

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES DEPARTMENT OF ENERGY,
AND THE
WASHINGTON STATE DEPARTMENT OF ECOLOGY,
FOR DEVELOPMENT OF THE
HANFORD SITE TANK CLOSURE AND WASTE MANAGEMENT EIS
(“TC&WM EIS”)

I. INTRODUCTION

The U.S. Department of Energy (DOE) and Washington State Department of Ecology (Ecology) have mutual responsibilities for accomplishing cleanup of the Hanford Site as well as continuing ongoing waste management activities consistent with applicable federal and state laws and regulations. The *Hanford Federal Facility Agreement and Consent Order* (otherwise called the “Tri-Party Agreement”, or “TPA”) contains various enforceable milestones that apply to tank waste management activities. DOE is also required to comply with applicable requirements of the federal *Resource Conservation & Recovery Act* (“RCRA”) and the state’s *Hazardous Waste Management Act* (“HWMA”) for ongoing waste management activities at Hanford. To carry out proposals for future actions and obtain necessary permits, each agency must comply with the applicable provisions of the federal *National Environmental Policy Act of 1969* (“NEPA”) and the *Washington State Environmental Policy Act* (“SEPA”). There was a Cooperating Agency Memorandum of Understanding (MOU) in place for the Tank Closure Environmental Impact Statement (TC-EIS) effective March 25, 2003. This MOU is a revision to the original MOU. This MOU is entered into by the agencies to more effectively carry out their respective responsibilities in complying with the applicable provisions of NEPA and SEPA.

Concurrent with the development of this revised MOU, DOE and the Washington State Department of Ecology (Ecology) entered into a Settlement Agreement to resolve the issues in litigation brought by the State of Washington (*Washington v. Bodman*) that challenged the adequacy of DOE’s *Hanford Site Solid Waste Environmental Impact Statement* (HSW EIS). As a result of the Settlement Agreement, a Stipulation and Order of dismissal of the *Washington v. Bodman* litigation was agreed to between the parties and filed with the U.S. District Court for the Eastern District of Washington. Consistent with the Settlement Agreement, and as mutually agreed to with Ecology as a “Cooperating Agency” under NEPA, DOE will revise, update, and re-analyze groundwater impacts and other resource areas related to waste disposal alternatives in the HSW EIS. These new analyses will be integrated with the TC EIS, into the expanded

TC&WM EIS, which is currently under development. In addition, other existing analyses within the HSW EIS that are not directly affected by the waste disposal alternatives will also be reviewed, revised, and updated as appropriate, as part of the development of the expanded TC&WM EIS. Alternatives for low-level and mixed low-level waste drawn from the HSW EIS may be simplified for analysis and presentation purposes in the TC&WM EIS, as agreeable to both parties. The result will be a single, integrated EIS addressing ongoing and proposed waste management activities that were within the original scope of the HSW EIS as well as proposed scope of the TC-EIS activities that DOE will undertake at the Hanford Site.

DOE recognizes that Ecology has special expertise and perspectives that can aid DOE in its data gathering and analysis activities. DOE acknowledges that gaining the State's input on the regulatory implications and the technical aspects of retrieving, treating, immobilizing, and disposing of Hanford Site tank waste and performing other Hanford Site solid waste management activities will likely benefit DOE's environmental analyses under NEPA. The State recognizes that cooperation with DOE will likely aid DOE's progress toward meeting the legal requirements in the *Hanford Federal Facility Agreement and Compliance Order*, as well as likely improve DOE's analyses of potential impacts from waste management and tank closure alternatives at Hanford. It is therefore appropriate for Ecology and DOE to cooperate in preparation of environmental documentation for agency actions that must fulfill applicable requirements of NEPA and SEPA.

Ecology and DOE hope that a cooperative effort will streamline the environmental impact review process; avoid duplication, delay, and extra costs; and provide a superior product. Ecology and DOE agree to cooperate in DOE's preparation of environmental documentation intended to satisfy the applicable provisions of NEPA and SEPA for evaluation of the proposed waste management and tank closure actions at the Hanford Site that have been determined by the agencies to require an EIS. Ecology's cooperation does not necessarily mean that the State of Washington agrees, either from a technical or policy basis, with the scope of all waste management alternatives analyzed in the EIS, or with the substance of all decisions DOE might make following finalization of the EIS.

