

**BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

IN THE MATTER OF BILL GREEN	}	
RICHLAND, WASHINGTON	}	
	}	
	}	PERMIT NO.: 00-05-006,
THE HANFORD SITE	}	RENEWAL 3
TITLE V OPERATING PERMIT	}	
RENEWAL 3, ISSUED BY THE	}	
WASHINGTON STATE	}	
DEPARTMENT OF ECOLOGY	}	

PETITION REQUESTING THE ADMINISTRATOR OBJECT TO THE
U.S. DEPARTMENT OF ENERGY HANFORD SITE,
TITLE V OPERATING PERMIT,
NUMBER 00-05-006, RENEWAL 3

Pursuant to *Clean Air Act* (CAA) § 505 (b)(2) [42 U.S.C. 7661d (b)(2)] and 40 Code of Federal Regulations (C.F.R.) 70.8(d) Bill Green (Petitioner) hereby petitions the Administrator of the United States Environmental Protection Agency (EPA) to object to the Hanford Site Title V Operating Permit, Number 00-05-006, Renewal 3 (Renewal 3). As detailed below, this petition expresses 4 (four) objections. Petitioner’s 4 (four) objections are:

1. Ecology exceeded its authority when it developed and requires use of a new monitoring method, unapproved by EPA, for determining compliance with emission limits for federally-enforceable requirements, contrary to 40 C.F.R. 61.04 (c)(10) n.16;
2. Federally-enforceable conditions for some emissions units in Renewal 3 do not contain emissions limits, only references to other documents where these emission limits are located, contrary to CAA § 504(a) [42 U.S.C. 7661c (a)] and 40 C.F.R. 70.6 (a)(1);
3. Ecology did not include in Renewal 3 applicable requirements from Administrative Order of Correction (AO) Number 20030006 for control of fugitive dust from the Marshalling Yard, now called the Material Handling Facility (MHF), contrary to 40 C.F.R. 70.7 (a)(1)(iv), 40 C.F.R. 70.6 (a)(1), and EPA’s determination ‘that CAA-related requirements in Administrative Orders are appropriately treated as “applicable requirements” and must be included in title v permits’; and
4. When Ecology based some Renewal 3 terms and conditions on information supplied verbally by the Permittee, and information destroyed before public review, the public was deprived the opportunity to review information used in the permitting process, contrary to 40 C.F.R. 70.7 (h)(2)

These well-supported objections plus exhibits and relevant binding authority combine to demonstrate the public review process preceding issuance of the Permit did not comply with the CAA and 40 C.F.R. 70 (Part 70). Therefore, the Administrator is obligated to object.

1.0 Scope of Renewal 3

Ecology defined the substantive scope of Renewal 3 in its public announcement as follows:

“The State’s regulations for control of air emissions limit the duration of an AOP to five years. The current Hanford Site AOP expires on March 31, 2018. A new AOP is needed as the Hanford Site still has air emissions.”

(Department of Ecology, State of Washington, *Hanford Site Air Operating Permit Renewal 3 Public Comment Period*, Pub. No: 17-05-015, Dec. 2017. Available at: <https://ecology.wa.gov/DOE/files/24/24da0ec7-d304-4e6d-8643-829b8b5560d2.pdf>)

In a federal Register notice, EPA states “[w]hen a title V permit is renewed, all aspects of the title V permit are subject to public comment and petition as part of the process to issue a renewal permit.” 81 Fed. Reg. 57822, 57829, Aug. 24, 2018. Thus, the scope of any renewal is very broad.

The practical scope of public review and this petition are limited by the scope of Ecology’s revision¹. Because the permitting action is a 5-year renewal required by 40 C.F.R 70.6 (a)(2), the practical scope is broad, and pertains to all applicable requirements in the draft permit with regard to compliance with requirements of Part 70. A renewal of a permit is subject to the same issuance process required for issuance of the initial permit, in accordance with 40 C.F.R.70.7 (c).

2.0 General Chronology

September 12, 2017	Permittee submits application DOE/RL-2017-31 Revision 0, via letter 17-ESQ-0092, dated Aug. 25, 2017. Stamped received by Ecology on Sep. 12, 2017.
November 7, 2017	Ecology announces permittee’s application to be complete in letter 17-NWP-163, dated Nov. 7, 2017.
December 8, 2017	Ecology’s Air Operating Permit Register (Volume 18, Number 23) containing the following notation: “None received”.
December 11, 2017	December 8, 2017, Air Operating Permit Register changed to contain an announcement by Ecology Nuclear Waste Program (NWP) a public comment period for Renewal 3, opening on Dec. 17, 2017, and closing on Feb. 16, 2018.

¹ “Public objections to a draft permit, permit revision, or permit renewal must be germane to the applicable requirements implicated by the permit action in question. For example, objections addressed to portions of an existing permit that would not in any way be affected by a proposed permit revision would not be germane. Public comments will only be germane if they address whether the draft permit is consistent with applicable requirements or requirements of part 70.” 57 Fed. Reg. 32250, 32290/3 (July 21, 1992).

December 17, 2017	Public announcement appears in Sunday edition of the local newspaper opening the public comment period. (<i>See also Ecology publication number 17-05-015.</i>)
January 10, 2018	Ecology announces a public comment period for renewal of Hanford's AOP in Permit Register dated Jan. 10, 2018, (Vol. 19, No. 1). The review period runs from Jan. 14 through Mar. 16, 2018. No additional information provided to support public review.
January 14, 2018	Ecology announced it was extending the public comment period for Renewal 3 of Hanford's AOP until Mar. 16, 2018, in the classified section of the Tri-City Herald.
March 13, 2018	Petitioner's initial 143 public review comments were received by Ecology.
March 16, 2018	Public comment period extended to Apr. 6, 2018.
March 20, 2018	Petitioner emailed Comment 144 to permitting authority.
April 6, 2018	Close of public comment period.
July 10, 2018	Announced re-opening of public comment from July 22, 2018 through August 24, 2018. Purpose: ". . . to provide some additional supporting documentation for public review. There are no changes to the draft permit documents."
August 1, 2018	Comment period extended to September 14, 2018. Electronic access to additional supporting documentation made available.
September 13, 2018	Petitioner's public review comments (145-151) received by Ecology.
September 14, 2018	Close of public comment period.
October 15, 2018	EPA issues order granting petition for objection: <i>In the Matter of U.S. Dept. of Energy-Hanford Operations</i> , Order on Petition No. X-2016-13. Directing Ecology to provide the public with all relevant supporting materials for the permitting decision, including information used by Health to implement Subpart H.
May 16, 2019	Proposed AOP transmitted to EPA for 45-day review pursuant to 40 C.F.R. 70.8, via Ecology letter 19-NWP-082
June 10, 2019	Petitioner's certified letter to K. McFadden, EPA Region 10 (7018 3090 0000 2792 6705): "RE: Proposed Hanford Air Operating Permit (AOP) No. 00-05-006, Renewal 3". Request for EPA objection under 40 C.F.R. 70.8 because Ecology failed to abide by EPA's order dated Oct. 15, 2018.
July 6, 2019	End of EPA 45-day review period. EPA did not object to issuance of Renewal 3.
July 15, 2019	Ecology issues proposed Renewal 3 as final with an effective date of 8/01/2019.

July 18, 2019	Petitioner files this petition with EPA Administrator Wheeler, with service to Permittee and Ecology.
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3.0 Objections

Petitioner respectfully requests the Administrator discharge his duty under CAA § 505(b)(2) [42 U.S.C. 7661d (b)(2)] based on the following objections:

- Contrary to 40 C.F.R. 61.04 (c)(10) n.16, Ecology exceeded its authority when it developed and requires use of a new monitoring method, unapproved by EPA, for determining compliance with emission limits for federally-enforceable requirements.
- Contrary to CAA § 504(a) [42 U.S.C. 7661c (a)] and 40 C.F.R. 70.6 (a)(1) federally-enforceable conditions for some emissions units in Renewal 3 do not contain emissions limits, only references to other documents where these emission limits are located.
- Contrary to 40 C.F.R. 70.7 (a)(1)(iv), 40 C.F.R. 70.6 (a)(1), and EPA’s determination ‘that CAA-related requirements in Administrative Orders are appropriately treated as “applicable requirements” and must be included in title v permits’, Ecology did not include in the Permit applicable requirements from Administrative Order of Correction (AO) Number 20030006 for control of fugitive dust from the Marshalling Yard, now called the Material Handling Facility (MHF).
- Contrary to 40 C.F.R. 70.7 (h)(2), Ecology based some Renewal 3 terms and conditions on information supplied verbally by the Permittee and information destroyed before public review, thereby depriving the public the opportunity to review information used in the permitting process.

Forty (40) C.F.R. 70.8 (d) requires a petition be “...based only on objections to the permit that were raised with reasonable specificity during the public comment period . . . , or unless the grounds for such objection arose after such period.” 40 C.F.R. 70.8(d). The term “reasonable specificity” is not defined. To address the requirement of “reasonable specificity” Petitioner cites to and quotes from the comment giving rise to the particular objection.

3.1 Objection 1

Contrary to 40 C.F.R. 61.04 (c)(10) n.16, Ecology exceeded its authority when it developed and requires use of a new monitoring method, unapproved by EPA, for determining compliance with emission limits for federally-enforceable requirements.

Objection 1 regards Ecology’s development and mandated use of ratios to determine compliance with emission limits. This ratio method appears in Ecology Order DE11NWP-001, Revision 4, (Order, included as Exhibit 4) which appears on page 96 of the Hanford Site Air Operating Permit, Renewal 3, Number 00-05-06 (Renewal 3). The ratio method is used as a test

method and as part of the periodic monitoring requirement for determining compliance with conditions regulating emissions of volatile organic compounds (VOCs) on page 97 of Renewal 3 and for determining compliance with the condition regulating toxic air pollutants (TAPs) on pages 98-99. Renewal 3 shows both the VOC condition and the TAP condition as federally-enforceable (“State-Only: No.”). Objection 1 also asserts the Ratio Method is insufficient to assure compliance with permit terms and conditions. *See* 40 CFR 70.6(c)(1).

The emissions addressed in this objection are gases and vapors that freely pass through high efficiency particulate air (HEPA) filters². HEPA filters are the control technology used on Tank Farms tanks, both double shell and single shell³. Had Ecology required a more effective control technology, the basis for this objection would likely not exist.⁴

Objection 1 is raised with “reasonable specificity” primarily in Petitioner’s comment 55⁵, but also in Petitioner’s comment 145, parts a & b⁶.

Petitioner’s comment 55 reads, in part:

Comment 55: [draft Attachment 1, 1.4.32 Discharge Point: 241-AP, 241-SY, and 241-AY/AZ Ventilation, p. 103 to 116]: The method used by Ecology in Order DE11NWP-001, Rev. 4 (Order) estimates emissions of dimethyl mercury (and other regulated tank air pollutants) by using measured emissions of ammonia and applying a previously-established ratio between the two¹. While sampling and analysis of dimethyl mercury (DMM) and ammonia do appear to require using EPA protocols and methods, it does not appear EPA has approved that portion of Ecology’s method involving the establishment and use of ratios. Nor does it appear the ratio part of the method was vetted by EPA, or by members of the scientific community, or by contractors employed by Ecology, or by other Ecology staff² before it was imposed by this Order. Absent proper vetting, establishment of method detection limits³ and approval by EPA, Ecology’s use of the ratio method to demonstrate compliance with federally-enforceable emissions limits should be discontinued. EPA seems to have never approved use of ratios as an analytical method for measuring any non-radionuclide HAP, including mercury, DMM, N-Nitrosodimethylamine, and chromium hexavalent: soluble, except chromic trioxide. Nor does this use of ratios to infer compliance with emission limits for TAPs seem to appear in Ecology’s “Source Test Manual - Procedures for Compliance Testing”. [see WAC 173-400-105 (4)].

...

Revise to:

1. provide actual and enforceable emission limits;

² “The tanks vent head space gases and vapors through particulate filters that prevent radio nuclides [*sic*] from reaching the atmosphere, while allowing the gases and vapors free passage.” W.R. Wilmarth et al., *Hanford Tank Vapor Assessment Report*, SRNL-RP-2014-00791, Oct. 30, 2014 at 118. Exhibit 1, Enclosure 2, p.118

³ “SSTs [single shell tank] are passively vented, meaning that the vents are open and not equipped with any type of mechanical exhauster. There is typically a single passive vent at the top of a riser which extends from the dome roof of the tank up through the pit to an elevation a few feet above the top of the cover blocks. There are high-efficiency particulate air (HEPA) filters at the top of the vent risers to control radioactive contaminants while allowing gases and vapors to readily pass through. . . . The tank head space and the annulus between the inner and outer shells of the DSTs are actively vented, with HEPA filters . . .” *Id.* at 22

⁴ For a discussion of a more effective control technology see: *Review and Comments on Washington State Department of Ecology Requirements for the Measurement and Control of Emissions from Hanford’s Nuclear Waste Storage Tanks*, Henry S. Cole, Ph.D., Henry S. Cole & Associates, Inc., Feb. 2017, Exhibit 1, pgs. 214-15, 218, 228, and Section 5 beginning on p. 238 of 248.

⁵ *See* Exhibit 1, Enclosure 1, comment 55.

⁶ *See* Exhibit 2, comment 145, parts a & b.

2. provide: a) monitoring that is sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the applicable requirement [40 C.F.R. 70.6 (a)(3)(i)(B), WAC 173-401-615(1)(b)];
b) monitoring that captures all sources of covered emissions including those attributed to bolus events and fugitive emissions; c) monitoring that recognizes and addresses the unstable and dynamic emission-generating environment within the tanks; d) monitoring that addresses the orders of magnitude increases in emissions resulting from waste-disturbing activities; e) monitoring that considers the impact of differing physical and chemical properties among the TAPs of concern; and f) monitoring that is vetted by the scientific community and **approved by EPA**;
3. provide a method for which there is a method detection limit; and
4. provide monitoring frequencies sufficient to capture emissions of all TAPs under all anticipated project conditions, and re-start public review.

1 “*The permit was based upon the highest measured value for each pollutant emitted from all **quiescent** tank sampling events. Ecology used these values to establish the ratio between the emissions of all tank emission compounds. This ratio was the basis for estimating compound-by-compound emissions values from dispersion modeling. . . . Using this ratio, it is possible to estimate the emissions of any emitted compound if the emissions of just one compound has been measured.*” (emphasis added)

Response to Comments, Air Permit Revision to Facilitate Waste, Retrieval from Hanford Tank AY-102, January 24 – February 23, 2016, Summary of a public comment period and responses to comments, Dept. of Ecology, State of Washington, Pub. No. 16-05-005, Mar. 2016, p.18.[⁷]

2 Response to Public Records Act (RCW 42.56) request (PDTs 35933) dated Aug. 12, 2016.

3 The method detection limit (MDL) is defined as the minimum concentration of a substance that can be measured and reported with 99% confidence. <https://www.epa.gov/cwa-methods/method-detection-limit-frequent-questions>

(emphasis added) Exhibit 1, Enclosure 1, comment 55.

Please note, the phrase enclosed in parenthesis above “(and other regulated tank air pollutants)” includes VOCs⁸.

Petitioner’s comment 145 a & b reads, in part:

Comment 145: [draft Attachment 1, 1.4.32 Discharge Point: 241-AP, 241-SY, and 241-AY/AZ Ventilation, pp. 103 to 116; also refer to comments 55 and 144; baseline assessments pp. 107 & 113 of draft Attachment 1]:

a) Comment 55 addresses, in part, the use of ratios to estimate the quantity of various regulated air pollutants in emissions from Hanford’s tank farm tanks. The ratio method uses the measured amount of ammonia in the emissions from quiescent tanks, then applies a preestablished ratio between ammonia and the other pollutant of concern to estimate the quantity of that other pollutant in the tank emissions.

...

Part of Comment 144 addresses creation of new operating limits whereby the ammonia emission limit is maintained by a combination of decreasing the exhaust fan rate (in scfm) and increasing the ammonia concentration limit (in ppm). Both the establishment and use of ratios

⁷ Page enclosed in Exhibit 5 to this petition. Exhibit 5, p. 18 (15/15). Also available at: <https://fortress.wa.gov/ecy/publications/documents/1605005.pdf>

⁸ “Regulated air pollutant means the following: (1) Nitrogen oxides or any volatile organic compounds;” 40 C.F.R. 70.2

and maintaining ammonia emission limits by adjusting only fan exhaust rates and headspace concentration rely on headspace gases being homogeneous. However, there is no such requirement.

