

5.0 Interface of Regulatory Authorities

5.1 Regulatory Programs

The RCRA, CERCLA, and State Dangerous Waste Program overlap in many areas. In general, CERCLA was created by Congress to respond to the release of hazardous substances and to investigate and respond to releases and potential releases from past-practice activities. The RCRA and State Dangerous Waste Program were created to prevent releases at active facilities that generate, store, treat, transport, or dispose of hazardous wastes or hazardous constituents. The RCRA, as amended by HSWA, also provides for corrective action for releases at RCRA facilities regardless of time of release. This section is intended to clarify how these various programs will interface to achieve an efficient regulatory program.

Regulatory authority shall remain with the regulatory agency having legal authority for those decisions, regardless of whether that agency is the lead regulatory agency for the work (see Section 5.6 for lead regulatory agency concept). The lead regulatory agency shall oversee the work, and brief and obtain any necessary approvals from the agency with regulatory authority. For example, where Ecology is the lead regulatory agency at a CERCLA site, it shall brief EPA as necessary to obtain EPA approval before a remedial action is selected.

5.2 Categories of Waste Units

There are three categories of units and related statutory or regulatory authorities that will be addressed under this action plan. These categories are TSD unit, RCRA-CERCLA past-practice (R-CPP) unit, and CERCLA past-practice (CPP) unit, and are defined as follows.

5.2.1 Treatment, Storage, and Disposal Unit

This is a unit that has treated, stored or disposed of RCRA hazardous waste after November 19, 1980 or State-only dangerous waste, after March 12, 1982, or that is currently treating, storing, or disposing of RCRA hazardous waste or State-only dangerous waste. It also includes units at which such wastes will be stored, treated, or disposed in the future, except as provided by 173-303-200 WAC (waste accumulation times that do not require permitting). The TSD units are those that must receive a RCRA permit for operation or postclosure care and/or that must be closed to meet State standards. Section 6.0 describes the processes to be used to permit and/or close TSD units.

5.2.2 RCRA-CERCLA Past-Practice Unit

The purpose of this category is to address releases of RCRA hazardous wastes or constituents from sources other than TSD units at the Hanford Site regardless of the date of waste receipt at the unit. This includes single-incident releases at any location on the Site and corrective action beyond the Site boundary. Releases of CERCLA hazardous substances would also be addressed. The releases will be addressed using both the state HWMA corrective action

program and CERCLA authority and process. Corrective action authority is based on three separate components of HSWA as follows:

- **RCRA Section 3004(u)**. Section 3004(u) of RCRA provides authority for corrective action at solid waste management units at a facility seeking a RCRA permit. This includes units that received any solid waste, as defined in 40 CFR Part 261.2, including RCRA hazardous wastes or hazardous constituents, at any time. Hazardous constituents are those that are listed in 40 CFR Part 261 Appendix VIII. Those waste management units that will be addressed as RPP units under Section 3004(u) are so designated in Appendix C.
- **RCRA Section 3004(v)**. RCRA Section 3004(v) specifies that corrective action to address releases from a RCRA facility will extend beyond the physical boundaries of the Site, to the extent necessary to protect human health and the environment. Section 3004(v) does not apply to releases within the boundary of the Hanford Site.
- **RCRA Section 3008(h)**. RCRA Section 3008(h) is a broad corrective action authority that is applicable to the Hanford Site as long as RCRA interim status is maintained. It is more expansive than RCRA Section 3004(u), in that it can be used to address corrective action for any release of RCRA hazardous waste or constituents, including single-spill incidents, and can be used to address releases that migrate offsite.

5.2.3 CERCLA Past-Practice Unit

The CPP units include units that have received hazardous substances, as defined by CERCLA, irrespective of the date such hazardous substances were placed at the unit. Those waste management units that will be addressed as CPP units are so designated in Appendix C.

For the purposes of this action plan, it is necessary to distinguish between a CPP unit, a RPP unit, and a TSD unit. Any TSD unit, as defined in Section 5.2.1, will be classified as a TSD unit, rather than a CERCLA unit, even if it is investigated in conjunction with CPP units. The CPP and RPP units will be distinguished in accordance with Section 5.4.