Nothing in this Memorandum of Understanding (MOU) should be interpreted as Ecology's concurrence that DOE's final EIS will satisfy NEPA regulations at 40 CFR Part 1500 et seq. or the SEPA pursuant to WAC 197-11-164.

II. PURPOSE

The purpose of this MOU is to define the responsibilities of each agency in preparation of the EIS. Pursuant to the Council on Environmental Quality (CEQ) regulations implementing NEPA, 40 C.F.R. Part 1501 et seq., the agencies agree that working together on an EIS may be accomplished in several ways. For the purposes of this MOU, DOE and Ecology (the Parties) agree that the most effective relationship shall be one in which DOE serves as the "Lead Agency" and Ecology serves as the "Cooperating Agency" As defined in the CEQ regulations (40 C.F.R. Part 1508). Ecology will be the lead agency representing the State for all matters related to SEPA.

The roles and responsibilities of both the Lead Agency and the Cooperating Agency during the preparation of the TC&WM EIS are detailed below. The Parties will revise the existing Tank Retrieval and Closure Process Communication Plan (RPP-13334, Rev. 0), as appropriate to describe this relationship and the process that the Parties will follow to carry out these respective roles.

III. ROLES AND RESPONSIBILITIES

A. “Lead Agency” means the party that will have final responsibility to ensure that the process leading to completion of a TC&WM EIS and a Record of Decision is adequately performed. The Lead Agency coordinates with all necessary parties, provides expertise and technical review, and meets all applicable NEPA requirements. As used herein, DOE is the lead agency.

B. “Cooperating Agency” means a party that participates in the process closely to provide advice and assistance to the Lead Agency, particularly in matters relating to SEPA requirements and to regulatory impacts and requirements. The Cooperating Agency may also offer advice and assistance in other parts of the process, as agreed with the Lead Agency. As used herein, Ecology is the Cooperating Agency.

C. “Process” means the joint process by which the Lead Agency will meet its NEPA obligations and the Cooperating Agency will meet its SEPA obligations.

D. Schedule for the TC&WM EIS: Subject to Section III of this MOU, the Parties agree to act with reasonable diligence to develop and implement a schedule that will have the final TC&WM EIS issued by an estimated completion date of June 2008.

E. Administrative Record Materials: The Parties agree that the development and maintenance of a complete, current Administrative Record are crucial for the NEPA decision-making process. To further this goal, the Parties agree that DOE will assemble and maintain the Administrative Record. In addition, to the extent allowed by law, the Parties agree that DOE and Ecology will provide all relevant documents, computer records, and any other materials to DOE for this purpose on a timely (preferably weekly) basis during the preparation of the draft and final EIS.

F. Data Gathering and Analysis: the parties intend that Ecology will participate in all appropriate phases of data gathering, analysis, and interpretation activities for the EIS, to the extent possible. The Parties will share and discuss information that DOE and its contractors use in the preparation of this EIS (examples include assumptions, input parameters of modeling, calibration, validation, sensitivity analysis, assessment of groundwater flow field, alternative conceptual models, assessment of uncertainties and significance, and exposure scenarios). DOE will share computer generated data files/packages that they used for this assessment with Ecology.

The Parties agree that DOE, with cooperation from Ecology, will conduct periodic quality control reviews of the data that DOE uses to model the impacts to groundwater and human health and the environment from the alternatives included in the TC&WM EIS. This effort is also intended to reflect the “lessons learned” and recommendations made to DOE from the quality

assurance review conducted for the HSW EIS, as documented in the *Final Report of the Review of the Hanford Solid Waste Environmental Impact Statement (EIS) Data Quality, Control and Management Issues*. Ecology will review a representative sample of data that DOE and its NEPA contractors incorporate into any modeling of releases or impacts of releases from the tank farms and other Hanford Site waste management activities.

Ecology and DOE have already signed a Technical Guidance Document (TGD) that establishes key values and methods for critical areas of analysis in the TC EIS now under development. The Parties agree that this TGD will remain in place for the TC&WM EIS, but may be revised and expanded as appropriate to address the additional groundwater and waste management scope being included from the HSW EIS.