Require tank headspace gases be homogenous and require monitoring sufficient to verify these tank headspace gases remain homogenous over time.

b) Baseline assessments for the subject discharge points are addressed on pages 107 and 113 of draft Attachment 1. The concept of a baseline and the establishment of a baseline for tank emissions rely on those emissions being homogenous, in addition to an emission formation environment within tanks that is in steady state. [The term “steady state” is defined as: “a system, operation, mixture, rate, etc. that does not change with time or that maintains a state of relative equilibrium even after undergoing fluctuations or transformations” (*see*: <http://www.yourdictionary.com/steady-state>).] Even though a reliable baseline cannot be established absent a homogenous mixture of headspace gases and a steady state emission formation environment within the tanks, there is no requirement for either.

Require the emission formation environment within the tanks be in steady state and that the gases within the tank headspace be homogenous. Also, provide monitoring sufficient to demonstrate continuous compliance with these requirements.

Exhibit 2, comment 145 a & b

Also implicated in this objection is Ecology’s failure to establish emissions limits based upon all HAPs contained in the subject emissions. Overlooked are all emissions from radioactive isotopes of regulated HAPs emitted and all radioactive vapors and gases emitted. This part of the objection is raised with “reasonable specificity”, primarily in Petitioner’s comment 4. Exhibit 1, Enclosure 1, comment 4. Comment 4 reads, in part:

Comment 4: [draft Renewal 3, general: permit organization - underestimated risk]:

...

Overlooked in separately determining public risk from non-radioactive emissions alone and from radionuclide emissions alone, are the “. . . potential additive and synergistic effects of radioactive and non-radioactive releases. These factors dictate that greater precaution be applied regarding the designation of emission limits and requirements for monitoring and control technologies.”¹

¹ Cole Report, *Enclosure 3*, p. 2 [the “Cole Report” is: *Review and Comments on Washington State Department of Ecology Requirements for the Measurement and Control of Emissions from Hanford's Nuclear Waste Storage Tanks*, Henry S. Cole, Ph.D., Henry S. Cole & Associates, Inc., Feb. 2017. Included as *Enclosure 3*.]

Exhibit 1, Enclosure 1, comment 4

3.1.1 Requirements

Authorities not delegated to Ecology by EPA appear in 40 C.F.R 61.04 (c)(10), footnote 16 to the table titled “DELEGATION STATUS FOR PART 61 STANDARDS—REGION 10”. Footnote 16 from this table reads: “16. General Provisions Authorities which are not

delegated include: §§ 61.04(b)⁹; 61.12(d)(1)¹⁰; 61.13(h)(1)(ii)¹¹ for approval of major alternatives to test methods; § 61.14(g)(1)(ii)¹² for approval of major alternatives to monitoring; § 61.16¹³; § 61.53(c)(4)¹⁴; and any sections in the subparts pertaining to approval of alternative standards (i.e., alternative means of emission limitations), or approval of major alternatives to test methods or monitoring. For definitions of minor, intermediate, and major alternatives or changes to test methods and monitoring, see 40 CFR 63.90.”

[40 FR 18170, Apr. 25, 1975], [Footnotes to regulatory language added.]

With respect to monitoring, Part 70 requires an AOP (title V permit), in part:

- “Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit” 40 C.F.R. 70.6 (a)(3)(i)(B)
- “All part 70 permits shall contain the following elements with respect to compliance: (1) Consistent with paragraph (a)(3) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.” 40 C.F.R 70.6 (c)

3.1.2 Ecology’s ratio monitoring method

In a published document, Ecology describes its Ratio Method, as follows:

*“The permit was based upon the highest measured value for each pollutant emitted from all **quiescent** tank sampling events. Ecology used these values to establish the ratio between the emissions of all tank*

⁹) Section 112(d) of the Act directs the Administrator to delegate to each State, when appropriate, the authority to implement and enforce national emission standards for hazardous air pollutants for stationary sources located in such State. If the authority to implement and enforce a standard under this part has been delegated to a State, all information required to be submitted to EPA under paragraph (a) of this section shall also be submitted to the appropriate State agency (provided, that each specific delegation may exempt sources from a certain Federal or State reporting requirement). The Administrator may permit all or some of the information to be submitted to the appropriate State agency only, instead of to EPA and the State agency. If acceptable to both the Administrator and the owner or operator of a source, notifications and reports may be submitted on electronic media.

¹⁰ If, in the Administrator’s judgment, an alternative means of emission limitation will achieve a reduction in emissions of a pollutant from a source at least equivalent to the reduction in emissions of that pollutant from that source achieved under any design, equipment, work practice or operational standard, the Administrator will publish in the Federal Register a notice permitting the use of the alternative means for purposes of compliance with the standard. The notice will restrict the permission to the source(s) or category(ies) of sources on which the alternative means will achieve equivalent emission reductions. The notice may condition permission on requirements related to the operation and maintenance of the alternative means.

¹¹ Emission tests shall be conducted as set forth in this section, the applicable subpart and appendix B unless the Administrator - (ii) Approves the use of an alternative method;

¹² Monitoring shall be conducted as set forth in this section and the applicable subpart unless the Administrator - (ii) Approves the use of alternatives to any monitoring requirements or procedures.

¹³ The availability to the public of information provided to, or otherwise obtained by, the Administrator under this part shall be governed by part 2 of this chapter.

¹⁴ Mercury chlor-alkali plants - cell room ventilation system. An owner or operator may carry out approved design, maintenance, and housekeeping practices. A list of approved practices is provided in appendix A of “Review of National Emission Standards for Mercury,” EPA-450/3-84-014a, December 1984. Copies are available from EPA’s Central Docket Section, Docket item number A-84-41, III-B-1.

emission compounds. This ratio was the basis for estimating compound-by-compound emissions values from dispersion modeling. . . . Using this ratio, it is possible to estimate the emissions of any emitted compound if the emissions of just one compound has been measured.” (emphasis added)

Response to Comments, Air Permit Revision to Facilitate Waste, Retrieval from Hanford Tank AY-102, January 24 – February 23, 2016, Summary of a public comment period and responses to comments, Dept. of Ecology, State of Washington, Pub. No. 16-05-005, Mar. 2016, p.18., Exhibit 5, p.18 (15/15). Available at: <https://fortress.wa.gov/ecy/publications/documents/1605005.pdf>

In this same document and on the same page (*see Exhibit 5, p. 15/15*), Ecology also portrays its Ratio Method as purely mathematical, ignoring “*molecular structure, associated physical properties, atmospheric conditions, etc.*”:

“This has nothing to do with molecular structure, associated physical properties, atmospheric conditions, etc. It is strictly the ratio between ammonia and dimethyl mercury in the ‘worse case’ tank. In fact, the emission ratios for all compounds were established in the dispersion modeling and allow for the use of ammonia as a representative compound.” Id.

Headspace sampling used to establish the initial ratios and all subsequent headspace sampling used to determine compliance occurs in an environment that is not homogenous, and, according to experts hired by one of the Permittee’s contractors, is constantly changing. In its response to public comments, Ecology agrees stating:

The Hanford Site tank waste is not a homogenous waste form. It is a mixture of solids, sludges, liquids, vapor pockets, solvents, radioactive isotopes, metals, and other chemicals. It is impractical to require tank headspace gasses be homogenous.

[Exhibit 3, Ecology response to comment I-10-1 b), Petitioner’s comment 145 b) above] Experts add to this description, writing, in a federally-funded report:

“The [tank] waste material is radioactive, continually generating heat, continually catalyzing both known and unknown chemical reactions in all layers, and continually generating gases and known and unknown chemical products that are continuously created and destroyed via chemical, thermal, radiocatalytic and radiolytic processes in all layers.”

W.R. Wilmarth et al., *Hanford Tank Vapor Assessment Report*, SRNL-RP-2014-00791, Oct. 30, 2014 at 2. Exhibit 1, Enclosure 2, p.2 (This federally-funded report was prepared for a Hanford Site contractor, by an independent panel of experts, commissioned through the Savannah River National Laboratory. Also available at: http://srnl.doe.gov/documents/Hanford_TVAT_Report_2014-10-30-FINAL.pdf)

Given this continuously-changing emission formation environment, it is highly unlikely sampling results would remain accurate for any significant period of time after the sample was collected. Furthermore, samples taken from an environment that is not homogenous and is “continually generating gases and known and unknown chemical products that are continuously created and destroyed via chemical, thermal, radiocatalytic and radiolytic processes” can never be representative.

Headspace gases and vapors freely pass through high efficiency particulate air (HEPA)

filters¹⁵. HEPA filters are the control technology used on Tank Farms tanks, both double shell and single shell¹⁶.

In Petitioner's comment 55 above, petitioner requests, in part, the Ratio Monitoring Method be replaced with a method that has a *Method Detection Limit*¹⁷ (MDL) ("3. provide a method for which there is a method detection limit"¹⁸). Ecology responds by addressing MDLs for ammonia monitoring and for methods used to measure other regulated air pollutants of concern.

"The method detection limit for ammonia monitoring during waste disturbing activities would be dependent on the device used. The approval order also requires confirmatory samples of ammonia, dimethyl mercury, n-nitrosodimethylamine, and chromium hexavalent: soluble, except chromic trioxide to ensure the permitted ammonia concentration. These samples must be collected following EPA approved procedures, or alternate procedures approved by Ecology, which would identify the method detection limits. The permittee, USDOE, is then required to evaluate this data to determine if the constituents of the ammonia concentration limits provided sufficient indication of emission of other toxic air pollutants during these waste disturbing activities (i.e., the ratio determined from the application material was maintained)." (emphasis is mine) (Exhibit 3, Ecology response to comment I-7-55.)

Ecology's response confuses an MDL for application of the Ratio Method with MDLs for sampling methods applicable to specific pollutants of concern. Under the Ratio Monitoring Method, once the various ratios between ammonia and other pollutants of concern have been established, or adjusted, only ammonia is monitored. After establishment of the various ratios, values for other pollutants of concern are inferred (not directly measured) by applying the previously-established ratio to the measured value of ammonia. **It is the application of the Ratio Method that does not have a Method Detection Limit.** As noted in footnote 3 to Petitioner's comment 55 above, "[t]he method detection limit (MDL) is defined as the minimum concentration of a substance that can be measured and reported with 99% confidence. <https://www.epa.gov/cwa-methods/method-detection-limit-frequent-questions>". Ecology doesn't rebut the allegation the Ratio Method lacks an MDL.

Ecology's Ratio Method also overlooks implicated emissions of radioactive gases and vapors when Ecology set emission limits. As noted in Petitioner's comment 4 above, Ecology overlooked the risk to the public from the "potential additive and synergistic effects of radioactive and non-radioactive releases." Ecology responds to this concern stating, in part:

". . . [R]adiological components in sufficient quantity to create appreciable synergistic effects with chemicals are only present together in the single shell and double shell mixed waste tanks and related tank waste streams at Hanford. The underlying requirements (e.g. notice of construction approval orders and radiological air emission licenses) for discharge locations emitting Hanford tank waste

¹⁵ "The tanks vent head space gases and vapors through particulate filters that prevent radio nuclides [*sic*] from reaching the atmosphere, while allowing the gases and vapors free passage." W.R. Wilmarth et al., *Hanford Tank Vapor Assessment Report*, SRNL-RP-2014-00791, Oct. 30, 2014 at 118. Exhibit 1, Enclosure 2, p.118

¹⁶ "SSTs [single shell tank] are passively vented, meaning that the vents are open and not equipped with any type of mechanical exhauster. There is typically a single passive vent at the top of a riser which extends from the dome roof of the tank up through the pit to an elevation a few feet above the top of the cover blocks. There are high-efficiency particulate air (HEPA) filters at the top of the vent risers to control radioactive contaminants while allowing gases and vapors to readily pass through. . . . The tank head space and the annulus between the inner and outer shells of the DSTs are actively vented, with HEPA filters . . ." *Id.* at 22

¹⁷ "The method detection limit (MDL) is defined as the minimum concentration of a substance that can be measured and reported with 99% confidence. <https://www.epa.gov/cwa-methods/method-detection-limit-frequent-questions>".

¹⁸ Exhibit 1, enclosure 1, comment 55.

utilized tank head space samples for determining the source term. Thus, the samples collected and used in the permitting process have already accounted for these potential synergistic interactions.”

Exhibit 3, response to comment I-7-4

According to the Statement of Basis (*Standard Terms and General Conditions*) for proposed Renewal 3, Ecology regulates non-radioactive toxic and criteria air emissions in Attachment 1 of Renewal 3, while, under separate statutory and regulatory authority, the Washington State Department of Health (Health) regulates radionuclide emissions in Attachment 2 of Renewal 3¹⁹. Therefore, emissions of non-radionuclides and emissions of radionuclides are regulated by separate state agencies under separate statutory and regulatory authorities in separate attachments to Renewal 3. Because of this regulatory dichotomy, no order issued by Ecology and no license issued by Health considers the synergistic and/or additive effects of a combination of both non-radionuclide emissions and radionuclide emissions.

Thus, Ecology’s Ratio Method was created using emission measurements from tanks not undergoing waste-disturbing activities (quiescent) and from a radiogenic emission formation environment that is not homogenous, is continuously changing, and is never in steady-state. Samples of emissions extracted from such an emission formation environment can never be representative. The Ratio Method does not consider any chemical or any physical properties which are unique to every compound, nor does it consider any atmospheric conditions. The Ratio Method has no MDL. Ecology considers its approach is conservative because the ratios were created using emissions data for non-radionuclide pollutants from the “worst case” tank, and permitting radionuclides and non-radionuclides separately accounts for any additive or for any synergistic effects.

Section 3.5, a portion of which appears below, describes how application of the Ratio Method is to be modified to address huge increases in emissions during waste-disturbing activities. Reportedly, emissions from tanks can increase 1,000-times (3 orders of magnitude or 10³) during waste-disturbing activities.

“We understand that the transient spikes were reported to be as much as three orders of magnitude greater than the baseline quiescent levels.”

Exhibit 1, Enclosure 2, page 26 of 153

In section 3.5.2 of the Order (Exhibit 4) Ecology specifies how the Ratio Method will be adjusted to accommodate massive increases in emissions resulting from waste-disturbing activities. Section 3.5.2 “Adjustment of Ammonia Emission Limits” states, in part:

“The establishment of the ammonia concentration limit in Table 6 was calculated from the best currently available data on tank waste characteristics and engineering judgment on actual tank emission activity compared to theoretical tank emission activity. To confirm and then adjust the emission limits as actual performance data is collected. . .” . . . [3.5.2.3] If the sampled ratio would result in an increased emission limit in Table 6, the permittee will need to specifically request for the increased emission limit to be entered into Table 6. . . The new emission limit will be effective on the date entered in Table 6. . .”

¹⁹ “Ecology regulates non-radioactive toxic and criteria air emissions under the authority of 42 United States Code 7401, et seq, RCW 70.94, and WAC 173-401; Health regulates radioactive air emissions under the authority of RCW 70.92, WAC 173-480, and WAC 246-247. . .”, STATEMENT OF BASIS, HANFORD SITE AIR OPERATING PERMIT, NO. 00-05-006 RENEWAL 3, STATE OF WASHINGTON DEPARTMENT OF ECOLOGY, STATE OF WASHINGTON DEPARTMENT OF HEALTH, BENTON CLEAN AIR AGENCY, Statement of Basis for proposed Renewal 3, at iii

(emphasis is mine) Exhibit 4, Section 3.5.2

Because ammonia is used, during waste disturbing activities, as a surrogate for VOCs, dimethyl mercury, n-Nitrosodimethylamine, and all TAPs, as submitted in the Permittee's Notice of Construction Application, (conditions, 1.1.2, 1.1.3, 1.1.4, 1.1.5, and 1.1.6) any increase in Table 6 ammonia limits is also an increase in the limits for VOCs, dimethyl mercury, n-Nitrosodimethylamine, and all TAPs, as submitted in the Permittee's Notice of Construction Application. Thus, it appears there are NO fixed emission limits under this Order. All the Permittee need do is notify Ecology "electronically (e.g. email)" after it has exceeded a Table 6 "emission limit". Section 3.5.2.2.2 requires the permittee to evaluate emissions data to determine "[i]f ammonia limits provided sufficient indicator for emissions of other toxic air pollutants.". Exhibit 4, Section 3.5.2.2.2. Such a requirement certainly indicates Ecology lacks confidence in the reliability and viability of its Ratio Method. "Sufficient indicator" as an evaluation criterion represents a huge range of acceptability, particularly when its left up to the permittee's discretion.

Thus, Ecology's Ratio Method, which mathematically describes a straight-line relationship, is force-fit to attempt to accurately predict emissions of non-radionuclide pollutants in an exothermic, radiocatalytic, and radiolytic environment where emissions of these non-radionuclide pollutants increase exponentially resulting in spikes up to 1,000-fold above quiescent levels.

