the R-CPP operable units. Ecology will identify the SEPA elements of the environment that could be impacted as early in the corrective action process as possible. Notice of the SEPA determination would be issued no later than the issuing of the proposed Corrective Action Decision (CAD). This timing for identifying SEPA elements and issuing a SEPA determination parallels how Ecology makes SEPA determinations for MTCA cleanup actions (where Ecology identifies the SEPA elements of the environment that could be impacted as early in the MTCA process as possible, and issues SEPA threshold determinations no later than the issuance of the draft Cleanup Action Plan. WAC 197-11-249)