Ecology’s right to incorporate any technical or policy points of view in a Foreword to the TC&WM EIS is preserved. This MOU is intended to establish a balanced and open process for addressing such views for inclusion in the TC&WM EIS. In some cases, this process may result in additional sensitivity analyses.

IV. GENERAL DOE AND ECOLOGY RESPONSIBILITIES

DOE	ECOLOGY
A. Active and timely participation in all appropriate phases of the process.	A. Active and timely participation in all appropriate phases of the process.
B. Establish a time schedule for the process that meets both NEPA and SEPA requirements and allows review times for the agencies involved and effective citizen involvement.	B. Provide advice about SEPA requirements.
C. Provide for meetings with appropriate federal, state, regional, and local agencies, and concerned groups for the purpose of increasing communication and receiving comments on EIS-related documents.	C. Provide advice, assistance, and support at public meetings.
D. Maintain jointly with Ecology an issues resolution list that reflects the items about which the two agencies are not yet agreed. Either agency may add items to the list, but both must agree to delete an item. This information will be provided periodically to stakeholders, Tribal Nations, and other interested groups or individuals.	D. Maintain jointly with DOE an issues resolution list that reflects the items about which the two agencies are not yet agreed. Either agency may add items to the list, but both must agree to delete an item. This information will be provided periodically to stakeholders, Tribal Nations, and other interested groups or individuals. Ecology will post this on its “tank list serv.”
E. Provide Ecology representatives with draft	E. Provide DOE with timely responses,

DOE	ECOLOGY
<p>copies of relevant analyses, plans, schedules, issue papers, etc., in a timely manner. Adequate lead time normally is seven working days.</p> <p>F. In instances involving questions as to the content, accuracy or relevance of any material (including issues, data, and analyses), DOE will make the final determination on inclusion, deletion, or revision of the material. DOE will have responsibility for ensuring compliance with requirements of NEPA. DOE will attempt to produce an EIS that may be used by Ecology to satisfy SEPA.</p> <p>G. DOE will conduct periodic QA/QC activities.</p> <p>H. Dispute Resolution</p> <ul style="list-style-type: none"> • The Parties agree that they will strive to expeditiously and fairly resolve disputes at the NEPA Document Manager Level. Each party agrees to work professionally with the other to achieve closure on any issues arising during the process of preparing and processing the NEPA documents. • The Parties recognize that the essence of the NEPA process is to inform the public of different points of view on the technical matters whenever it is necessary for complete disclosure. Thus, one method of resolution under NEPA is for parties to “agree to disagree” and to so state in the NEPA documents. <p>I. Ensure compliance with requirements of NEPA and Council on Environmental Quality (CEQ) regulations, as well as other federal regulations and laws.</p>	<p>advice, or assistance as appropriate. Normally timely is seven working days.</p> <p>F. Review drafts of data packages, EIS chapters, issue papers, public briefings and other such documents, and provide timely advice and assistance regarding content, accuracy, or relevance of those materials. Notify DOE if there is concern about the EIS meeting SEPA requirements.</p> <p>G. The State will cooperate with DOE in its periodic QA/QC activities.</p> <p>H. Dispute Resolution</p> <ul style="list-style-type: none"> • The Parties agree that they will strive to expeditiously and fairly resolve disputes at the Project Manager Level. Each party agrees to work professionally with the other to achieve closure on any issues arising during the process of preparing and processing the NEPA documents. • The Parties recognize that the essence of the NEPA process is to inform the public of different points of view on the technical matters whenever it is necessary for complete disclosure. Thus, one method of resolution under NEPA is for parties to “agree to disagree” and to so state in the NEPA documents. <p>I. Not applicable.</p>