3.1.3 Ecology requires use of Ratio Monitoring

Section 3.0 of Ecology's Order DE11NWP-001, Revision 4²⁰ (Order) addresses various aspects of required emission monitoring. The Order is enclosed as Exhibit 4. Section 3.5 of the Order reads, as follows:

3.5 Ammonia Monitoring as Indicator Compound for TAPs During Solids Mixing, Disturbing Bulk Tank Solids, Removal of Enough Supernatant to Potentially Create a Gas Release Event, or Waste Feed Delivery Operations to the WTP

Ammonia shall be monitored as an indicator for compliance with TAP emission limits during solids mixing, disturbing bulk tank solids, removal of enough supernatant to potentially create a gas release event, or Waste Feed Delivery operations to the WTP as it can be measured near real time, is readily emitted by all tank farm exhausters and the rate of ammonia release is expected to change (increase) with tank waste solids disturbances. A maximum concentration of ammonia in part per million (ppm) by volume of ammonia emitted will be used as an indicator for compliance with release rates of TAPs. The ppm value was calculated for each exhauster from the release rate of ammonia in the application. Table 6 lists the maximum allowable ammonia reading in ppm for the exhausters in the AY/AZ and AP tank farms during solids mixing, disturbing bulk tank solids, removal of enough supernatant to potentially create a gas release event, or Waste Feed Delivery operations.

Ecology must be notified within 24 hours of any reading exceeding Table 6 values. This notification can be performed electronically (e.g. email) and shall include, at a minimum, the

²⁰ "NON-RADIOACTIVE AIR EMISSIONS NOTICE OF CONSTRUCTION APPROVAL ORDER CONDITIONS AND RESTRICTIONS DE11NWP-001, REVISION 4", Washington State Dept. of Ecology, 03/03/2016. Enclosed as Exhibit 4.

reading(s) in exceedance, the exhauster system involved, and the elapsed time between compliant readings as discussed in Section 3.5.1.

Exhibit 4, NOC p. 11/30. Line numbering removed.

Approval conditions for VOC emissions contained on page 97 of *proposed* Renewal 3 require use of NOC²¹ Section 3.5 (above) to satisfy conditions for “Periodic Monitoring:”, “Test Method:”, and “Test Frequency:”.

“Periodic Monitoring: (2) During solids mixing, disturbing bulk tank solids, removal of enough supernatant to potentially create a gas release event, or Waste Feed Delivery operations to the Hanford Waste Treatment and Immobilization Plant operations compliance with Approval Condition shall be demonstrated by monitoring emissions of all TAP emission limits as described in Section 3.5.

Test Method: (2) As described in Section 3.5 during solids mixing, disturbing bulk tank solids, removal of enough supernatant to potentially create a gas release event, or Waste Feed Delivery operations to the Hanford Waste Treatment and Immobilization Plant.

Test Frequency: (2) As described in Section 3.5 during solids mixing, disturbing bulk tank solids, removal of enough supernatant to potentially create a gas release event, or Waste Feed Delivery operations to the Hanford Waste Treatment and Immobilization Plant.”

(Line numbering removed and emphasis added.) Exhibit 5, *proposed* Renewal 3, p. 97 (2/15)

Approval conditions for emission limits of all TAPs contained on page 98 of the *proposed* Renewal 3 require use of NOC Section 3.5 to satisfy conditions for “Periodic Monitoring:”.

“Test Method: (3) During solids mixing, disturbing bulk tank solids, removal of enough supernatant to potentially create a gas release event, or Waste Feed Delivery operations to the Hanford Waste Treatment Plant (WTP) operations compliance with Approval Condition 1.1.3 shall be demonstrated by monitoring emissions of all TAP emission limits as described in Section 3.5.”

(Line numbering removed and emphasis added.) Exhibit 5, *proposed* Renewal 3, p. 98 (3/15)

Ecology requires use of ratio monitoring, because Renewal 3 conditions implementing requirements for VOC, dimethyl mercury (Exhibit 5, *proposed* Renewal 3 p.101, 103; 6/15, 8/15), n-Nitrosodimethylamine (Exhibit 5, *proposed* Renewal 3, p.101-103; 6-8/15), chromium hexavalent: soluble, except chromic trioxide (Exhibit 5, *proposed* Renewal 3, p. 103; 8/15), and other TAP emission limits (Exhibit 5, *proposed* Renewal 3, p. 98; 3/15) require use of NOC Section 3.5. The title of NOC Section 3.5 is, “**Ammonia Monitoring as Indicator Compound. . .**”. See above

²¹ *Id.*

3.1.4 Argument

Petitioner's comment 55, above, informs, in part, that Ecology did not provide records requested pursuant to Washington's *Public Records Act* (RCW 42.56) regarding any request from Ecology to seek approval from EPA for its Ratio Method including any response from EPA addressing Ecology's request.

"Nor does it appear the ratio part of the method was vetted by EPA, or by members of the scientific community, or by contractors employed by Ecology, or by other Ecology staff² before it was imposed by this Order. Absent proper vetting, establishment of method detection limits³ and approval by EPA, Ecology's use of the ratio method to demonstrate compliance with federally-enforceable emissions limits should be discontinued. EPA seems to have never approved use of ratios as an analytical method for measuring any non-radionuclide HAP, including mercury, DMM, N-Nitrosodimethylamine, and chromium hexavalent: soluble, except chromic trioxide.

...

Revise to:

2. provide . . . f) monitoring that is vetted by the scientific community and approved by EPA. .

² Response to Public Records Act (RCW 42.56) request (PDS 35933) dated Aug. 12, 2016."

(Other footnotes omitted.) Exhibit 1, Enclosure 1, comment 55

Ecology responds to Petitioner's statements regarding lack of EPA approval for Ecology's Ratio Method, with a single and irrelevant sentence:

"EPA allows monitoring of surrogates as indicators for the pollutant of concern."

(emphasis is mine) Exhibit 4, Ecology response to comment I-7-55

Ecology's response does not address whether "EPA allows monitoring of surrogates as indicators for the pollutant of concern" from an environment that is never homogeneous and is never in equilibrium (i.e. steady state)²². Ecology's response also overlooks the expressed concern that Ecology had not received EPA approval to implement Ecology's Ratio Method.

In *proposed* Renewal 3, Ecology requires use of the Ratio Method for determining compliance with emission limits for VOCs, dimethyl mercury, n-Nitrosodimethylamine, and chromium hexavalent: soluble, except chromic trioxide, plus other TAPs. These emission limits and the implicated "Periodic Monitoring" and "Test Method" requirements are shown as federally-enforceable ("State-Only: No."). See Exhibit 5 to this petition. Therefore, pursuant to 40 C.F.R. 70.6 (b) these conditions are enforceable by EPA and the public.

According to authorities EPA withheld from delegation to Ecology, published in 40 C.F.R. 61.04 (c)(10) n.16, Ecology exceeded its authority when it developed and requires use of a new monitoring method (the Ratio Method), unapproved by EPA, for determining compliance with emission limits for federally-enforceable requirements.

Although there are many flaws in Ecology's Ratio Method that should receive extra scrutiny by EPA as part of any approval process, four of the more significant are: 1. The Ratio Method uses linear proportions to predict emissions of markedly disparate compounds, all of

²² "The Hanford Site tank waste is not a homogenous waste form. It is a mixture of solids, sludges, liquids, vapor pockets, solvents, radioactive isotopes, metals, and other chemicals. . . . the conservative factors used in permitting the discharge point do not require the system be homogeneous, nor at steady state." Ecology's response to comment 145 b), Exhibit 3, pgs. 135-136 of 660.

which vary exponentially at different rates as temperatures increase²³ (i.e. using linear relationships to evaluate exponential behavior); 2. Because dispersion modeling only considered non-radionuclide emissions, that modeling overlooked the additive or the synergistic impacts of radioactive gases and vapors Ecology acknowledges are present; 3. The Ratio Method overlooks “[t]he [tank] waste material is radioactive, continually generating heat, continually catalyzing both known and unknown chemical reactions in all layers, and continually generating gases and known and unknown chemical products that are continuously created and destroyed via chemical, thermal, radiocatalytic and radiolytic processes in all layers”²⁴, thus, any samples taken cannot be representative, and; 4. There is no method detection limit.

[For an evaluation of the Ratio Method see: *Review and Comments on Washington State Department of Ecology Requirements for the Measurement and Control of Emissions from Hanford's Nuclear Waste Storage Tanks*, Henry S. Cole, Ph.D., Henry S. Cole & Associates, Inc., Feb. 2017. Included as Exhibit 1, Enclosure 3 to this petition]

3.1.5 The Administrator must object

Based on the foregoing, Petitioner respectfully requests the Administrator follow the CAA²⁵ and case law²⁶ by objecting to Renewal 3. Ecology exceeded its authority when it developed and requires use of a new monitoring method (the Ratio Method), unapproved by EPA, for determining compliance with emission limits for federally-enforceable requirements, contrary to 40 C.F.R. 61.04 (c)(10) n.16.

Petitioner properly submitted comment 55 and others, and Ecology received Petitioner’s comments during an advertised public comment period for Renewal 3. Petitioner provides a copy of the particular C.F.R. in which EPA withholds authority from Ecology to independently develop and use major alternatives to test methods:

“General Provisions Authorities which are not delegated include: §§ 61.04(b); 61.12(d)(1); 61.13(h)(1)(ii) for approval of major alternatives to test methods; § 61.14(g)(1)(ii) for approval of major alternatives to monitoring; § 61.16; § 61.53(c)(4); and any sections in the subparts pertaining to approval of alternative standards (i.e., alternative means of emission limitations), or approval of major alternatives to test methods or monitoring.”

²³ “Emission rates are linearly proportional to vapor pressures.³⁰ Table 10 of the Tier 2 Report shows that stack temperatures for the sources modeled (Table 1) vary between 293°K and 408°K. This is significant, because the boiling point of DMHg is 369°K; at temperatures at or above the boiling point, emissions increase extremely rapidly.”, *Review and Comments on Washington State Department of Ecology Requirements for the Measurement and Control of Emissions from Hanford's Nuclear Waste Storage Tanks*, Henry S. Cole, Ph.D., Henry S. Cole & Associates, Inc., Feb. 2017. Sec. 4 (footnote omitted). Exhibit 1, Enclosure 3, Section 4

²⁴ W.R. Wilmarth et al., *Hanford Tank Vapor Assessment Report*, SRNL-RP-2014-00791, Oct. 30, 2014. at 21 (Included as *Enclosure 2* to these comments.)

²⁵ “See 42 U.S.C. § 7661d(b)(2) (providing that the EPA Administrator “shall issue an objection” if a permit is defective).” *Sierra Club v. Johnson*, 436 F.3d 1269, 1280 (11th Cir.2006)

²⁶ “Simply put, the Administrator is required to object to permits that violate the Clean Air Act. This duty to object to such permits is a nondiscretionary duty.” *New York Public Interest Research Group v. Whitman*, 321 F.3d 316 (2d Cir. 2003), 321 F. 3d 316, 333 (2d Cir. 2003)

Petitioner provides, in Ecology's own words, a description of its Ratio Method, what considerations were used in developing this method, and the requirement this method must be used by the permittee. Ecology explains its Ratio Method is purely mathematical and "*has nothing to do with molecular structure, associated physical properties, atmospheric conditions, etc. It is strictly the ratio between ammonia and dimethyl mercury in the 'worse case' tank. In fact, the emission ratios for all compounds were established in the dispersion modeling and allow for the use of ammonia as a representative compound.*"²⁷ Ecology's Ratio Method overlooked radionuclide emissions Ecology acknowledges are emitted from the tanks²⁸. Petitioner also: 1. provides and cites to evaluations and descriptions of the constantly changing emission-generating environment within Tank Farm tanks, quoting from a federally-funded report prepared by an independent panel of experts hired by one of the Permittee's contractors; and 2. provides and cites to an evaluation of Ecology's new method by a well-qualified consultant. A complete copy of both reports is contained in Exhibit 1, Enclosures 2 and 3 to this petition.

In Ecology's response to public comments, Ecology does not deny it lacks approval from EPA to implement the Ratio Method; stating, in the relevant portion: "EPA allows monitoring of surrogates as indicators for the pollutant of concern." Exhibit 3, response to comment I-7-55. Nor was Ecology able to supply any request it made to EPA for such an approval. (*See* comment 55 above.)

For these reasons, the Administrator must object.

3.2 Objection 2

Contrary to CAA § 504(a) [42 U.S.C. 7661c (a)] and 40 C.F.R. 70.6 (a)(1) federally-enforceable conditions for some emissions units in Renewal 3 do not contain emissions limits, only references to other documents where these emission limits are located.

Petitioner raises this objection with "reasonable specificity" in public comments received by Ecology during an announced public comment period. It is primarily, Petitioner's comment 24, (Exhibit 1, Enclosure 1, comment 24) that addresses the basis for this objection. Other comments properly submitted by the Petitioner relating to the stated objection are: comments 38 a), 44 a), 131 a) and perhaps others.

Petitioner's comment 24 reads, as follows:

<p>"Comment 24: [draft Attachment 1, general, permit limits referenced, but not included]: Several approval conditions contain the same, or a similar, statement: "All</p>

²⁷ Response to Comments, Air Permit Revision to Facilitate Waste, Retrieval from Hanford Tank AY-102, January 24 – February 23, 2016, Summary of a public comment period and responses to comments, Dept. of Ecology, State of Washington, Pub. No. 16-05-005, Mar. 2016, p.18., Exhibit 5, p.18 (15/15).

Available at: <https://fortress.wa.gov/ecy/publications/documents/1605005.pdf>

²⁸ "[R]adiological components in sufficient quantity to create appreciable synergistic effects with chemicals are only present together in the single shell and double shell mixed waste tanks and related tank waste streams at Hanford." Exhibit 3, response to comment I-7-4.

TAPs, as submitted in the Permittee's Notice of Construction Application, shall be below their respective

ASIL^{1,2}. The specific TAP is omitted as is the applicable ASIL. Failing to identify specific TAPs regulated in draft Renewal 3, and failing to identify the applicable limit in permit conditions seems contrary to the purpose of a title V permit. A title V permit is to contain all of a permittee's obligations with respect to each air pollutant it is required to control³. Neither the permittee nor the public should be required to seek out the permittee's NOC application in order to ascertain what specific air pollutants the permittee is required to control and the particular limit applicable to the air pollutant in question. If the practice of referencing were allowed, eventually an AOP would contain no specific terms and conditions, only references to other sources of information.

Supply specific air pollutants the permittee is required to control and the particular limit applicable to the air pollutant in question, and re-start public review.

¹ As used in this condition ["All Taps . . . shall be below their respective ASIL"], "their respective ASIL" functions as a limit.

² This comment also applies to: **a)** 1.4.14 Discharge Point: CWC, Condition Approval 6/29/2006, p.46; **b)**

1.4.19 Discharge Point: P-2025E ETF, Condition Approval 6/6/2007 (DE07NWP-003) and 9/27/2007 (Amendment 2), Revision 1 (8/10/2010), p.57; **c)** 1.4.20 Discharge Point: P-2706T 001, Condition Approval 6/29/2006, p.58; **d)** Reporting, Condition Approval 2/18/2005 (DE05NWP-001), p.82; **e)** Reporting, Condition Approval 10/12/2005 (DE05NWP-002, Rev. 1), p.86; **f)** Condition Approval 03/03/2016, Periodic Monitoring, #5, p.105; **g)** 1.4.33 Discharge Point: Lagoon Treatment System, Condition Approval 2/6/2012, p.117; and, perhaps other discharge points

³ In the U.S. Senate report accompanying bill S. 1630 to amend the CAA, this body spoke to the Intended contents of an AOP. "The air permit program will ensure that all of a source's obligations with respect to each of the air pollutants it is required to control will be contained in one permit document." S. Rep. No.101-228, at 3730 (12-20-89), as reprinted in 1990 U.S.C.C.A.N. 3385. (emphasis is mine)

Exhibit 1, Enclosure 1, comment 24

Specific federally-enforceable conditions implicated in the objection include, but are not limited to, the following as contained in *Exhibit 6* to this petition (page numbers refer to the page in Attachment 1 of the *proposed* AOP, as submitted to EPA):

Emissions unit: 1.4.14 CWC,

"Condition: All TAPs, as submitted in the Permittee's Notice of Construction Application, shall be below their respective ASIL.", *Exhibit 6* p. 45, (1/7)

Enforceability is stated as: "State-Only: No" (i.e. federally enforceable)

Emissions unit: 1.4.18 Discharge Point: Emergency Diesel Generators,

"Condition: Total Emission Limits. . . C. A new NOC also is required if total emissions of criteria pollutants would exceed the WAC 173-400-110 thresholds.", *Exhibit 6* p. 53, (2/7)

Enforceability stated as: "State-Only: NSR thresholds – No." (i.e. federally enforceable)

Emissions unit: 1.4.20 P-2706T 001,

"Condition: Emission Limits. . . B. All TAPs, as submitted in the Permittee's Notice of Construction Application, will be below their respective ASIL.", *Exhibit 6* p. 57, (3/7)

Enforceability stated as: "State-Only: No" (i.e. federally enforceable)

Emissions unit: 1.4.27 Discharge Point: E-85 Fuel Station,
“Condition: Emission Limits: . . . B. All TAPs, as submitted in the Permittee’s NOC Application, shall be below their respective ASIL.”, *Exhibit 6* p. 84, (4/7)
Enforceability stated as: “State-Only: No” (i.e. federally enforceable)

Emissions unit: 1.4.32 Discharge Point: 241-AP, 241-SY, and 241-AY/AZ Ventilation,
“EMISSION LIMITS: All TAPs, as shown in Table 7, 8 or 9 of Approval Order DE11NWP-001, Rev. 4 shall be below their respective ASIL or. . .”, *Exhibit 6* p. 98, (5/7)
Enforceability stated as: “State-Only: No” (*Exhibit 6* p.99; 6/7) (i.e. federally enforceable)

Emissions unit: 1.4.33 Discharge Point: Lagoon Treatment System,
“Condition: All TAPs, as submitted in the Permittee’s Notice of Construction Application, shall be below their respective ASIL.”, *Exhibit 6* p.110, (7/7)
Enforceability stated as: “State-Only: No” (i.e. federally enforceable)

Also implicated in this objection is Petitioner’s comment 25, which states:

“**Comment 25: [draft Attachment 1, general, unspecified regulated activities]:** Specify the actual activity regulated by the permit, in the permit and not by reference to another document. Statements like: “The activities described in the Notice of Construction application will be permitted without additional control technologies required . . .”¹ call for both the permittee and the public to locate a copy of the permittee’s NOC application in order to discover what activities are being regulated under the permit. An AOP needs to actually specify all regulated activities and not reference activities defined in some other document(s). Renewal 3 cannot be a “source-specific bible for Clean Air Act compliance”² when determining what is regulated under the permit requires consulting a library of other documents.
Supply the activities regulated by the permit and re-start public review.

