

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
U. S. DEPARTMENT OF ENERGY, AS LEAD AGENCY,
AND THE
U.S. ENVIRONMENTAL PROTECTION AGENCY,
AS A COOPERATING AGENCY,
FOR THE FINAL TANK CLOSURE AND WASTE MANAGEMENT EIS
FOR THE HANFORD SITE, RICHLAND, WASHINGTON
(“TC&WM EIS”)

I. INTRODUCTION

Pursuant to the National Environmental Policy Act (NEPA), this Memorandum of Understanding (MOU) defines a cooperating agency relationship between the U.S. Department of Energy (DOE) and U.S. Environmental Protection Agency (EPA) for preparation of the final Tank Closure and Waste Management Environmental Impact Statement for the Hanford Site (TC&WM EIS). Under a separate MOU, the Washington State Department of Ecology (Ecology) is also a Cooperating Agency and is the lead agency representing the State for all matters related to the State Environmental Policy Act (SEPA). EPA was neither a cooperating agency in the initial scoping process for the original Tank Closure EIS or the expanded TC&WM EIS, nor in DOE’s subsequent development of the alternatives evaluated in the EIS, or the preparation of the draft TC&WM EIS. However, DOE considers it appropriate and timely to obtain EPA’s technical expertise and experience, from both a national and regional perspective, on the final TC&WM EIS. DOE seeks EPA’s input regarding nationally acceptable approaches to modeling and analysis of potential environmental impacts associated with the proposed actions and alternatives evaluated in the final TC&WM EIS.

II. PURPOSE

The purpose of this MOU is to define the roles and responsibilities of each agency (lead and cooperating) in the EIS process pursuant to the Council on Environmental Quality (CEQ) regulations implementing NEPA, 40 C.F.R. Part 1500 et seq., and CEQ guidance concerning cooperating agencies (see <http://ceq.hss.doe.gov/>). For purposes of the final TC&WM EIS, DOE is the “Lead Agency” and EPA is a “Cooperating Agency” as defined in the CEQ regulations (40 C.F.R. §§1501.5, 1501.6, 1508.5, 1508.16). The cooperating agency roles and responsibilities in the TC&WM EIS process are separate from and not intended to duplicate or replace the same agency’s regulatory roles, including under the Tri-Party Agreement, or EPA’s oversight of Ecology’s authorized dangerous waste program. The roles and responsibilities of DOE (Lead

Agency) and EPA (Cooperating Agency) during the preparation of the final TC&WM EIS are detailed below.

III. ROLES AND RESPONSIBILITIES

- A. As the Lead Agency, DOE initiated the preparation of the final EIS and has ultimate responsibility for ensuring that the process leading to completion of the TC&WM EIS and issuance of a Record of Decision is adequately performed in compliance with NEPA and CEQ regulations. The Lead Agency identifies and coordinates with all necessary parties, provides its own expertise with regard to the proposed action and alternatives, and conducts independent technical reviews to ensure the final EIS meets all applicable NEPA requirements.
- B. The Cooperating Agency, here EPA, participates in the EIS process to provide advice and technical assistance or expertise to the Lead Agency. EPA participates in this MOU as a Cooperating Agency under authority set forth in Section 1501.6 of CEQ's NEPA implementing regulations (40 C.F.R. §1501.6). Nothing in this agreement alters or affects EPA's independent review and comment responsibilities under Section 309 of the Clean Air Act.

IV. GENERAL DOE AND EPA RESPONSIBILITIES

DOE	EPA
<p>A. Active and timely participation in all appropriate remaining phases of the process, consistent with the CEQ regulations concerning participation of cooperating agencies.</p> <p>B. In instances involving questions as to the content, accuracy or relevance of any material (including issues, data, and analyses to the EIS), DOE will make the final determination on inclusion, deletion, or revision of the material. DOE has the final responsibility for ensuring compliance with requirements of NEPA in its preparation of the EIS.</p>	<p>A. EPA anticipates active and timely participation in all appropriate remaining phases of the EIS process – as time, budget, and other resources allow, and consistent with the CEQ regulations concerning participation of cooperating agencies.</p> <p>B. EPA intends to review a preliminary final EIS and provide timely advice and technical assistance regarding content, accuracy, or relevance of those materials. Input is expected to focus primarily on issues in EPA's comment letter on the Draft TC& WM EIS and, as appropriate, on other areas where DOE has requested EPA's special expertise, as defined by CEQ in 40 CFR §1508.26.</p>

C. Dispute Resolution

- The Parties agree that they will strive to expeditiously and fairly resolve disagreements at the NEPA Document Manager Level. If such differences cannot be resolved at the NEPA Document Manager Level, the issues may be elevated within the ORP Office of Environment, Safety and Quality and if necessary the DOE HQ Office of NEPA Policy and Compliance. Each Party agrees to work professionally with the other to achieve closure on any issues arising during the process of preparing and processing the final EIS.