5.3 Management of Treatment, Storage, and Disposal Units

As previously stated, TSD units are identified in Appendix B. Any additional TSD units that are subsequently identified shall be added to Appendix B in accordance with the process described in Section 12.2.

Unless closed in accordance with Sections 6.3.1 or 6.3.3, TSD units shall be permitted for either operation or postclosure care pursuant to the authorized State Dangerous Waste Program (173-303 WAC) and HSWA. Prior to permitting or closure of TSD units, DOE shall achieve (in accordance with the work schedule contained in Appendix D) and maintain compliance with applicable interim status requirements. All TSD units that undergo closure, irrespective of permit status, shall be closed pursuant to the authorized State Dangerous Waste Program in accordance with 173-303-610 WAC.

5.4 Management of Past-Practice Units

This section describes the rationale for placing units in either a RCRA-CERCLA or a CERCLA past-practice category for corrective action as defined below. In many cases, either authority could be used with comparable results. The categories are as follows:

- The CPP units, (see Section 7.3)
- The R-CPP units, under both the authorized state corrective action program and CERCLA (see Section 7.4).

Since the Hanford Site was proposed for inclusion on the National Priorities List (NPL) (*Federal Register*, June 24, 1988), and was placed on the NPL on November 3, 1989 (*Federal Register*, October 4, 1989), the parties agree that regardless of a unit's designation as a CPP or R-CPP, all CERCLA hazardous substances and all of the wastes regulated under the State Dangerous Waste Program (173-303 WAC) shall be addressed as part of any CERCLA or RCRA-CERCLA response action.

Section 121 of CERCLA, with provision for waivers in a limited number of circumstances, requires that remedial actions attain a degree of cleanup that meets "applicable or relevant and appropriate Federal and State environmental requirements" (ARAR). Accordingly, (1) all State-only hazardous wastes will be addressed under CERCLA, and (2) RCRA standards for cleanup or TSD requirements (as well as other applicable or relevant and appropriate Federal and State regulations) will be met under a CERCLA action (See Section 7.5 for further discussion of cleanup requirements). This eliminates many discrepancies between the two programs.

All past-practice units within an operable unit will be designated as either R-CPP units, with Ecology as the lead regulatory agency, or CPP units, with either the EPA or Ecology as the lead regulatory agency (See Appendix C). The past practice process selected for each operable unit shall be sufficiently comprehensive to satisfy the technical requirements of both statutory authorities and the respective regulations. For R-CPP operable units there will be both a Corrective Action Decision under RCRA and a Record of Decision under CERCLA.

If an operable unit consists primarily of past-practice units (i.e., no TSD units or relatively insignificant TSD units), CERCLA authority will generally be used for those past-practice units. The CERCLA authority will also be used for past-practice units in which remediation of CERCLA-only materials comprises the majority of work to be done in that operable unit. In some cases Ecology will be the lead regulatory agency for remedial action under CPP authority.

The R-CPP authority will generally be used for operable units that contain significant TSD units and/or lower priority past-practice units.

Currently assigned R-CPP and CPP designations are shown in Appendix C. Further assignments will be made in accordance with Section 12.2 prior to initiation of any actions for those operable units.

The EPA and Ecology shall jointly determine whether an operable unit will be managed as an R-CPP or CPP unit. Such designation may be changed due to the discovery of additional information concerning the operable unit. If a change in management (e.g. change from R-CPP to CPP unit) is proposed after the Remedial Investigation/ Feasibility Study (RI/FS) or RCRA Facility Investigation/Corrective Measures Study (RFI/CMS) work plan, as described in Section 7.0, has been submitted to the lead regulatory agency (see Section 5.6 on discussion of lead regulatory agency), the change requires the agreement of all parties.