¹ See also: 1.4.18 Discharge Point: Emergency Diesel Generators, condition “A.”, p. 54; 1.4.22 Discharge Point: P-296W004 001, Condition Approval 5/21/2003, p. 62; and elsewhere
² “In a sense, a [title v] permit is a source-specific bible for Clean Air Act compliance.” *Com. of Va. v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996)

Exhibit 1, Enclosure 1, Comment 25

3.2.1 Requirements

Section 504 (a) [42 U.S.C. 7661c (a)] of the CAA reads:

“**Conditions.** Each permit issued under this subchapter shall include enforceable emission limitations and standards, . . .” [42 U.S.C. 7661c (a); CAA§ 504(a)]

Section 504 (a) is implemented by EPA in 40 C.F.R. 70.6 (a). Forty C.F.R. 70.6 (a)(1) reads as follows:

40 C.F.R. 70.6 Permit content. (a) Standard permit requirements. Each permit issued under this part shall include the following elements: (1) Emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance. . . .”

40 C.F.R. 70.6

In enacting title v of the CAA the U.S. Senate opined: (It was the Senate bill that was passed.)

"The air permit program will ensure that all of a source's obligations with respect to each of the air pollutants it is required to control will be contained in one permit document. . . . The Title V permit program will enable the source, States, EPA, and the public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements. Better enforcement will result for all air pollution requirements, including SIP limits, new source performance standards, hazardous air pollution requirements, and acid deposition limits."

S. Rep. No. 101-228, at 3730 (12-20-89), as reprinted in 1990U.S.C.C.A.N. 3385

The 2nd Circuit court of Appeals described a title v permit as follows:

"In a sense, a [title v] permit is a source-specific bible for Clean Air Act compliance." *Com. of Va. v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996)

In White Paper Number 2, EPA addresses referencing with respect to the content of Title v permits.

"Expectations for referencing with respect to permit content are somewhat better defined than for permit applications. Section 504(a) states that each permit "shall include enforceable emissions limitations and standards" and "such other conditions as are necessary to assure compliance with the applicable requirements." . . . Analogous provisions are contained in §§ 70.6(a)(1) and (3). The EPA interprets these provisions to place limits on the type of information that may be referenced in permits."

"*White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program*", U.S. Environmental Protection Agency Office of Air Quality Planning and Standards, Mar. 5, 1996 at 40. (Available at:

<https://www.epa.gov/sites/production/files/2015-08/documents/wtppr-2.pdf>)

3.2.2 Ecology's response

Ecology's complete response to Petitioner's comment 24 appears below. This response can also be located in Ecology's response to public comments document included as Exhibit 3 to this petition. Ecology's response document is as submitted to EPA via Ecology letter 19-NWP-082, dated May 16, 2019.

Ecology Response to I-7-24

Thank you for your comment.

The Hanford AOP Renewal 3 contains terms and conditions that assure compliance with all applicable requirements at the time of permit issuance in accordance with WAC 173-401-600. With a mega-site like Hanford, Ecology has chosen to streamline the process to reduce the complexity of the permit by using language from approval orders, including references to conditions, tables, and applications from approval orders, and references to other regulations. The Hanford AOP contains all approval conditions from current NOC approval orders for the associated discharge points, as well as other applicable regulatory requirements.

WAC 173-401-600(1), WAC 173-401-605(1), and 40 CFR 70.6(a)(a) [*sic*] each require that the operating permit shall contain terms and conditions that assure compliance with all applicable requirements. This is not the same as saying that the permit itself has to include all applicable requirements, as implied by the comment. The regulations do not prohibit the permit from referencing

requirements in NOC approval orders, rather than restating the provisions from the NOC approval orders. Ecology has determined that referencing requirements in the underlying orders complies with the above regulations and, furthermore, is appropriate and effective in streamlining the content for the Hanford AOP.

The public comment period was reopened on July 22, 2018, and extended on August 10, 2018, to supply additional supporting and relevant documentation used in the permitting process. The reopened public comment period ended September 14, 2018. Referenced sections, tables, figures and other information cited in AOP discharge point conditions from NOC approval orders were provided for review during this reopened public comment period, including the information from the referenced conditions in the comment.

No change to the AOP is required.

Exhibit 3, response to comment I-7-24

3.2.3 Argument

Petitioner's comment 24 is specific to the inclusion of emission limits, by reference, into Renewal 3. Ecology's response to comment 24 confuses "emission limits" with "all applicable requirements". The term "applicable requirement" does not appear in Petitioner's comment 24. EPA has determined that an inherent component of any meaningful opportunity for public comment is a response by the permitting authority to significant comments²⁹. Ecology's failure to address incorporation of federally-enforceable emission limits by reference into a title v permit certainly may have resulted in a flawed permit.

However, Ecology's re-direction of the scope to include "all applicable requirements" is instructive with regard to Ecology's regulatory analysis of 40 C.F.R. 70.6 (a)(1). [It is assumed Ecology intended to cite to 40 C.F.R. 70.6 (a)(1) rather than "40 CFR 70.6(a)(a)", because there is no such subparagraph under 70.6 (a).] The statements "[t]his is not the same as saying that the permit itself has to include all applicable requirements, as implied by the comment." (comment 24 makes no such implication) and "Ecology has determined that referencing requirements in the underlying orders complies with the above regulations. . ." points to a flawed analysis of federal requirements that fundamentally re-defines the contents of a title v permits. Under Ecology's flawed analysis, Ecology could issue a title v permit that is merely a bibliography, requiring the public, and others, to maintain a library of referenced documents. From an enforcement standpoint, field inspectors would need to maintain and carry a library of referenced documents to be able to assess compliance with permit terms and conditions. Ecology's bibliography approach seems contrary to the clearly-expressed intention of the Congress: "The Title V permit program will enable the source, States, EPA, and the public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements"³⁰. Ecology's re-definition of a title v permit as a bibliography also seems problematic for the Permittee with respect to easily ascertaining specific requirements that are

²⁹ See, e.g., *In re Onyx Environmental Services*, Order on Petition V-2005-1 (February 1, 2006), at 7, citing *Home Box Office v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977) ("the opportunity to comment is meaningless unless the agency responds to significant points raised by the public.")

³⁰ S. Rep. No. 101-228, at 3730 (12-20-89), as reprinted in 1990U.S.C.C.A.N. 3385

subject to compliance certification. Petitioner's comment 25 (above) was also rejected by Ecology, for the same over-broad streamlining reasons. See Exhibit 3, response to comment I-7-25. Petitioner's comment 25 addresses Ecology's referencing to other documents where the particular activity being regulated is located, rather than actually including the regulated activity in draft Renewal 3. Thus, under the guise of streamlining, Ecology has eliminated emission limits, eliminated the specific activity being regulated, and, pursuant to Ecology's response, eliminated "all applicable requirements" from inclusion in title v permits. If Ecology's bibliography approach were carried to conclusion, an Ecology-issued title v permit could contain only a single requirement: "The permittee is required to comply with all pertinent requirements of WAC 173-401³¹." The extent of Ecology's streamlining certainly appears contrary to a "Title V permit program [that] will enable the source, States, EPA, and the public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements"³² as clearly intended by Congress.

With respect to emission limits, it is difficult to see how Ecology's bibliography approach meets either Congressional intent of the CAA or the specific requirements codified in 42 U.S.C. 7661c (a) [CAA § 504 (a)] and specific requirements codified in 40 C.F.R. 70.6 (a)(1). In White Paper number 2, EPA seems to recognize both 42 U.S.C. 7661c (a) [CAA § 504 (a)] and 40 C.F.R. 70.6 (a)(1) place limits on the "type of information that may be referenced in the permit", stating: "Expectations for referencing with respect to permit content are somewhat better defined than for permit applications. Section 504(a) states that each permit "shall include enforceable emissions limitations and standards" and "such other conditions as are necessary to assure compliance with the applicable requirements." *supra*.

Case law informs that even the courts aren't permitted to substitute their own definition of a word for one enacted by Congress.

"When Congress makes such a clear statement as to how categories are to be defined and distinguished, neither the agency nor the courts are permitted to substitute their own definition for that of Congress, regardless of how close the substitute definition may come to achieving the same result as the statutory definition, or perhaps a result that is arguably better."

AK Steel Corp. v. United States, 226 F.3d 1361, 1372 (Fed. Cir. 2000).³³

It would thus seem that use of the word "include" by Congress in CAA § 504 (a) means "include"³⁴ and not "reference" or otherwise expanded to mean "include by reference".

Ecology's bibliography approach ("Ecology has determined that referencing requirements in the underlying orders complies with the above regulations [WAC 173-401-600(1), WAC 173-401-605(1), and 40 CFR 70.6(a)(a) [*sic*]].") requires section 504 (a) be re-interpreted to state "Each permit issued under this subchapter shall reference ~~include~~ enforceable emission limitations and standards. . ." and a similar re-interpretation of 40 C.F.R. 70.6 (a) ("Each permit issued under this part shall include by reference the following elements: (1) Emissions limitations and standards, including those operational requirements. . .").

³¹ WAC 173-401 is the Ecology regulation approved by EPA to implement requirements of Part 70.

³² S. Rep. No. 101-228, at 3730 (12-20-89), as reprinted in 1990U.S.C.C.A.N. 3385

³³ See also, "When a word is undefined, courts regularly give that term its ordinary meaning." Whitfield v. United States, 125 S. Ct. at 691 (2005)

³⁴ "comprise or contain as part of a whole." <https://www.google.com/search?client=ms-google-coop&q=include&cx=partner-pub-2225482417208543:5634069718>

While EPA seems to recognize there are limitations, codified in both statute and regulation, to the use of references in a title v permit, Ecology seems to see no such limitations.

3.2.4 The Administrator must object

Contrary to CAA § 504(a) [42 U.S.C. 7661c (a)] and 40 C.F.R. 70.6 (a)(1) federally-enforceable conditions for some emissions units in Renewal 3 do not contain emissions limits, only references to other documents where these emission limits are located.

Petitioner raised this objection with “reasonable specificity”, primarily in Petitioner’s comment 24 (above). Petitioner’s comment 24 was received by Ecology during an advertised public comment period on Renewal 3. In comment 24, Petitioner requests Ecology to “[s]upply specific air pollutants the permittee is required to control and the particular limit applicable to the air pollutant in question, and re-start public review.”. Petitioner provides Ecology’s response to comment 24, a response that denies relief sought in Petitioner’s comment, stating, in part, “Ecology has determined that referencing requirements in the underlying orders complies with the above regulations. . .”. Petitioner cites to specific language in CAA § 504 (a) and 40 C.F.R. 70.6 (a)(1), each of which state a title v permit “shall include [] emission limitations”. This statutory language and implementing regulatory language are cited by EPA in White Paper Number 2, above “The EPA interprets these provisions to place limits on the type of information that may be referenced in permits”. Petitioner also cites to case law from the Federal Circuit Court of Appeals which concludes “neither the agency nor the courts are permitted to substitute their own definition for that of Congress, regardless of how close the substitute definition may come to achieving the same result as the statutory definition, or perhaps a result that is arguably better³⁵”. Under this decision the word “include” used by Congress in CAA § 504(a) [42 U.S.C. 7661c (a)] means “include” (comprise or contain as part of a whole) and not “reference” or “include by reference”. Because Renewal 3 does not actually include emission limitations for federally-enforceable requirements, Renewal 3 is not in compliance with the plain language in either CAA § 504 (a) and 40 C.F.R. 70.6 (a)(1).

In accordance with the CAA, the Administrator “shall issue an objection [to the issuance of a Title V permit]...if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of [the CAA]” or is not in compliance with Part 70, the regulation implementing Title V.³⁶ Under case law the Administrator has discretion defining a reasonable interpretation of the term “demonstrate” in CAA § 505 (b)(2) [42 U.S.C. 7661d (b)(2)]³⁷. However, because the

³⁵ AK Steel Corp. v. United States, 226 F.3d 1361, 1372 (Fed. Cir. 2000)

³⁶ CAA § 502 (b)(2) [42 U.S.C. 7661d (b)(2)]; *see also* “The Administrator will object to the issuance of any proposed permit determined not to be in compliance with applicable requirements or requirements under this part [70]”. 40 C.F.R. 70.8(c)(1)

³⁷ “The ambiguity of this provision in the statute [42 U.S.C. 7661d (b)(2)] suggests that Congress has left the meaning of “demonstrate” open for EPA to supply a reasonable interpretation under *Chevron* [*Chevron USA Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)].” *MacClarence v. U.S. E.P.A.*, 596 F.3d 1123, 1131 (9th Cir. 2010)

Petitioner has demonstrated the permit is not in compliance, the Administrator has no option but to object to the permit³⁸.

3.3 Objection 3

Contrary to 40 C.F.R. 70.7 (a)(1)(iv), 40 C.F.R. 70.6 (a)(1), and EPA's determination that 'all CAA-related requirements in Administrative Orders are appropriately treated as "applicable requirements" and must be included in title v permits', Ecology did not include in the Permit applicable requirements from Administrative Order of Correction (AO) Number 20030006 for control of fugitive dust from the Marshalling Yard, now called the Material Handling Facility (MHF).

This objection is raised with "reasonable specificity" in Petitioner's comment 18, which is included in its entirety below. *See also*, Exhibit 1, Enclosure 1, comment 18. Petitioner's comment 18 was submitted during an announced public comment period for Renewal 3 and received by Ecology within that same public comment period. The 1st sentence of Petitioner's comment 18 reads as follows:

"Contrary to 40 C.F.R. 70.7 (a)(1)(iv) and -70.6 (a)(1), Ecology did not include in the Permit applicable requirements from Administrative Order of Correction (AO) Number 20030006 for control of fugitive dust from the Marshalling Yard, now called the Material Handling Facility (MHF)."

This sentence is very similar to the objection stated above. Ecology's full response to comment 18 is also provided below.

3.3.1 Requirements

In 40 C.F.R. 70.7 (a)(1)(iv) EPA requires "[a] permit, permit modification, or renewal may be issued only if all of the following condition have been met:. . . (iv) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this part;"

Forty C.F.R. 70.6 (a)(1) requires: "Each permit issued under this part shall include the following elements: (1) Emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance."

In 2009, EPA issued an order "*In the Matter of CITGO Refining and Chemicals Company L.P.*, Petition Number VI-2007-01, (May 28, 2009)"³⁹ (CITGO Order) EPA's CITGO Order states, in relevant part:

'EPA believes that, because [] AOs [administrative orders] reflect the conclusion of a[n] [] administrative process resulting from the enforcement of "applicable requirements" under the Act, **all CAA-related requirements in such [] AOs are appropriately treated as "applicable requirements" and must be included in title V permits.** . . .'