DOE	ECOLOGY
<p>J. Attempt to ensure compliance with requirements of SEPA and other Washington authorities as they relate to the TC&WM EIS. As much as possible consolidate meetings, processes, and documents.</p> <p>K. Ensure that relevant environmental issues, reasonable alternatives, and environmental impacts are addressed in the EIS.</p> <p>L. Schedule meetings with appropriate lead time and notification to Ecology project members. Provide Ecology minutes and other papers relevant to those meetings.</p> <p>M. Respond to challenges to subsequent decisions made based on the final EIS.</p> <p>N. Continue obligations under the Tri-Party Agreement that remain unchanged by completion of the TC&WM EIS. If decisions based on environmental analyses in the EIS indicate the need to consider Tri-Party Agreement changes, DOE will follow the Tri-Party Agreement process to submit potential changes.</p> <p>O. Some information supporting EIS analyses may contain predecisional, deliberative process (under FOIA or OUO), non-public information or proprietary data. DOE will</p>	<p>J. Consult closely with DOE to ensure that all SEPA and other state requirements are clear and known to DOE as they relate to the TC&WM EIS. Offer timely advice and assistance regarding consolidation of meetings, processes, and documents.</p> <p>K. Provide advice and consultation to DOE about relevant environmental issues, alternatives, and environmental impacts as they are addressed in draft documents leading up to formal documents for public review.</p> <p>L. Designate at least two Ecology representatives who will participate in the EIS project as project members. At least one Ecology project member will attend all relevant meetings, including project management meetings, briefings for management, and meetings with stakeholders and Tribal Nations. Ecology project members will participate in meetings to offer Ecology positions on issues, relevant expertise, advice, and assistance.</p> <p>M. Provide information and advice to DOE on responding to EIS challenges.</p> <p>N. If decisions based on environmental analyses in the EIS indicate the need to consider Tri-Party Agreement changes, Ecology will follow the Tri-Party Agreement process to evaluate the proposal.</p> <p>O. Ecology will comply with the public disclosure requirements of Chapter 42.17 RCW, which includes exemptions from disclosure for certain public records.</p>

DOE	ECOLOGY
<p>appropriately protect materials identified as “draft” 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” includes Ecology 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 Ecology EIS representatives.</p>	<p>Ecology will notify the DOE document manager of any request for public disclosure pursuant to RCW 42.17.330. In the event DOE determines that a document otherwise discloseable by Ecology under Chapter 42.17 RCW is not appropriate for public inspection, DOE may seek a protective order preventing disclosure of the document pursuant to applicable federal laws and/or RCW 42.17.330. Ecology will ensure that its EIS representatives obtain necessary security clearances.</p>

V. PROCEDURES

DOE	ECOLOGY
<p>A. Conduct public scoping meetings to receive comments on the proposed action and alternatives as described in the Notice of Intent.</p> <p>B. Identify the primary issues and concerns arising from the scoping process including the public scoping meetings. Identify additional information acquired during the scoping process. Prepare a plan to address the issues and concerns in the draft EIS.</p> <p>C. Write or rewrite sections, parts, or chapters of the EIS. Provide internal drafts to Ecology with adequate time for review and comment.</p> <p>D. Convene workshops as necessary or as requested with Ecology to review sections, parts, or chapters of the EIS and supporting analyses. Decide which comments and revisions should be reflected in the EIS.</p> <p>E. Accept the draft “Foreword” that Ecology provides.</p>	<p>A. Provide advice, assistance, and support at public meetings as requested by DOE.</p> <p>B. Provide advice and comment about the issues and concerns, and additional information, acquired in the scoping process, including public scoping meetings.</p> <p>C. Review internal drafts of all sections, parts, or chapters of the EIS and offer comments or propose revisions.</p> <p>D. Participate in workshops convened to review sections, parts, or chapters of the EIS and supporting analyses.</p> <p>E. Provide a draft “Foreword” to be included in the draft EIS.</p>

DOE	ECOLOGY
<p>F. Issue (distribute) the draft EIS to the public, and federal, state, and local agencies for review and comment using processes established by NEPA.</p> <p>G. Receive comments resulting from the public comment period. Determine how the comments will be addressed and decide which changes to the draft EIS are necessary.</p> <p>H. Publish as a part of the “Foreword” in the final EIS a statement from Ecology which will contain its perspectives and positions on the development and content of the EIS.</p> <p>I. Write the final EIS. File the final EIS with the U.S. Environmental Protection Agency. Make printed copies of the final EIS. Publish a Notice of Availability in the <i>Federal Register</i>. Distribute the final EIS to the public, and federal, state, and local agencies.</p>	<p>F. Review and provide comments on the draft EIS.</p> <p>G. Participate in discussions on comment responses and proposed changes in the EIS with DOE. Provide advice and assistance. Notify DOE formally of disagreement with the final EIS.</p> <p>H. Provide a statement in the comments and responses and changes to the EIS to DOE in a timely manner that will be included in the “Foreword” part of the final EIS that states Ecology’s perspectives and positions.</p> <p>I. Review the final EIS and verify that Ecology comments on the draft EIS were adequately addressed. Determine if the final EIS can be adopted as a substitute for preparing the SEPA EIS.</p> <p>This adoption determination will be based on (1) whether SEPA requirements are met as specified in WAC 197-11-600 and 197-11-630, (2) whether State comments on the draft EIS were adequately incorporated into the final EIS, or (3) whether the final EIS has not been found inadequate by a court, the Council on Environmental Quality, or by the U.S. Environmental Protection Agency.</p> <p>Ecology will issue its determination to adopt the EIS. In the event that substantial written requests are received to hold a public hearing on the adequacy of the EIS as a substitute for the SEPA EIS, and DOE does not hold a hearing, Ecology will hold its own hearing. If necessary, Ecology may reconsider its adoption in light of comments made at the public hearing.</p>
<p>J. Decision Making: DOE is responsible</p>	<p>J. Decision Making: If Ecology has any</p>