- The Parties recognize that the essence of the NEPA process is to inform the decision-maker and the public of different points of view, should they exist, on technical matters. Thus, "agreeing to disagree" is one possible outcome. In such a situation, DOE and EPA plan to work together to ensure any differing positions are presented in the final EIS.

- D. Schedule meetings with appropriate lead time and notification to EPA project members. Provide EPA copies of meeting minutes as appropriate.

C. Dispute Resolution

- The Parties agree that they will strive to expeditiously and fairly resolve disagreements at the Project Manager Level. If such differences cannot be resolved at the Project Manager Level, the issues may be elevated to the appropriate EPA Region 10 and/or Headquarters Office with responsibilities for NEPA compliance and the respective DOE counterpart offices for resolution. Each Party agrees to work professionally with the other to achieve closure on any issues arising during the process of preparing and processing the final EIS. In all cases, EPA retains the right to comment on any issues related to the final EIS, including those in disagreement with DOE.

- The Parties recognize that the essence of the NEPA process is to inform the decision-maker and the public of different points of view, should they exist, on technical matters. Thus, "agreeing to disagree" is one possible outcome. In such a situation, DOE and EPA plan to work together to ensure any differing positions are presented in the final EIS.

- D. Designate at least two EPA representatives who are expected to routinely participate in the EIS project as project members. One EPA project member is expected to attend all relevant meetings, including project management meetings, briefings for management, and pertinent meetings with stakeholders and Tribal Nations. EPA project members plan to participate in meetings, as appropriate, to describe EPA's views about DOE's analyses in the EIS.

<p>E. If decisions based on environmental analyses in the EIS indicate the need to consider future changes to existing legal agreements or permits in place at the Hanford Site, DOE will follow the established regulatory processes for such legal agreements or permits to submit potential changes.</p> <p>F. Information supporting EIS analyses may contain predecisional, deliberative process (under FOIA or OUO), non-public (Privacy Act) information, or proprietary data. As the Lead Agency responsible for the NEPA process, DOE will appropriately protect materials identified as “draft-predecisional” or “proprietary” or that is labeled with other restrictive legends. DOE will limit use and dissemination of these materials to employees involved in preparation of the EIS. “Employees” include EPA project members with appropriate security clearances. If DOE receives a request for public disclosure, DOE will make a determination in accordance with federal laws how to respond. DOE will expeditiously process appropriate security clearances for EPA EIS representatives. If necessary, in order to preserve DOE’s deliberative process protections related to the final EIS, information may be made available to EPA for viewing at DOE facilities.</p> <p>G. DOE will notify EPA Point of Contacts of pertinent meetings or discussions related to the EIS with stakeholders, tribes, agencies, and others that relate to the EIS where EPA’s participation would be appropriate.</p>	<p>E. EPA’s responsibilities under this MOU are complete as of DOE’s publication of the Final TC&WM EIS.</p> <p>F. If faced with a request for any documents originating from DOE, EPA will act in accordance with the Freedom of Information Act, 5 U.S.C. § 552, and applicable regulations including, but not limited to, 40 CFR § 2.103(d).</p> <p>G. EPA plans to notify the NEPA Document Manager of pertinent meetings or discussions with stakeholders, tribes, agencies, and others that relate to the EIS, where DOE’s participation would be appropriate.</p>
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V. PROCEDURES

DOE	EPA
<p>A. Accept and include in the final TC&WM EIS a "Foreword" that EPA will provide.</p> <p>B. Issue (distribute) the final EIS to the public, and federal, state, and local agencies for review and comment using processes established by NEPA.</p> <p>C. Continue review of comments resulting from the public comment period on the Draft TC&WM EIS. Determine how the comments will be addressed after consulting with cooperating agencies where appropriate, and decide what changes to the TC&WM EIS are necessary. Determine how to address any issues or disagreements raised by EPA concerning DOE's responses and proposed changes to the EIS.</p>	<p>A. In accordance with a schedule that supports the production of the final EIS, EPA expects to provide a "Foreword," expressing EPA's views and perspectives, to be included in the final EIS. The Foreword will acknowledge EPA's role as a cooperating agency based on its special expertise as defined by CEQ regulations.</p> <p>B. EPA intends to review and provide comments on the internal final draft of the final EIS.</p> <p>C. EPA plans to participate in discussions with DOE on comment responses and proposed changes to the EIS. EPA expects to provide advice and technical assistance as appropriate, and to notify DOE formally of any disagreements or issues concerning DOE's responses or proposed changes to the EIS.</p>