³⁸ "Simply put, the Administrator is required to object to permits that violate the Clean Air Act. This duty to object to such permits is a nondiscretionary duty." *New York Public Interest Research Group v. Whitman*, 321 F. 3d 316, 333 (2d Cir. 2003)

³⁹ Available at:

https://www.epa.gov/sites/production/files/2015-08/documents/citgo_corpuschristi_west_response2007.pdf

(emphasis is mine) *In the Matter of CITGO Refining and Chemicals Company L.P.*, Petition Number VI-2007-01, at 12 (May 28, 2009)

3.3.2 Argument

Petitioner's comment 18 reads, as follows:

Comment 18 [draft Attachment 1, general: missing applicable requirements from an administrative order]: Contrary to 40 C.F.R. 70.7 (a)(1)(iv) and -70.6 (a)(1), Ecology did not include in the Permit applicable requirements from Administrative Order of Correction (AO) Number 20030006 for control of fugitive dust from the Marshalling Yard, now called the Material Handling Facility (MHF).

On March 12, 2003, The Benton Clean Air Authority (BCAA) issued both an administrative Order of Correction (AO) (No. 20030006) and a Notice of Violation (NOV) (No. 20030006) to Bechtel National (BNI). The stated reason for the AO and NOV was serial observations by a BCAA inspector in late February and early March, 2003, of excessive and uncontrolled blowing dust. The AO requires as follows:

1. Bechtel National will immediately take steps to minimize fugitive dust emissions from this site.
2. Bechtel National will submit a dust control plan to the BCAA within 5 calendar days of receipt of this order. This plan will be subject to review and comment by the BCAA. The plan will include a site map. In addition, it will include a schedule of implementation, applications, and maintenance of control measures. If water is used as a control measure, or in conjunction with other control measures, include access to, available quantity, location of water sources, and method and rates of application
3. Bechtel National will actively implement and manage the provisions of said plan to minimize fugitive dust emissions.
4. If the primary and contingency control measures outlined in the dust control plan subsequently prove to be inadequate or ineffective, Bechtel National will select and utilize additional control measures.

BNI did not appeal either the AO or NOV within 30-days of issuance as BNI was allowed to do under RCW 43.218.310.

On March 21, 2003, Mr. R.F. Naventi of BNI signed the *Waste Treatment Plant Marshalling Yard Project Dust Control Plan* (Plan). The Plan addresses all elements of the BCAA Order, above.

From unsigned and undated records provided by BCAA, it appears that in a letter dated May 16, 2003, BCAA may have sent to BNI a blank application form for relief of penalty and for relief of the Notice of Infraction. The unsigned, undated Notice of Penalty (NOP) letter contains the following paragraph:

Failure to perform the terms of this order by Bechtel National or the continuance of the appeal process will result in the amount of the original penalty reinstated in full to \$2,000.00 and shall constitute grounds for injunction or other relief from Superior Court by BCAA.

[BNI paid the full \$2,000.00 with check no. 6000952. (*See below*)] These unsigned, undated records were provided in response to a request pursuant to the *Public Records Act* (RCW 42.56) for "Any record(s) involving closure of BCAA Order of Correction 20030006 on October 16, 2003 or on any other date" plus other records.

[A request for "any records addressing actions that occurred after BNI submitted the required dust control plan on March 21, 2003" was made on March 13, 2013. In the April 3, 2013, response to that request, Ms S.S. Young, signing the response as Office Manager for BCAA, states: "The original signed records you have requested reached retention and have been

properly destroyed. . . ”. No records regarding order 20030006 were received by BCAA between 3/18/2003 and 1/15/2018.]

On August 20, 2003, and on August 27, 2003, BNI and BCAA, respectively, signed an agreement “. . . resolving a dispute over dust control”. The agreement:

- required BNI to pay \$2,000.00 (two thousand dollars) to BCAA;
- required that BNI “shall continue to implement a dust control plan and work with the Benton Clean Air Authority in implementation of such plan”; and
- required that BCAA “shall dismiss the Notice of Infraction (NOI) and Notice of Penalty (NOP) upon payment of the TWO THOUSAND DOLLAR (\$2,000.00) administrative cost.”

It thus appears that while conditions of the NOI and NOP were satisfied, the AO and conditions therein remain active.

On July 28, on July 31, and on August 11, 2006, Petitioner filed comments during the public comment period on the draft version of the “Hanford Site Air Operating Permit No. 00-05-006 2006, Renewal 1” (Renewal 1). Petitioner’s comments #4 and #15 addressed missing fugitive dust requirements for the Bechtel lay-down yard (a.k.a., Marshalling Yard). Overlooking the merits of these comments (and others) Ecology issued Renewal 1 as final on December 29, 2006. On January 23, 2007, Petitioner filed a notice of appeal to the issuance of Renewal 1 before the Pollution Control Hearings Board (PCHB). (Petitioner also filed a petition before the Administrator of EPA that the Administrator never responded to.)

On August 22, 2007, the PCHB resolved all remaining issues in its Order on Summary Judgment¹. With regard to the issue addressing the *Waste Treatment Plant Marshalling Yard Project Dust Control Plan* (Plan), the PCHB determined Appellant “Green has standing to challenge the adequacy of the dust control requirements contained in the AOP.”² The PCHB also concurred with Ecology’s argument “. . . that the Plan and its contents are not “applicable requirements” as defined in the state’s air operating permit program regulations and therefore, it was proper not to include the Plan in the AOP”³ The PCHB writes:

“We conclude that the plain language of WAC 173-401-200(4)(b), which includes statutes, rules, and orders as “applicable requirements,” does not extend to the specific content of the Plan developed in response to the Order of Correction issued by BCAA. The Order itself required Energy to submit and implement a plan to control dust. These requirements are included in the AOP. [footnote omitted] The specific provisions of the Plan were developed after the Order was issued and are not “requirements *in a regulatory order.*” *WAC173-401-200(4)(b) emphasis added.* Summary judgment on Legal Issue No.2 should be granted to Ecology.”⁴

The PCHB thus determined the Plan is not an “applicable requirement” under WAC 173-401-200 (4)(b). Though, they do not address whether the AO, which requires the Plan, is an “applicable requirement”. The PCHB continues:

“We note, however, that Ecology’s decision not to include the Plan as an applicable requirement in the AOP does not diminish its role in controlling dust at the marshalling yard. **The Plan remains in effect and is subject to enforcement by the Benton Clean Air Authority.** [reference omitted] Additionally, because Energy is using the Plan in fulfillment of the AOP’s requirement to implement a dust control plan, Ecology also has authority to enforce the Plan’s implementation.”⁵ [emphasis added]

Defendants, Ecology and The U.S. Department of Energy, Richland, and the PCHB all believed the AO was still enforce when Renewal 1 was issued as final on Dec. 29, 2006.

Defendants did not argue otherwise.

Petitioner continued to believe that use of the words “all” and “each” by Congress in defining a Title V permit⁶ do not accommodate exception. Petitioner expressed his view in a letter sent, via certified mail, to then EPA Administrator Lisa Jackson, dated April 22, 2009. Administrator Jackson responded in a letter dated June 12, 2009. Her response reads, in part:

“The EPA’s approach to the way in which Title V operating permits address the provisions of various types of enforcement actions has recently been reviewed and addressed in the context of another Petition to Object pursuant to Title V of the Act. The Administrator’s May 28, 2009 Order, responding to a Title V Petition addressing the permit issued to CITGO Refining and Chemicals Company L.P., in Texas, provides a summary of our position on some of these issues and references key supporting regulatory provisions and administrative precedent. [Cite CITGO order at 12-13.]”

The cited portion of the “CITGO order”, reads, in part:

‘EPA believes that, because [] AOs [administrative orders] reflect the conclusion of a[n] [] administrative process resulting from the enforcement of "applicable requirements" under the Act, all CAA-related requirements in such [] AOs are appropriately treated as "applicable requirements" and must be included in title V permits. . . .’ *In the Matter of CITGO Refining and Chemicals Company L.P.*, Petition Number VI-2007-01, at 12 (May 28, 2009) [Available at:

https://www.epa.gov/sites/production/files/2015-08/documents/citgo_corpuschristi_west_response2007.pdf]

Thus, the (4) four conditions in the AO, including the requirement to prepare a Plan containing specific elements (*see* Condition 2 of AO 20030006 above) are to be treated as “applicable requirements” and should already have been included in Hanford’s AOP. Specific elements in the Plan implementing the CAA-related requirements of the AO are also to be included in Hanford’s AOP as conditions required to assure compliance with the “applicable requirements” in the AO.

The PCHB ruling that contents of the Plan required by an AO are not “applicable requirements” under Washington law is not inconsistent with EPA’s determination that CAA-related requirements in the AO are to be treated as “applicable requirements” and must be included in Title V permits. The PCHB’s ruling did not go beyond an analysis of the definition of “applicable requirement” in WAC 173-401-200 (4)(b) with respect to the Plan. For example, the PCHB ruling did not consider requirements in WAC 173-401-700 (1)(e) and – 600 (1) mandating a title V permit contain conditions that assure compliance with all “applicable requirement”. As with WAC 173-401-700 (1)(e) and – 600 (1), Part 70 requires that specific conditions in the Plan needed to assure compliance with the “applicable requirements” in the AO must also be included as conditions in the Title V permit⁷.

The Marshalling Yard remains active, though it has been renamed as the “Material Handling Facility” or “MHF”.

Add the 4 (four) conditions from the BCAA AO (# 20030006) to be consistent with EPA’s determination that CAA-related requirements in an AO are to be treated as “applicable requirements” and must be included in a source’s title v permit.

¹ *Green v. Ecology and U.S. Department of Energy*, PCHB No.07-012, Summary Judgment Order, Aug. 22, 2007. Available at: <http://www.eluho.wa.gov/Global/RenderPDF?source=casedocument&id=396>

² *Id.* at 9

³ *Id.* at 15

⁴ *Id.* at 16-17

⁵ *Id.* at 17

⁶ "The air permit program will ensure that all of a source's obligations with respect to each of the air pollutants it is required to control will be contained in one permit document. . . . In addition, the source will file periodic reports, as determined by EPA regulations, identifying the extent to which it has complied with those obligations." S. Rep. No. 101-228, at 3730 (12-20-89), as reprinted in 1990U.S.C.C.A.N. 3385

⁷ "(1) A permit, permit modification, or renewal may be issued only if all of the following condition (sic) have been met: . . .(iv) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this part" 40 C.F.R. 70.7 (a)(1)(iv) [see also 40 C.F.R. 70.6 (a)(1)]

Exhibit 1, Enclosure 1, comment 18

A signed copy of the Benton Clean Air Authority (BCAA) Administrative Order of Correction, No. 20030006 (AO), the associated Notice of Violation (NOV), and a signed copy of the AO-required *Waste Treatment Plant Marshalling Yard Project Dust Control Plan* (Plan) are provided as Exhibit 7 to this petition.

The AO and NOV were issued for violation of WAC 173-400-040 (2) & (8)(a) (2003). The former citation addresses fallout, which is not federally-enforceable, the latter regards control of fugitive dust, which is part of Washington State's State Implementation Plan (SIP). Because control of fugitive dust is part of an EPA-approved SIP, control of fugitive dust is also an "applicable requirement" as defined in 40 C.F.R. 70.2. Washington Administrative Code 173-400-040 (8)(a) (2003) requires "reasonable precautions [be taken] to prevent [] fugitive dust from becoming airborne . . .and [to] maintain and operate the source to minimize emissions". The term "reasonable precautions" is not defined. Because of the violation issued by BCAA and the resulting AO, it appears the BCAA determined "reasonable precautions. . .[to] maintain and operate the source to minimize emissions" are those elements required in the AO and implement in the Plan. Ecology does not challenge BCAA's interpretation of "reasonable precautions" in its response below. After all, it was BCAA that issued the NOV and AO under BCAA's authority. Nor does Ecology's response challenge the existence of the NOV, the existence of the AO, or the existence of the Plan addressing requirements of the AO.

Ecology responds to Petitioner's comment 18, as follows: (this is Ecology's complete response. See Exhibit 3, response to comment I-7-18)

Ecology Response to I-7-18

Thank you for your comment.

The Administrative Order (AO) is not in effect and is not an applicable requirement for the Hanford AOP. The AO was closed and disposed of, but the dust control requirements from that AO that remain in effect are found in the terms of the underlying requirement in Approval Order DE02NWP-002, Revision 2. Ecology offers the following history of the AO for control of fugitive dust from the Material Handling Facility (formerly the Marshalling Yard).

- The Dust Control Plan for the Waste Treatment Plant (WTP) Construction Site (24590-WTPGPP-SENV-015) was originally prepared December 23, 2002, to meet

DE02NWP-002, Condition 8.1. The original DE02NWP-002 did not include the WTP Marshalling Yard.

- On March 21, 2003, a separate WTP Marshalling Yard Dust Control Plan was developed in response to a BCAA Order of Correction 20030006.
- On October 16, 2003, BCAA's case involving Order of Correction 20030006 was closed.
- In 2006, Ecology incorporated the requirement for the WTP Marshalling Yard dust control plan into DE02NWP-002 via Amendment 4 in response to a public comment made during review of AOP 00-05-006, Renewal 1. The separate dust control plans for the Marshalling Yard and the remaining WTP locations continued to be implemented.
- On March 3, 2010, the above implemented and compliant Dust Control Plans were consolidated into one plan with issuance of 24590-WTP-GPP-SENV-015, Revision 1, Fugitive Dust Control.
- The Material Handling Facility dust control plan is a requirement of DE02NWP-002, Revision 2. DE02NWP-002, Revision 2 states the Construction Phase Fugitive Dust Control Plan(s) "shall address fugitive dust control at the WTP construction site adjacent to the Hanford 200 Area and the Material Handling Facility." Additionally, the dust control plan "shall be made available to Ecology upon request."
- The fugitive dust control plan addressing the Material Handling Facility is a requirement in the permit which is issued under the authority of Ecology.

The fugitive dust control condition from DE02NWP-002, Revision 2, which requires a dust control plan addressing the Material Handling Facility, is found in discharge point 1.4.23 on page 63 of the draft Hanford AOP Renewal 3. Therefore, the draft Hanford AOP Renewal 3 contains the applicable requirements in regards to the control of fugitive dust at the Material Handling Facility.

No change to the AOP is required.

Exhibit 3, response to comment I-7-18

Ecology states in its response that “[t]he Administrative Order (AO) is not in effect and is not an applicable requirement for the Hanford AOP”, is partially correct, an AO is not an “applicable requirement” under Part 70. However, EPA’s decision in CITGO, above, is quite clear: “AOs [administrative orders] reflect the conclusion of a[n] [] administrative process resulting from the enforcement of "applicable requirements" under the Act, all CAA-related requirements in such [] AOs are appropriately treated as "applicable requirements" and must be included in title V permits”. Control of fugitive dust is an “applicable requirement” under 40 C.F.R. 70.2, if for no other reason than this is a requirement in Washington State’s EPA-approved SIP. The AO in question has never been vacated, and Ecology provides no support for any other conclusion. Ecology’s response continues, “. . . On October 16, 2003, BCAA's case involving Order of Correction 20030006 was closed.” While Ecology’s response asserts the case (administrative process) giving rise to the AO is closed, Ecology doesn’t assert either the AO spawned by BCAA’s administrative process

or the BCAA-reviewed Plan addressing requirements of the AO have been vacated. Had such records existed, it seems likely Ecology and/or the permittee, who was a party to the action, would have cited them when responding to Appellant's complaint before the PCHB. One of the issues before the PCHB regarded Ecology's failure to include requirements of the AO in Hanford's AOP. This action was filed on January 23, 2007. The PCHB decision is dated August 22, 2007. In its decision the PCHB writes "**The Plan remains in effect and is subject to enforcement by the Benton Clean Air Authority.**". *Supra*. The Plan mandated by the AO requires that: "2. . . [t]his plan will be subject to review and comment by the BCAA. The plan will include a site map. In addition, it will include a schedule of implementation, applications, and maintenance of control measures. If water is used as a control measure, or in conjunction with other control measures, include access to, available quantity, location of water sources, and method and rates of application 3. Bechtel National will actively implement and manage the provisions of said plan to minimize fugitive dust emissions. 4. If the primary and contingency control measures outlined in the dust control plan subsequently prove to be inadequate or ineffective, Bechtel National will select and utilize additional control measures." (*See* Petitioner's comment 18 above.) While it appears the associated Notice of Infraction (NOI) and Notice of Penalty (NOP) were satisfied during August, 2003, as of August 22, 2007, the PCHB still believed the AO-required Plan to be in effect and enforceable by the BCAA. Ecology does not dispute this. Either Ecology and/or the Permittee could have provided documentation supporting the contention the AO-required Plan was vacated. Neither did. Absent supporting facts, any assertion by Ecology that the AO-mandated Plan has been vacated is nothing more than conclusory. Note, **it is this AO-required Plan, which was required to be reviewed by BCAA, and Ecology's failure to include the Plan in Renewal 3 that is at issue.**

Ecology continues its response, stating: "The fugitive dust control condition from DE02NWP-002, Revision 2, which requires a dust control plan addressing the Material Handling Facility, is found in discharge point 1.4.23 on page 63 of the draft Hanford AOP Renewal 3. Therefore, the draft Hanford AOP Renewal 3 contains the applicable requirements in regards to the control of fugitive dust at the Material Handling Facility [MHF]."