DOE	ECOLOGY
for making decisions to take actions within the scope of the EIS and related NEPA documents. DOE will make these decisions consistent with NEPA statutory and regulatory requirements. DOE shall discuss its decisions with Ecology prior to the issuance of the Record of Decision on the EIS.	objection to DOE’s decision, to the extent practicable, Ecology will notify DOE of its objection prior to issuance of the Record of Decision (ROD). Nothing in the ROD shall preclude the State’s ability to make independent decisions within its jurisdiction. The State will make SEPA determinations through analysis of the Final TC&WM EIS and will adopt the EIS if it meets the requirements of WAC 197-11 SEPA Rules.

VI. COMMENT AND ISSUE RESOLUTION PROCESS

DOE	ECOLOGY
<p>A. Prepare responses to public comments. Make those responses available in draft form to Ecology with sufficient time for review and comment. Maintain a log of formal review comments and responses as part of the Administrative Record.</p> <p>B. Receive policy, technical, and editorial comments on internal draft materials from Ecology reviewers. DOE will determine whether and how to reflect these comments in the EIS.</p>	<p>A. Aid DOE in preparing responses to public comments. Give input to DOE with sufficient time for review, comment, and incorporation.</p> <p>B. Provide policy, technical, and editorial comments on internal draft materials.</p>

VII. EFFECT OF THIS MOU

- A. The Parties agree that the sole purpose of this MOU is to set out roles, responsibilities, and expectations of the Parties during DOE’s preparation of the TC&WM EIS.
- B. Both Parties agree that no portion of this MOU creates, nor is it intended to create, any enforceable legal rights, either procedural or substantive, as between the Parties or any third parties in addition to any such rights that may exist under applicable provisions of NEPA and SEPA.
- C. Nothing in this MOU shall be construed to restrict in any way the authority of any agency of the State of Washington to ensure that DOE complies with the *Hazardous Waste Management Act of Washington* (RCW 70.105), SEPA (RCW 43.21C) or any other applicable law, order, or agreement.

D. Nothing in this MOU shall relieve DOE from its obligation to comply with any applicable federal, state or local law, order or agreement between the State of Washington and DOE.

E. Nothing in this MOU shall alter the rights and responsibilities of the Parties with regard to provisions of the Settlement Agreement and the Stipulated Order referenced in Section I of this MOU.

VIII. MODIFICATION AND TERMINATION

A. The Parties may modify this Cooperating Agency MOU by mutual written agreement.

B. This MOU will terminate when the Record of Decision for the Final TC&WM EIS appears in the *Federal Register*. However, the Parties may reinstate this MOU by mutual agreement if additional actions become necessary.

The image shows four handwritten signatures and dates, each followed by a horizontal line and a typed name and title. The signatures are: Roy Schepens (1/5/06), Keith Klein (1/5/06), Ines Triay (1/6/06), and Jane A. Hedges (1/5/06). The typed text below each signature identifies the signatory and their affiliation.

Roy Schepens, Manager, Office of River Protection, U.S. Department of Energy

Keith Klein, Manager, Richland Operations Office, U.S. Department of Energy

Ines Triay (EM-3), Office of Environmental Management, U.S. Department of Energy

Jane A. Hedges, Program Manager, Nuclear Waste Program, Washington State Department of Ecology