VI. COMMENT AND ISSUE RESOLUTION PROCESS

DOE	EPA
<p>A. Prepare preliminary responses to public comments concerning groundwater analyses and environmental justice. Make those preliminary responses available in draft form to EPA (including viewing at DOE facilities) with sufficient time for EPA's review and comment. Maintain a log of EPA's review comments and responses as part of the EIS Administrative Record.</p>	<p>A. Utilizing its national and regional special expertise and knowledge, EPA intends to assist DOE, as appropriate and as resources allow, in developing responses to EPA comments on the draft EIS. EPA expects to give input to DOE, allowing sufficient time for review, dialogue with DOE, and incorporation into the Comment Response Document. EPA may be asked to provide information or data on particular issues that are within its particular areas of expertise. EPA may</p>

	also assemble and present the data or information with the assistance of experts retained by EPA.
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VII. OTHER PROVISIONS

- A. Nothing in this MOU shall require any of the Parties to assume any obligation or expend any sum for funds in excess of available, authorized appropriations or in any other way take action in violation of the Anti-Deficiency Act.
- B. Conflict of Interest. The Parties agree not to utilize any individuals for purposes of EIS development or participation in EIS-related internal and pre-decisional discussions, including but not limited to groundwater modeling analysis, such as officials, employees, or third party contractors who may have a financial interest in the outcome of the EIS, per CEQ regulations (40 CFR §1506.5(c)) and relevant case law.
- C. Management of Information. EPA acknowledges that all data and information provided by them may become part of DOE's official Administrative Record at the conclusion of the EIS process, except for data or information determined to be subject to protections under the FOIA, restricted by the Privacy Act, or subject to other legal restrictions or protections.
- D. Coordination with contractors. The services of a lead independent EIS contractor and other Hanford Site contractors in a supporting role are being used by DOE for the preparation of the final EIS. For purposes of carrying out its responsibilities under this MOU, EPA may only communicate with the EIS contractor and the other Hanford Site contractors who are supplying data or information to support the EIS through the NEPA Document Manager as the designated Contracting Officer Technical Representative (COTR). Similarly, DOE may only communicate with EPA Contractors working on the EIS through the EPA Region 10 Manager for the Environmental Review and Sediment Management Unit.

VIII. EFFECT OF THIS MOU

- A. The sole purpose of this MOU is to set out roles, responsibilities, and expectations of the Parties during DOE's preparation of the final TC&WM EIS.
- B. No portion of this MOU creates, nor is it intended to create, any right or benefit, either procedural or substantive, enforceable by law or equity, as between the Parties or any third parties. This MOU does not direct or apply to any person outside of DOE and EPA.

VIII. ADMINISTRATION OF THE MOU

- A. This MOU becomes effective upon signature by the authorized officials of DOE and EPA.
- B. The Parties may modify this Cooperating Agency MOU by mutual written agreement.
- C. If not terminated earlier, this MOU will terminate when the final TC&WM EIS notice of availability appears in the *Federal Register*. Any Party may end its participation in this MOU by providing written notice to the other Party. If terminated, the Parties may reinstate this MOU by mutual agreement if additional actions become necessary.

IX. POINTS OF CONTACT


Department of Energy (DOE):
Mary Beth Burandt
TC&WM EIS NEPA Document Manager
U.S. Department of Energy

EPA Region 10:
Theogene Mbabaliye
Environmental Review and Sediment Management Unit
1200 6th Avenue, Suite 900
Seattle, WA 98101

X. SIGNATURES

The parties to this MOU, through their duly authorized representatives, have executed this MOU on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU, as set forth herein.

Department of Energy

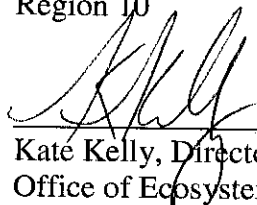


Paul Harrington
Acting Assistant Manager
Office of Environmental, Safety and Quality

4/22/11

Date

U.S. Environmental Protection Agency,
Region 10



Kate Kelly, Director
Office of Ecosystems, Tribal and Public
Affairs

4/11/11

Date