Ecology's response overlooks that Ecology doesn't have the requisite authority to vacate requirements in an AO issued by another agency, the BCAA, nor does Ecology have the necessary authority to grant the Permittee permission to disregard the BCAA AO-required Plan. Ecology's response further confuses any dust control plan "addressing the Material Handling Facility" with the existing BCAA-reviewed Plan that complies with requirements of the BCAA-issued AO. The 2 plans are not interchangeable. BCAA issued the NOV and AO requiring the Plan under its authority. Ecology played no role in issuing the NOV, no role in issuing the AO, and no role in reviewing the required Plan. Ecology's response also overlooks the AO-required Plan does exist and has existed since March 21, 2003. ("On March 21, 2003, Mr. R.F. Naventi of BNI signed the *Waste Treatment Plant Marshalling Yard Project Dust Control Plan*", Comment 18 above; *see also* Exhibit 7, pgs. 7-15). The Plan addresses all elements of the BCAA Administrative Order, above. In its ruling, the PCHB determined "The Plan remains in effect and is subject to enforcement by the Benton Clean Air Authority." *Supra*. The issue raised in comment 18 is the BCAA-reviewed Plan has never been incorporated into any version of Hanford's AOP, and does not appear in Renewal 3.

As Ecology correctly points out in its response to comment 18, above, requirements from discharge point 1.4.23 do include: "Construction Phase Fugitive Dust Control Plan(s), prepared using EPA

and Ecology guidelines, shall address fugitive dust control at the WTP construction site adjacent to the Hanford 200 Area and the Material Handling Facility. . . .” (See also, Exhibit 5, p. 62.) However, as pointed out in Petitioner’s comment 33, “there is no date specified by which these plan(s) must be prepared. Absent such a date this condition is both unenforceable and meaningless.”⁴⁰ Neither is there a triggering event, such as “the plan will be prepared before any dust disturbing activities associated with construction can occur”, by which the plan(s) must be prepared. Additionally, there is no requirement the “Construction Phase Fugitive Dust Control Plan(s)” are in addition to the AO-required and BCAA-reviewed Plan, with respect to the Material Handling Facility (formerly, the Waste Treatment Plant Marshalling Yard). (See above.)

EPA’s determination in CITGO, above, states “because [] AOs [administrative orders] reflect the conclusion of a[n] [] administrative process resulting from the enforcement of "applicable requirements" under the Act, all CAA-related requirements in such [] AOs are appropriately treated as "applicable requirements" and must be included in title V permits. . . .” (emphasis is mine). This text from CITGO in combination with requirements addressing “applicable requirements” codified in 40 C.F.R. 70.7 (a)(1)(iv) and 40 C.F.R. 70.6 (a)(1), demand Ecology include the Plan in Renewal 3. The Plan satisfies requirements from the AO implementing a Part-70 “applicable requirement”.

Ecology denied relief sought by the Petitioner in his comment 18, stating: “No change to the AOP is required.” (See Ecology response above.)

3.3.3 The Administrator must object

Based on the foregoing, Petitioner respectfully requests the Administrator follow the CAA⁴¹ and case law⁴² by objecting to Renewal 3. Ecology did not include in Renewal 3 the Plan (Exhibit 7, pgs. 7-14) required by Administrative Order of Correction (AO) Number 20030006 (Exhibit 7, pgs. 1-3) for control of fugitive dust from the Marshalling Yard, now called the Material Handling Facility (MHF), contrary to 40 C.F.R. 70.7 (a)(1)(iv), 40 C.F.R. 70.6 (a)(1), and EPA’s determination in CITGO, “that, because [] AOs [administrative orders] reflect the conclusion of a[n] [] administrative process resulting from the enforcement of "applicable requirements" under the Act, all CAA-related requirements in such [] AOs are appropriately treated as "applicable requirements" and must be included in title V permits. . . .”⁴³ . . . Control of fugitive dust is an “applicable requirement” under 40 C.F.R. 70.2, because this requirement is part of an EPA-approved SIP for Washington State.

Petitioner raised this objection with “reasonable specificity” in Comment 18 (above). Petitioner’s comment 18 plus others were properly submitted, and received by Ecology during an advertised public comment period for *draft* Renewal 3. Ecology doesn’t dispute the Plan exists.

⁴⁰ Exhibit 1, Enclosure 1, comment 33

⁴¹ “See 42 U.S.C. § 7661d(b)(2) (providing that the EPA Administrator “shall issue an objection” if a permit is defective).” *Sierra Club v. Johnson*, 436 F.3d 1269, 1280 (11th Cir.2006)

⁴² “Simply put, the Administrator is required to object to permits that violate the Clean Air Act. This duty to object to such permits is a nondiscretionary duty.” *New York Public Interest Research Group v. Whitman*, 321 F.3d 316 (2nd Cir. 2003), 321 F. 3d 316, 333 (2d Cir. 2003)

⁴³ *In the Matter of CITGO Refining and Chemicals Company L.P.*, Petition Number VI-2007-01, at 12 (May 28, 2009). Available at:

https://www.epa.gov/sites/production/files/2015-08/documents/citgo_corpuschristi_west_response2007.pdf

Petitioner provides, in Exhibit 7 to this petition, a signed copy of the AO, a signed copy of the NOV, and a signed copy of the AO-required dust control plan (Plan). Ecology's response asserts BCAA's administrative process that resulted in the Administrative Order (AO) is closed, which is correct but irrelevant, but makes no assertion with regard to the Plan spawned by BCAA's administrative process satisfying requirements of the AO. It is this AO-required Plan and Ecology's failure to include this Plan in Renewal 3 that is the issue at bar.

Ecology further cites to a requirement in *draft* Renewal 3 addressing "Construction Phase Dust Control Plan(s)" for emissions unit 1.4.23. (*See* Exhibit 5, p.62.) However, Ecology exceeds its authority should it attempt to replace a dust control plan resulting from an administrative process conducted by a separate agency, the Benton Clean Air Authority (BCAA), and further exceeds its authority should Ecology allow the permittee to disregard this BCAA-required Plan in favor of a "Construction Phase Dust Control Plan(s)" that may never exist. Ecology's requirement for "Construction Phase Dust Control Plan(s)" overlooks requirements for control of fugitive dust specified in the AO and satisfied in the AO-required Plan. Furthermore, Ecology's requirement for a "Construction Phase Dust Control Plan(s)" does not specify either a date or a triggering event by which such a plan or plans must be prepared. Absent a requirement specifying when the plan(s) must exist, this condition is unenforceable.

For the above reasons, the Administrator respectfully-requested to object to issuance of Renewal 3.

3.4 Objection 4

Contrary to 40 C.F.R. 70.7 (h)(2), Ecology based some Renewal 3 terms and conditions on information supplied verbally by the Permittee and information destroyed before public review, thereby depriving the public the opportunity to review information used in the permitting process.

Specifically, this objection pertains to:

1. the avoidance of public review of material used in the permitting process by relying on verbally-communicated information to implement requirements of 40 C.F.R. 61 Subpart H for 2 (two) emissions units (EUs), and;
2. using verbal and destroyed information as the basis for changing an operating condition and an emission limit in an Ecology order (DE11NWP-001, Rev. 4; *see* Exhibit 4).

Petitioner raised this object with "reasonable specificity" primarily in Petitioner's comments 135, 145 c) and 150. *See* Exhibit 1, Enclosure 1, comment 135, Exhibit 2, comments 145 c) and 150. These comments, and others, were received by Ecology during an announced public comment period on *draft* Renewal 3. Also implicated in this objection is EPA Order on

Petition No. X-2016-13, dated Oct. 15, 2018⁴⁴ (EPA Order), and a letter Petitioner sent, via certified mail, to EPA on June 10, 2019⁴⁵:

“request[ing] the U.S. Environmental Protection Agency (EPA) object to the subject *proposed* AOP during your 45-day review. The basis for this request is the acknowledged failure of the Washington State Department of Ecology (Ecology) to conduct a public review for *draft* AOP Renewal 3 in accordance with EPA’s October 15, 2018 (Order). . .”

Enclosed as Exhibit 8 to this petition.

EPA has not responded to this letter as of July 15, 2019, nor did EPA take the requested action.

Petitioner’s comment 135 reads, in part:

Comment 135: [draft Attachment 2, Renewal 3, general: information used in the permitting process but not provided to the public]: As required by 40 C.F.R. 70.7 (h)(2), provide the public with all information used in the permitting process to justify terms and conditions in Attachment 2 (License FF-01), implementing requirements of 40 C.F.R. 61 subpart H.

...

Two (2) of the six (6) new EUs noted above that are still in Attachment 2 of draft Renewal 3, lack applications containing information required by WAC 246-247-110 *Appendix A*. (EUs 1371 & 1384.) Because the initiating requests and justifications for the addition of EUs were used in the permitting process, such information would seem to be included under EPA’s interpretation of language in 40 C.F.R. 70.7 (h)(2). EPA’s interpretation is captured in a ruling by the 11th Circuit Court of Appeals [See *Sierra Club v. Johnson*, 436 F.3d 1269, 1284, (11th Cir. 2006)]. Absent such documentation it is highly unlikely, if not impossible, these additions could have occurred. Absent such documentation, it is also extremely difficult, if not impossible, for the public to conduct a meaningful public review.

...

For EU 1371:
Letter 13-ECD-0068 (8/14/2013) requests addition of two radial filters to the new MARS Vacuum, and transmits a “Notification of Off-Permit Change” form and a certification for that form. About twelve (12) days later, on 8/26/2013, Health issued letter AIR 13-822 in response. Health’s response, in AIR 13-822, requests additional information in 4 bulleted items. The additional information requested is:

- “Provide information on emission unit (EU) name, nomenclature or AEI-ID, EU diameter, exhaust temperature, flow rates, and EU height for the new MARS vacuum HEP A filters.
- Validate that the U.S. Department of Energy FF-01 license EU numbers associated with the current air approval letter number AIR 12-343 are correct.
- Provide current individual process descriptions for each of the EUs associated with the NOC.
- Provide all information required in WAC 246-247-110 *Appendix A* – Application information requirements.”

Apparently information transmitted by letter 13-ECD-0068, dated 8/14/2013, was deemed insufficient by Health’s request for additional information (see bulleted items above) in letter AIR 13-822, dated 8/26/2013, or **about 12 days after the date of letter 13-ECD-0068**.

...

For EU 1384:

⁴⁴ *In the Matter of U.S. Department of Energy – Hanford Operations*, Order on Petition No. X-2016-13 (Oct. 15, 2018). Also available at: https://www.epa.gov/sites/production/files/2018-10/documents/hanford_response2016.pdf

⁴⁵ Letter, from B. Green to K. McFadden, Branch Chief, Air Permits and Toxics Branch, EPA Region 10, “RE: *Proposed Hanford Air Operating Permit (AOP) No. 00-05-006, Renewal 3. (Renewal 3)*”, (sent cert. mail: 7018 3090 0000 2792 6705), Jun. 10, 2019

Letter AIR 13-1104 (11-07-2013) from Health to the permittee notes the application for EU's 1371 & 1384 were approved. However, there was no such application included.

Exhibit 1, Enclosure 1, comment 135; Exhibit 8, pgs. 19-23

Petitioner's comment 150 reads, in part:

Comment 150: [draft Attachment 2, Renewal 3, reference comment 135, information used in the permitting process but not provided to the public]:

Comment 135 advises information required by 40 C.F.R. 70.7 (h)(2) [*see also* WAC 173-401-800 (1)(d)(iv)] regarding two emissions units (EU 1371 and EU 1384) and one Report of Closure for EU 141 were not included in supporting information provided by Ecology. . . . Without such applications, even the existence of these emissions units (EUs) is unknowable by the public, as is the potential-to-emit regulated air pollutants and, thus, appropriate monitoring, appropriate operating conditions, and appropriate controls. The Washington State Department of Health (DOH) acknowledges the Permittee failed to submit the required NOC applications for EUs 1371 and 1384.

"Okay, well, as far as the missing application for addition of the two radial filters (EU 1371 and 1384)...it appears to be correct that we didn't receive an actual application." Email from S.D. Berven, DOH to P.J. Martell, DOH, and P. Gent, Ecology, subject: "AOP Comments", dated Mar. 23, 2018, 1:37 PM.

...

However, DOH has no obligations under Part 70. Furthermore, DOH can't grant waivers for compliance with Part 70. It is Ecology and the Permittee that must comply. Ecology's obligations include the requirement to issue an AOP in accordance Part 70. Thus, under Part 70, it is the Permittee and Ecology that are responsible for the Permittee's failure to provide the required NOC applications, applications that were requested in writing. (*See* letter [AIR 13-822](#), 8/26/2013.)

...

Whether DOH required written NOC applications is not germane. Ecology, as the sole permitting authority, is obligated to issue Hanford's AOP in accordance with Part 70. If DOH and the Permittee failed to supply NOC applications that will withstand requirements of Part 70, for EUs 1371 & 1384, then it is Ecology's obligation to require the Permittee supply such applications. Neither DOH or the Permittee can absolve Ecology of this duty. According to 40 C.F.R. 70.7 (a)(1)(ii), Ecology cannot issue an AOP until Ecology "has complied with the requirements for public participation under paragraph (h) [40 C.F.R. 70.7 (h)]". [*See also* WAC 173-401-700 (1)(c).] Ecology can't comply with public participation requirements of 40 C.F.R. 70.7 (h) with verbal NOC applications created "in a meeting or on the phone". Absent suitable NOC applications, the Permittee should not be allowed to operate EUs 1371 & 1384, nor should these EUs appear in the AOP.

Part 70 also specifies that "[a]ll terms and conditions in a part 70 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act." [40 C.F.R. 70.6 (b)(1).] Citizen enforcement under the CAA is frustrated when Ecology and the Permittee act to make unavailable, records, such as NOC applications, needed by the public to evaluate options for enforcement of terms and conditions in an AOP. Both EUs 1371 and 1384 are shown as active in draft Renewal 3.

Under WAC 173-400 Ecology has authority to require NOC applications from the Permittee that include requirements implementing the radionuclide NESHAP codified in 40 C.F.R. 61 Subpart H.

...

Ecology's letter 18-NWP-073 (cited above) also does not appear to be cognizant of EPA's position with regard to documents withheld from the public during the Renewal 2 issuance process. In a filing before a U.S. district court, EPA states Ecology committed to providing the information missing from the

issuance process for Renewal 2 as part of the public review process for Renewal 3 of Hanford's AOP (Renewal 3).

“During the public comment period on that permit [Renewal 3], which is expected to begin before October 31, 2017, Ecology has committed to make available to the public, on request, the documents Plaintiff contends Ecology had unlawfully withheld. . . .” *Green v. Pruitt*, “Reply in Support of Motion to Hold Case in Abeyance”, case 4:17-cv-5034, 8/22/17 at 2
The contended “unlawfully withheld” documents include NOC applications for EUs 1371 and 1384. . .

For complete comment, including footnotes, *see* Exhibit 2, comment 150; Exhibit 8, pgs. 19-23

Petitioner's comment 145 c) reads, in total:

c) Comment 144 is based, in part, on Ecology's response to a March 19, 2018, request submitted under the *Public Records Act*, RCW 42.56. (Request PDTS 46149.) This request was for “[t]he information supplied to Ecology requesting the 10/26/2016 updated [sic] to Table 6 from regulatory order DE11NWP-001, Rev. 4”. Ecology's response reflects that no such records exist. There are no documents requesting the change to operating limits; no information supporting or justifying such a request; and no existing documents to support public participation. Additionally, calculations plus the values used to populate the variables in calculations employed by Ecology to establish the new exhaust fan rates (in scfm) and ammonia concentration limits (in ppm) were performed on a white board which was subsequently erased; thus, these records also do not exist¹ to support public participation. While Ecology is apparently free under the *Public Records Act* to conduct a meeting where emissions potentially affecting public health without generating any records, and while Ecology is apparently free under state law to change operating conditions codified in an Order issued under a federally-approved program without maintaining records, neither Ecology nor the Permittee have the requisite authority to overlook federal regulation, namely 40 C.F.R. 70. At the very least, this oversight by both Ecology and the Permittee implicates those paragraphs of 40 C.F.R. 70 regarding significant records deemed relevant by being used in the permitting process [40 C.F.R. 70.7 (h)(2)²], those records needed to ascertain whether monitoring is sufficient to assure continuous compliance [40 C.F.R. 70.6 (a)(3)(i)(B)³], and records sufficient to allow the Administrator of EPA to discharge its duty under section 505(b)(2) of the federal *Clean Air Act* (CAA) [40 C.F.R. 70.7 (h)(5)⁴]. After all, Part 70 contains a regulatory mechanism for Ecology to obtain additional information needed to comply with requirements of Part 70. Part 70 also provides that Ecology cannot issue an AOP until it “has complied with the requirements for public participation under paragraph (h) [40 C.F.R. 70.7 (h)]”. [40 C.F.R. 70.7 (a)(1)(ii); WAC 173-401-700 (1)(c).] Ecology can't comply with public participation requirements of 40 C.F.R. 70.7 (h) when relevant records were unavailable to the public because Ecology received them verbally, or because Ecology erased them. These records should have been easily reproduced to support public participation under Part 70. It is uncertain why Ecology chose not to do so.