5.5 Treatment, Storage, and Disposal Units and Past Practice Units Interface

In some cases, TSD units are closely associated with past-practice units at the Hanford Site, either geographically or through similar processes and waste streams. Although disposition of all TSD units must be managed in accordance with Section 6.0, a procedure to coordinate the TSD unit closure and other applicable dangerous waste permitting activity with the past-practice investigation and/or remediation activity is necessary to prevent overlap and duplication of work, thereby economically and efficiently addressing the contamination. In Appendix B, selected TSD groups/units, primarily land disposal units, were initially assigned to operable units based on the criteria defined in Section 3.3.

In order to coordinate the development and implementation of closure plans for such TSD units with the investigation and remediation of closely associated past-practice units, DOE will provide Ecology with the information necessary to satisfy any outstanding closure plan requirements under WAC 173-303-610(3) in the form of one or more Coordinated Closure (CC) Proposals. Each CC Proposal will be submitted to Ecology as a permit modification request in accordance with WAC 173-303-830(4) and in conjunction with the submission of the associated past-practice document(s) to the lead regulatory agency for the operable unit, pursuant to the applicable milestone(s) set forth in Appendix D.¹

The type of information required for each CC Proposal will depend on the category of past-practice documents with which it is associated. Unless otherwise agreed to in writing by DOE and Ecology, the timing and content of each CC proposal shall be consistent with the following requirements:

1. Coordination with Proposed Plan and/or Proposed Correction Action Decision

To request the use of alternative requirements under WAC 173-303-610(1)(e), DOE must provide Ecology with a CC Proposal for the applicable TSD unit(s) in conjunction with its submission of the Proposed Plan and/or Proposed Corrective Action Decision for the associated operable unit. CC Proposals submitted in accordance with this paragraph must:

- Set forth the justification for the use of alternative requirements as required by WAC 173-303-610(1)(e)(i)–(ii);

¹ In the event that there is a conflict between the requirements of Appendix I and the requirements of this Section as applied to the Single-Shell Tank System, the requirements of Appendix I shall control.

- Identify which closure requirements are proposed to be replaced with alternative requirements and describe the alternative requirements that would apply, to the extent such information is available, as required by WAC 173-303-610(3)(a)(ix); and
- Explain how closure of the TSD unit(s) using the proposed alternative requirements will comply with the closure performance standard set forth in WAC 173-303-610(2)(a), as required by WAC 173-303-610(3)(a)(i).

2. Coordination with Remedial Design/Remedial Action Work Plan and/or Corrective Measures Implementation Work Plan

For all TSD units being closed in coordination with closely associated past-practice units, DOE must provide Ecology with a CC Proposal for the applicable TSD unit(s) in conjunction with its submission of the Remedial Design/Remedial Action Work Plan and/or Corrective Measures Implementation Work Plan for the associated operable unit. Each CC Proposal submitted in accordance with this paragraph must:

- Provide all outstanding closure information required by WAC 173-303-610(3)(a)(i)–(vii)²;
- Provide all outstanding post-closure information required by WAC 173-303-610(8)(b), as applicable; and
- If DOE has requested the use of alternative requirements for closure of the applicable TSD unit(s) under WAC 173-303-610(1)(e), provide all outstanding information required by WAC 173-303-610(3)(a)(ix).

The information contained in a CC Proposal must: (1) include all information required by the milestone and/or permit condition under which the CC Proposal is submitted, (2) be consistent with closure requirements specified elsewhere in the Hanford Site-Wide (RCRA) permit, and (3) be coordinated with the recommended remedial action(s) for the associated operable unit and any applicable post-closure care requirements. Additionally, the closure/post-closure implementation schedule will reflect an overall prioritization between closure/post-closure and other remedial activities within the subject operable unit, considering environmental protection, health and safety, availability of technology, etc.

Each CC Proposal must be structured such that RCRA closure requirements are identified as separate and distinct from the CERCLA or RCRA Corrective Action requirements contained in the past-practice document(s), and so that all applicable RCRA closure/post-closure requirements can be easily incorporated into the existing closure plan(s) for the applicable TSD unit(s) in the RCRA Permit. If at a later date TSD groups/units need to be deleted from or added to an operable unit, the procedures defined in Section 12.2 will be used.