Part 70 also specifies that “[a]ll terms and conditions in a part 70 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act.” [40 C.F.R. 70.6 (b)(1).] Citizen enforcement under the CAA is frustrated when Ecology and the Permittee act to make unavailable, records needed by the public to evaluate options for enforcement of terms and conditions in an AOP.

Provide the public with all records required by 40 C.F.R. 70 that are deemed relevant by being used in the permitting process. Absent such records it is not possible for the public to evaluate the calculation(s) Ecology used to arrive at the new and higher concentration limits, the new lower fan rates, and the appropriateness of monitoring requirements. Also, provide those records needed to allow the Administrator of EPA to discharge its duty under section 505(b)(2) of the CAA, and re-start public review.

¹ “The calculation was performed on a white board by NWP Air personnel while USDOE was present using the original calculation formulas used with the permit. All parties were and are in agreement with the change calculated on the white board and an update was made to Table 6 of the permit. The board was erased and no calculation sheets were generated by NWP. As such, no records exist.” (emphasis added) Email from P. Gent, Ecology NWP, to T. Booth, Ecology NWP, “Subject: FW: REQUEST: Public Records Act”, Mar. 19, 2018, 2:13 PM

² “. . . additional information, including copies of the permit draft, the application, all relevant supporting materials, including those set forth in § 70.4(b)(3)(viii) of this part, and all other materials available to the permitting authority that are relevant to the permit decision; . . .” 40 C.F.R. 70.7 (h)(2): “EPA has determined that the phrase ‘materials available to the permitting authority that are relevant to the permit decision,’ 40 C.F.R. § 70.7(h)(2), means the information that the permitting authority has deemed to be relevant by using it in the permitting process. . . .” (emphasis added) *Sierra Club v. Johnson*, 436 F.3d 1269, 1284, (11th Cir. 2006); see also WAC 173-401-800 (1)(d)(iv)

³ “Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit, as reported pursuant to paragraph (a)(3)(iii) of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph (a)(3)(i)(B) of this section” 40 C.F.R. 70.6 (a)(3)(i)(B); see also WAC 173-401-615 (1)(b)

⁴ “The permitting authority shall keep a record of the commenters and also of the issues raised during the public participation process so that the Administrator may fulfill his obligation under section 505(b)(2) of the Act to determine whether a citizen petition may be granted, and such records shall be available to the public.” 40 C.F.R. 70.7 (h)(5); ; see also WAC 173-401-800 (5) & - 810 (2)

Exhibit 2, comment 145 c).

Comment 145 c) relates to a revision to Table 6 of Ecology Order DE11NWP-001, Revision 4 (Rev. 4), dated 10/26/2016. See Exhibit 8, p. 32. Table 6 as originally issued on 03/03/2016, is located in Exhibit 4 on p. 13 of 30. It is the records used as the basis for the 10/26/2016, revision to Table 6 that is at issue. The changes to Table 6 dated 10/26/2016, decreased the exhauster flow rate for 241-AP from 3,000 scfm to 1,750 scfm and increased the “ammonia concentration limit” from 100 ppm to 175 ppm, absent any justifying information provided to support public review for *draft* Renewal 3.

3.4.1 Requirements

To support public review required by 40 C.F.R. 70.7 (h), the permitting authority must provide the public with “. . . additional information, including copies of the permit draft, the application, all relevant supporting materials, including those set forth in § 70.4(b)(3)(viii) of this part, and all other materials available to the permitting authority that are relevant to the permit decision; . . .” 40 C.F.R. 70.7 (h)(2): “EPA has determined that the phrase ‘materials available to the permitting authority that are relevant to the permit decision,’ 40 C.F.R. § 70.7(h)(2), means the information that the permitting authority has deemed to be relevant by using it in the permitting process. . . .” (emphasis added) *Sierra Club v. Johnson*, 436 F.3d 1269, 1284, (11th Cir. 2006). [See also

WAC 173-401-800 (1)(d)(iv).] It thus appears EPA interprets the word “materials” to mean “information”.

Significant records deemed relevant by being used in the permitting process [40 C.F.R. 70.7 (h)(2); WAC 173-401-800 (1)(d)(iv)], implicates those records needed to ascertain whether monitoring is sufficient to assure continuous compliance [40 C.F.R. 70.6 (a)(3)(i)(B); WAC 173-401-615 (1)(b)], and those records sufficient to allow the Administrator of EPA to discharge its duty under section 505(b)(2) of the federal *Clean Air Act* (CAA) [40 C.F.R. 70.7 (h)(5)].

Under 40 C.F.R. 70.7 (a)(1)(ii), Ecology, as the permitting authority, cannot issue an AOP until Ecology “has complied with the requirements for public participation under paragraph (h) [40 C.F.R. 70.7 (h)]”. [See also WAC 173-401-700 (1)(c).]

Part 70 also specifies that “[a]ll terms and conditions in a part 70 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act.” [40 C.F.R. 70.6 (b)(1).] Citizen enforcement under the CAA is frustrated when Ecology and the Permittee act to make unavailable, records, such as NOC application materials and emissions calculations, needed by the public to evaluate options for enforcement of terms and conditions in an AOP.

Pursuant to 40 C.F.R. 70.8 (c)(3)(iii) “[f]ailure of the permitting authority to do any of the following also shall constitute grounds for an objection: . . . (iii) Process the permit under the procedures approved to meet § 70.7(h) of this part”). [40 C.F.R. 70.8 (c)(3)(iii) see also WAC 173-401-700 (1)(c).]

Under 40 C.F.R. 70.10 (c)(1)(i)(C), the Administrator may withdraw Part 70 program approval:

“(i) Where the permitting authority’s legal authority no longer meets the requirements of this part, including the following: (C) Failure to comply with the public participation requirements of § 70.7(h) of this part”

40 C.F.R. 70.10 (c)(1)

In accordance with 40 C.F.R. 70.10 (b):

“*State failure to administer or enforce.* Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this part and of any agreement between the State and the Administrator concerning operation of the program.”

40 C.F.R. 70.10 (b)

3.4.2 Ecology’s responses

Ecology responds to Petitioner’s comment 135 by stating, in part:

...
The Washington Department of Health (Health) provided all the relevant supporting material for EU 1371 and EU 1384 that was in their possession when the Hanford Site Air Operating Permit Renewal 3 went out for public comment. Health is responsible for enforcing the standards for radioactive air emissions and maintains the records related to these air emissions.

After receiving this comment, Health went back through the license file, emails, electronic files, and database and did not discover any additional information related to the change to EU 1371 or to EU 1384. Because no additional records were found, that means that all relevant supporting material was provided at the start of the comment period.

Your comment indicates in particular that you could not find applications or modified applications in the materials for EUs 1371 and 1384. The Permittee used letter 13-ECD-0068 as the application for both EU 1371 and EU 1384. This is reconfirmed in the first paragraph of letter AIR 13-822 stating "[a]dditional information is required in order for us to process reference application..." The reference in the letter is "Letter 13-ECD-0068."

Letter 13-ECD-0068 was provided in the supporting materials at the start of the public comment period.

You also raise questions about the additional information requested in AIR 13-822. The license writer recalls that the additional information requested in AIR 13-822 was communicated to Health by the Permittee verbally (e.g. in a meeting, on the phone, etc.) and this information was used to mark up NOC 899 that was sent to the Permittee.

...

Exhibit 3, pgs. 123 & 124 of 660

Ecology's response to Petitioner's comment 150 reads, in part"

...

Your comment also indicates completed notice of construction (NOC) applications were not submitted for EUs 1371 and 1384. The permittee, USDOE, submitted an application to the Washington Department of Health (DOH) for both EU 1371 and EU 1384 under letter 13-ECD-0068. This letter was provided to the public in the supporting materials at the start of the public comment period. DOH requested additional information in letter AIR 13-822. USDOE communicated the additional information requested in letter AIR 13-822 orally and DOH used the information to mark up the requirements for EUs 1371 and 1384 in NOC 899, which was then sent to the permittee.

Revised Code of Washington (RCW) 70.98.080(1)(a) does not require DOH [sic] to require a licensee to submit additional information in writing following submittal of a written application for modification. The word "may" used in the start of the sentence suggests that DOH has some discretion in deciding whether or not to require further written statements. Additionally, Washington Administrative Code (WAC) 246-247-060(1)(b) supports this interpretation because the rule does not expressly require written follow-up information.

Based on letter AIR 13-822 and the additional information provided orally by USDOE, DOH issued licenses for EUs 1371 and 1384. These licenses were submitted to Ecology as part of the FF-01 license to be incorporated into the Hanford AOP Renewal 3. Ecology accepted the FF-01 license, which included requirements to ensure compliance with 40 CFR Part 61 Subparts A and H, [sic] and included the FF-01 license in the AOP, as Attachment 2, as an underlying requirement. When an omission or error is found in [sic] the FF-01 license concerning the application of 40 CFR Part 61 Subpart H to a source, Ecology (i.e., Renewal 2, Revision B) attaches an addendum with corrections to the AOP until the corrections can be added to the FF-01 license and incorporated into a future AOP renewal or revision. This ensures that the Hanford AOP is revised as necessary in response to any significant comments on federal applicable requirements related to 40 CFR Part 61 Subpart H, consistent with EPA's response to Claim 3B in the Order Granting in Part and Denying in Part Two Petitions for Objection to Permits from Petition Numbers X-2014-01 and X-2013-01.

40 CFR 70.7(h)(2) requires the permitting authority to make available to the public, among other things, all relevant materials supporting changes to an AOP and all other materials available to the permitting authority that are relevant to the permitting decision. In the Order Granting a Petition for Objection to Permit for Petition Number X-2016-13, EPA determined that information that DOH materially considered in implementing 40 CFR Part 61 Subpart H in the license is relevant information for purposes of issuance of the Hanford AOP. EPA directed Ecology to make available for public review all information used by DOH to implement 40 CFR Part 61 Subpart H. DOH is responsible for writing radioactive air emission licenses and maintains the records related to these licenses. DOH provided all the relevant supporting materials for EUs 1371 and 1384 that was in its possession when the Hanford AOP Renewal 3 went out for public comment. DOH has since reviewed the license

file, emails, electronic files, and databases and has not discovered any additional information related to the changes to EUs 1371 or 1384.

The written application submitted to DOH was provided to the public during the public comment period. The regulations do not require the licensee to submit additional information in writing after a written application has been received. Finally, no additional records were discovered in subsequent searches. Therefore, Ecology has verified that all [sic] relevant material supporting the changes to EUs 1371 and 1384 was provided to the public at the start of the public comment period.

Ecology reviewed NOC 899 and determined requirements for compliance with 40 CFR Part 61 Subparts A and H were present. Ecology therefore accepted the FF-01 license, which includes NOC 899, into the Hanford AOP as an underlying requirement. In the Order Denying a Petition for Objection to Permit for Petition Number VI-2013-10 EPA states "Title V contains no language that says that this consolidation process must involve a review of the substantive adequacy of any "applicable requirements" or a reconsideration of whether the "applicable requirements" were properly derived." The Order continues to state "the Act does not say that "applicable requirements" with these characteristics must be checked in the title V process to determine if they were properly derived before they can be consolidated into an operating permit" and "neither does the Act demand that these "applicable requirements" be re-checked each time the operating permit is renewed."

Questions concerning the process by which DOH receives and reviews information when issuing a license must be addressed under the appropriate DOH licensing mechanism, not through the Hanford AOP public comment process. As the permitting authority, Ecology has met its obligations under Title V by incorporating all applicable underlying requirements into the Hanford AOP and providing for public review all the relevant supporting information available. . . .

Exhibit 3, pps. 143 & 144 of 660

Ecology's response to Petitioner's comment 145 c) reads, in part:

. . .
c) Ecology has previously addressed this concern in a letter from Alexandra Smith, Ecology's Nuclear Waste Program Manager, to the commenter dated April 25, 2018. The records requested in the comment are calculations that were performed on a whiteboard during a meeting between Ecology staff and the permittee, USDOE, discussing the operation change in exhauster flow rate. The calculation written on the whiteboard was a transitory record that falls within the "Brainstorming and Collaborating" category (Disposition Authority Number GS 50006) under the State Government General Records Retention Schedule. Notably, the retention schedule specifically calls out "notes written on whiteboards" as being part of that category. As a transitory record, that was to be retained until no longer needed for agency business and then destroyed. Accordingly, Ecology staff erased the whiteboard at the end of the meeting. Ecology and the permittee, USDOE, were in agreement with the change calculated on the whiteboard, and therefore Ecology did not see a need for an additional request. Therefore, Ecology has provided the public with all records that are deemed significant and relevant in the permitting process.

Additionally, the changes made to Table 6 of DE11NWP-001 Revision 4 did not result in an increase in emissions or an authorization of a future increase in emissions. The changes were driven by the permittee's, USDOE, operational need to decrease the maximum 241-AP exhauster flow rate from 3,000 standard cubic feet per minute (scfm) to 1,750 scfm. The change in ammonia concentration at the specified flow rate from 100 parts per million (ppm) to 175 ppm retains the same mass release rate in grams per second with the decreased ventilation rate. . . .

. . .
The changes to Table 6 did not result in an emissions increase and, therefore, would not result in changes to the monitoring requirements. The permittee, USDOE, is required to monitor the ventilation rates and the emissions of ammonia during the activities described above. This requirement is detailed in several conditions listed under

discharge point 1.4.32 and in approval order DE11NWP-001 Revision 4. The public was able review the appropriateness of monitoring requirements regarding the conditions from approval order DE11NWP-001 Revision 4 with the records that were provided to support the draft AOP.

No change to the AOP is required due to part (c).

Exhibit 3, pgs. 136 & 137 of 660

3.4.3 Argument

First, Ecology as the permitting authority is responsible for crafting, enforcing, and issuing a Title V permit in accordance with requirements of 40 C.F.R. 70, including 40 C.F.R. 70.7 (h). Health is not a permitting authority under Part 70 and is not obligated by any requirements of Part 70. It is Ecology, not Health, that is obligated to follow Part 70. Ecology has all necessary authority under WAC 173-400 to enforce requirements implementing the Radionuclide NESHAPs, including 40 C.F.R. 61 Subpart H. This Ecology authority is independent of any authority possessed by Health⁴⁶. EPA emphatically agrees, “Ecology, as the issuer of the Hanford Title V Permit, bears the ultimate responsibility for ensuring the requirements of Subpart H are appropriately addressed in the permit.”⁴⁷

3.4.3.1 With regard to Ecology’s avoidance of public review of information used in the permitting process by using verbal materials to implement requirements of 40 C.F.R. 61 Subpart H, there appears to be a difference of opinion. In its response to comment 135 above, Ecology asserts “Health went back through the license file, emails, electronic files, and database and did not discover any additional information related to the change to EU 1371 or to EU 1384. Because no additional records were found, that means that all relevant supporting material was provided at the start of the comment period.” A similar argument appears in Ecology’s response to comment 150, above. Ecology’s response continues: “ The permittee, USDOE, submitted an application to the Washington Department of Health (DOH) for both EU 1371 and EU 1384 under letter 13-ECD-0068. This letter was provided to the public in the supporting materials at the start of the public comment period. DOH requested additional information in letter AIR 13-822. USDOE communicated the additional information requested in letter AIR 13-822 orally and DOH used the information to mark up the requirements for EUs 1371 and 1384 in NOC 899, which was then sent to the permittee.” Ecology’s response to comment 150. (Letter AIR 13-822 and letter 13-ECD-0068 appear in Exhibit 8.)