² Because DOE does not use trust funds to establish financial assurance, WAC 173-303-610(3)(a)(viii) does not apply. In addition, if DOE has requested the use of alternative requirements for closure of the applicable TSD unit(s), the extent of information required by WAC 173-303-610(3)(a)(i)–(vii) will be determined by the scope of the Director's determination made for the applicable TSD unit(s) pursuant to WAC 173-303-610(1)(e).

Ecology, the EPA, and DOE agree that past-practice authority may provide the most efficient means for addressing mixed waste groundwater contamination plumes originating from a combination of TSD and past-practice units. However, in order to ensure that TSD units within the operable units are brought into compliance with RCRA and State hazardous waste regulations, Ecology intends, subject to part four of the Agreement, that all response or corrective actions, excluding situations where there is an imminent threat to the public health or environment as described in Section 7.2.3, will be conducted in a manner which ensures compliance with the technical requirements of the HWMA (Chapter 70.105 RCW and its implementation regulations). In any case, the parties agree that CERCLA remedial actions and, as appropriate, HSWA corrective measures will comply with ARARs.

5.6 Lead Regulatory Agency Concept

The EPA and Ecology have selected a lead regulatory agency approach to minimize duplication of effort and maximize productivity. Either the EPA or Ecology will be the lead regulatory agency for each operable unit, TSD group/unit or milestone.

The lead regulatory agency for a specific operable unit, TSD group/unit or milestone will be responsible for overseeing the activities covered by this action plan that relate to the successful completion of that milestone or activities at that operable unit or TSD group/unit, ensuring that all applicable requirements are met. However, the EPA and Ecology retain their respective legal authorities. The lead regulatory agency shall brief and obtain any necessary approvals from the agency with regulatory authority in accordance with the EPA/Ecology MOU. Regulatory oversight activity, including preparation of responses to documents submitted by the DOE, will be performed by the lead regulatory agency for each operable unit, TSD group/unit or milestone. The non-lead regulatory agency will not assign staff to provide any oversight or support.

The assignment of the lead regulatory agency for an operable unit, TSD group/unit or milestone will be based on the following criteria.

- The EPA will generally be the lead regulatory agency when the operable unit, TSD group/unit or milestone involves:
 - Operable units that contain no TSD units or that contain low-priority TSD units
 - Operable units that contain primarily CERCLA-only materials.
- Ecology will generally be the lead regulatory agency when the operable unit, TSD group/unit or milestone involves:
 - Operable units that consist of major TSD units, with limited past-practice units
 - Operable units that contain higher priority TSD units and lower priority past-practice units.
- Ecology will be lead regulatory agency for all TSD units and TSD groups.

In some cases, the above criteria may overlap, such that either the EPA or Ecology could be assigned as the lead regulatory agency. In this situation, other criteria would be used, such as available resources to undertake additional work in a timely manner, the designation and characteristics of an adjoining operable unit, or whether the characteristics of a given operable unit are similar to the characteristics of another operable unit that has already been managed by either agency.

Currently assigned lead regulatory agency designations are shown in Appendix C for each operable unit. Additional assignments will be made in accordance with Section 12.0 prior to any action on the operable unit, TSD group/unit or milestone. The lead regulatory agency shall maintain its role through completion of all required actions.

The decision as to which regulatory agency will assume the lead role will be a joint determination by the EPA and Ecology (see Paragraph 88 of this Agreement). Such determinations are subject to change based on additional information subsequently discovered concerning an operable unit, or for any other reason, as agreed upon by the EPA and Ecology. The parties intend that once the lead regulatory agency has been assigned, the lead regulatory agency designation will not change except for an extreme circumstance.

5.7 Integration with the National Environmental Policy Act (NEPA)

The purpose of the NEPA requirements is to ensure that potential environmental impacts of investigation and cleanup activity are assessed. These assessments, when determined to be required, will be made primarily as part of the CERCLA response action and RCRA corrective action processes. These processes will be supplemented, as necessary, to ensure compliance with NEPA requirements.