Ecology describes letter 13-ECD-0068 as transmitting an “application... for both EU 1371 and EU 1384”. A copy of letter 13-ECD-0068 is provided in Exhibit 8, pages 33-38. The subject line in letter 13-ECD-0068 reads:

⁴⁶ “The Administrator shall promulgate . . . regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. These elements shall include each of the following: (5) A requirement that the permitting authority have adequate authority to: (A) issue permits and assure compliance by all sources required to have a permit under this subchapter with each applicable standard, regulation or requirement under this chapter;” 42 U.S.C. 7661a (b)(5)(A); CAA § 501(b)(5)(A)

⁴⁷ *In the Matter of U.S. Department of Energy – Hanford Operations*, Order on Petition No. X-2016-13 (Oct. 15, 2018) at n.18, p. 11; *see also* Exhibit 8, n.18, p.16 . Also available at:

https://www.epa.gov/sites/production/files/2018-10/documents/hanford_response2016.pdf

“U.S. DEPARTMENT OF ENERGY (DOE), OFFICE OF RIVER PROTECTION (ORP) REQUESTS APPROVAL TO MODIFY THE LICENSE TO OPERATE THE CATEGORICAL TANK FARM FACILITY WASTE RETRIEVAL AND CLOSURE PHASE II WASTE RETRIEVAL OPERATIONS TO INCLUDE OPERATION OF RADIAL FILTERS FOR THE MOBILE ARM RETRIEVAL SYSTEM (MARS) VACUUM”

Exhibit 8, p. 33-38.

Letter 13-ECD 0068 transmits, as letter Attachment 1, a “NOTIFICATION OF OFF-PERMIT CHANGE, Permit Number: 00-05-006, Renewal 2 . . . pursuant to WAC 173-401-724(1), WAC 173-401-724(2), and WAC 173-401-724(6)”. Exhibit 8, p. 35-36. The word “application” does not appear in this letter or in any attachments to the letter. Rather than an “application” letter 13-ECD-0068 appears to be as stated by DOE-ORP, a request to modify Health’s license and a notification of off-permit change to the Hanford Site AOP, # 00-05-006. About 12 days after the date of Permittee’s letter 13-ECD-0068, Health requested considerable additional information, including “all information required in WAC 246-247-110 Appendix A – Application information requirements”. See Health Letter AIR 13-822, Exhibit 8, pgs. 28-31.

The reference line in Health letter AIR 13-822 states: ‘Letter 13-ECD-0068, Application for "Categorical Tank farm Facility Waste Retrieval and Closure Phase II Waste Retrieval Operations," dated August 14, 2013 -Additional Information Required’. Quoting from letter AIR 13-822:

“Additional information is required in order for us to process the reference application (per Washington Administrative Code [WAC] 246-247-060 (l)(b)). Following is a list of the additional required information:

- Provide information on emission unit (EU) name, nomenclature or AEI-ID, EU diameter, exhaust temperature, flow rates, and EU height for the new MARS vacuum HEP A filters.
- Validate that the U.S. Department of Energy FF-01 license EU numbers associated with the current air approval letter number AIR 12-343 are correct.
- Provide current individual process descriptions for each of the EUs associated with the NOC.
- Provide.”

Letter AIR 13-822 continues: “The review of this application has been placed on hold until we receive the requested information. The 30 day review period described in WAC 246-247-060 will begin upon the receipt of the requested information. Additional information may be requested in the future.” Exhibit 8, p. 28. “Letter 13-ECD-0068, dated 8/14/2013, was deemed insufficient by Health’s request for additional information (see bulleted items above) in letter AIR 13-822, dated 8/26/2013, or **about 12 days after the date of letter 13-ECD-0068.**” Petitioner’s comment 135, above. An internal email obtained through the *Public Records Act* (~state foia) informs Health never received an actual application for EUs 1371 and 1384.

“Okay, well, as far as the missing application for addition of the two radial filters (EU 1371 and 1384)...it appears to be correct that we didn’t receive an actual application.” Email from S.D. Berven, DOH to P.J. Martell, DOH, and P. Gent, Ecology, subject: “AOP Comments”, dated Mar. 23, 2018, 1:37 PM.

Neither Ecology or Health dispute the contents of this email.

Quoting from Ecology’s response to comment 135, above: “The license writer recalls that the additional information requested in AIR 13-822 was communicated to Health by the Permittee verbally (e.g. in a meeting, on the phone, etc.) and this information was used to mark up NOC 899 that was sent to the Permittee.”.

Letter AIR 13-822 is dated 8/26/2013. The initial versions of NOC 899 (for EU 1371) and NOC 908 (for EU 1384) are dated 9/19/2013, or about 23 days after Health’s request for application information in Letter AIR 13-822. Because these NOCs did not exist before Health’s

request for application information the word “mark up” should be “create”. Health used Permittee’s verbally-supplied information, which was provided to address shortcomings identified in Letter AIR 13-822, to create NOC 899 and NOC 908, because neither NOC 899 or NOC 908 previously existed. After these NOCs were created, they were sent to the Permittee for mark-up. After mark-up, they were issued on October 17, 2013, via letter AIR 13-1003.

Whether letter 13-ECD-0068 was an application is not a significant point. Health refers to this letter as an “application”, albeit one missing all or a substantial portion of the information required by that part of Health’s regulation defining application requirements, WAC 246-247-110 “Appendix A – Application information requirements”. A copy of WAC 246-247-110 “Appendix A – Application information requirements”, is provided in Exhibit 8, pgs. 30-31.

At issue in this part of Objection 4 is this “additional required information”, including “all information required in WAC 246-247-110 Appendix A – Application information requirements”⁴⁸ Health requested in Letter AIR 13-822 that was supplied verbally by the Permittee and subsequently used by Health to create NOC 899 and NOC 908.

Absent information used to create Notice of Construction (NOC) 899 and NOC 908, the public has no means to evaluate whether terms and conditions in these NOCs adequately implement requirements of 40 C.F.R. 61 Subpart H. Whether Ecology subsequently determined NOC 899 and NOC 908 appropriately addressed requirements of 40 C.F.R. 61 Subpart H, is not relevant, because the missing information at issue was used to create these NOCs. Also not relevant is Health’s repeat search of its license file, emails, electronic files, and database in an attempt to locate the missing verbally-communicated information (i.e. information conveyed without a record) used to address the additional information demanded in AIR 13-822. No record search will ever be successful in discovering information conveyed without a record. What is relevant is the public was denied information communicated verbally that was used in the permitting process to implement requirements of 40 C.F.R. 61 Subpart H for EUs 1371 in NOC 899 and 1384, in NOC 908.

NOC 899 for EU 1371 was issued as final on 10/31/2013 via letter AIR 13-1107, and replaced by NOC 1254, per letter AIR 17-710, dated 7/27/2017. NOC 908 for EU 1384 was also issued as final on 10/17/2013 and was replaced on 7/27/2017 by NOC 1255 which was issued pursuant to letter AIR 17-710.

The public was not provided with information Health requested in AIR 13-822, information that was subsequently used to create NOC 899 and NOC 908. The reason the public wasn’t provided this information is because such information was supplied verbally “(e.g. in a meeting, on the phone, etc.)” by the Permittee, thus no reviewable records exist. (Ecology response to comment 135 above.) Notice of Construction 899 and NOC 908 provide the operating terms and conditions for EUs 1371 and 1384, respectively, some of which implement requirements of 40 C.F.R. 61 Subpart H. The main questions are: If codified public review

⁴⁸ A copy of “WAC 246-247-110 Appendix A – Application information requirements” appears in Exhibit 8 at p. 30-31.

requirements can be skirted by using verbal information for 2 EUs, why not for 4, or for 8, or for all EUs in a title v permit? At what point do the requirements of 40 C.F.R. 70.7 (h)(2) become irrelevant? EPA has provided the answers:

“EPA agrees that Ecology’s failure to provide all relevant materials supporting the NERA license has prevented the public from knowing how the title V permit might be said to meet the requirements of Subpart H. This, in turn, means that the public lacked the opportunity to meaningfully participate in the permitting process and that the unavailability of such materials could have resulted in a deficiency in the title V permit.”⁴⁹

And:

“EPA has determined that the phrase ‘materials available to the permitting authority that are relevant to the permit decision,’ 40 C.F.R. § 70.7(h)(2), means the information that the permitting authority has deemed to be relevant by using it in the permitting process. . . .” (emphasis added) *Sierra Club v. Johnson*, 436 F.3d 1269, 1284, (11th Cir. 2006). [See also WAC 173-401-800 (1)(d)(iv).]

[It thus appears EPA and the 11th Circuit interpret the word “materials” to mean “information”.]

Neither NOCs 899 or 908 could have been created absent information required by WAC 246-247-110 “Appendix – A Application information requirements”, and requested by Letter AIR 13-822. (See Exhibit 8, pgs. 28-31.)

As noted above, it is Ecology’s regulatory obligation to issue Renewal 3 in accordance with requirements of Part 70⁵⁰. Ecology has all necessary authority to do so. Therefore, when the Permittee supplies verbal information subsequently used in the permitting process, it is Ecology’s obligation to require the Permittee also provide that information in a form reviewable by the public.

In interpreting language in 40 C.F.R. 70.7 (h)(2) EPA determined information that must be provided to support public review consists of all information deemed relevant by being used in the permitting process. EPA’s view is captured as a finding in case law.

“EPA has determined that the phrase ‘materials available to the permitting authority that are relevant to the permit decision,’ **40 C.F.R. § 70.7(h)(2), means the information that the permitting authority has deemed to be relevant by using it in the permitting process. . . .**” (emphasis added) *Sierra Club v. Johnson*, 436 F.3d 1269, 1284, (11th Cir. 2006) [See also WAC 173-401-800 (1)(d)(iv).]

Information supplied verbally to address codified application requirements and other material demanded by Health Letter AIR 13-822 and used to create NOC 899 and NOC 908, which were subsequently issued, was certainly information used in the permitting process. Yet that information was never offered to support public review. Ecology acknowledges verbally-communicated information was used to mark-up NOC 899 in its response to comment 135, and Health acknowledges, in an internal email, there was no actual application received for addition of EUs 1371 and 1384. Contrary to 40 C.F.R. 70.7 (h)(2) and WAC 173-401-800 (1)(d)(iv) the public was not provided all information deemed relevant to the permitting process for EUs 1371 and 1384.

⁴⁹ *In the Matter of U.S. Department of Energy – Hanford Operations*, Order on Petition No. X-2016-13 (Oct. 15, 2018) at 12; Exhibit 8, p.17

⁵⁰ “Ecology, as the issuer of the Hanford Title V Permit, bears the ultimate responsibility for ensuring the requirements of Subpart H are appropriately addressed in the permit.” *Id.* at 11; Exhibit 8 at 16

Ecology, as the Part 70 permitting authority, has all necessary authority to independently implement all Part 70 applicable requirements⁵¹. Furthermore, as the permitting authority, it is Ecology that must issue and enforce Hanford's AOP in accordance with requirements of Part 70, including requirements of 40 C.F.R. 70.7 (h)(2). [*See also* WAC 173-401-800 (1)(d)(iv).] Under 40 C.F.R. 70.7 (a)(1)(ii), Ecology, as the permitting authority, cannot issue an AOP until Ecology "has complied with the requirements for public participation under paragraph (h) [40 C.F.R. 70.7 (h)]". Because Ecology didn't comply with 40 C.F.R. 70.7 (h)(2), Ecology also cannot comply with 40 C.F.R. 70.7 (a)(1)(ii). [*See also* WAC 173-401-700 (1)(c).]

When Ecology overlooked requirements in 40 C.F.R. 70.7 (h)(2) and WAC 173-401-800 (1)(d)(iv) in determining terms and conditions implementing Subpart H based upon verbal information, Ecology also denies the public those records needed to ascertain the potential-to-emit radionuclides, whether monitoring is sufficient to assure continuous compliance [40 C.F.R. 70.6 (a)(3)(i)(B); WAC 173-401-615 (1)(b)], and impacts whether existing records are sufficient to allow the Administrator of EPA to discharge its duty under section 505(b)(2) of the federal *Clean Air Act* (CAA) [40 C.F.R. 70.7 (h)(5)].

Part 70 specifies that "[a]ll terms and conditions in a part 70 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act." [40 C.F.R. 70.6 (b)(1); *see also* WAC 173-401-625.] Citizen enforcement under the CAA is frustrated when Ecology and the Permittee act to make unavailable, records, such as actual NOC application materials (information), needed by the public to evaluate options for enforcement of terms and conditions in an AOP.

Pursuant to 40 C.F.R. 70.8 (c)(3)(iii) "[f]ailure of the permitting authority to do any of the following also shall constitute grounds for an objection: . . . (iii) Process the permit under the procedures approved to meet § 70.7(h) of this part". [40 C.F.R. 70.8 (c)(3)(iii); *see also* WAC 173-401-700 (1)(c).]

3.4.3.2 Petitioner's 2nd specific concern regards the use of verbal and destroyed information to change an operating condition and an emission limit in an Ecology order (DE11NWP-001, Rev. 4; *see* Exhibit 4). Table 6 of Rev. 4 is titled "Ammonia Concentration Limits (ppm)". In Rev. 4 ammonia is used as a surrogate for predicting the concentration in emissions of TAPs, including VOCs, dimethyl mercury, n-nitrosodimethylamine (NDMA), and chromium hexavalent: soluble, except chromic trioxide. Therefore, any change in the "ammonia concentration limit" in Table 6 reflects a change in the allowable concentration of VOCs, dimethyl mercury, NDMA, chromium hexavalent: soluble, except chromic trioxide, and other TAPs. The specific change in allowable concentration for each pollutant depends upon a previously-established ratio between emissions of ammonia and emissions of the particular pollutant.

⁵¹ "The Administrator shall promulgate . . . regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. These elements shall include each of the following: (5) A requirement that the permitting authority have adequate authority to: (A) issue permits and assure compliance by all sources required to have a permit under this subchapter with each applicable standard, regulation or requirement under this chapter;" 42 U.S.C. 7661a (b)(5)(A); CAA § 501(b)(5)(A)

There are two versions of Table 6 in Ecology order DE11NWP-001, Rev. 4 (Rev. 4). One version, the originally-issued version, is contained in Exhibit 4, on p. 13 of 30. The second version can be located in Exhibit 8, page 32. The second version reflects a decrease in the exhauster flow rate for 241-AP from 3,000 scfm to 1,750 scfm and an increase in the “ammonia concentration limit” from 100 ppm to 175 ppm. The date associated with this change is 10/26/2016.

In comment 145 c), Petitioner asserts:

“There are no documents requesting the change to operating limits; no information supporting or justifying such a request; and no existing documents to support public participation. . . calculations plus the values used to populate the variables in calculations employed by Ecology to establish the new exhaust fan rates (in scfm) and ammonia concentration limits (in ppm) were performed on a white board which was subsequently erased; thus, these records also do not exist to support public participation”

(footnote omitted) Exhibit 2, comment 145 c)

It is the information used as the basis for the 10/26/2016, change to operating the condition and limit for 241-AP in Table 6 that is at issue.

In its response to Petitioner’s comment 145 c), Ecology explains:

“The records requested in the comment are calculations that were performed on a whiteboard during a meeting between Ecology staff and the permittee, USDOE, discussing the operation change in exhauster flow rate. The calculation written on the whiteboard was a transitory record that falls within the "Brainstorming and Collaborating" category (Disposition Authority Number GS 50006) under the State Government General Records Retention Schedule. Notably, the retention schedule specifically calls out "notes written on whiteboards" as being part of that category. As a transitory record, that was to be retained until no longer needed for agency business and then destroyed. Accordingly, Ecology staff erased the whiteboard at the end of the meeting. Ecology and the permittee, USDOE, were in agreement with the change calculated on the whiteboard, and therefore Ecology did not see a need for an additional request. Therefore, Ecology has provided the public with all records that are deemed significant and relevant in the permitting process.

...

The changes were driven by the permittee's, USDOE, operational need to decrease the maximum 241-AP exhauster flow rate from 3,000 standard cubic feet per minute (scfm) to 1,750 scfm. The change in ammonia concentration at the specified flow rate from 100 parts per million (ppm) to 175 ppm retains the same mass release rate in grams per second with the decreased ventilation rate. . . .”

Exhibit 3, pgs. 136 & 137 of 660

Ecology acknowledges information used to affect the changes to Table 6, dated 10/26/2016, occurred absent any enduring records. This because the “State Government General Records Retention Schedule” allows transitory records, including notes on a white board, to be deleted when no longer needed. Overlooked in Ecology’s response is Ecology’s obligation under 40 C.F.R. 70.7 (h)(2). Forty C.F.R. 70.7 (h)(2) requires Ecology, as the permitting authority, to provide the public with all information deemed relevant by being used in the permitting process. A glance at the 2 versions of Table 6 is sufficient to discern the 10/26/2016 version differs from the original. According to Ecology, “[t]he changes were driven by the permittee's, USDOE, operational need to decrease the maximum 241-AP exhauster flow rate from 3,000 standard cubic feet per minute (scfm) to 1,750 scfm.” Because any change in the “ammonia concentration limit” in Table 6 reflects a change in the allowable concentration in ppm in emissions of VOCs, dimethyl mercury, NDMA, chromium hexavalent: soluble, except chromic trioxide, and other TAPs,

Ecology's 10/26/2016 changes impacted several concentration "limits" in Rev. 4. Ecology certainly did use the verbal request from the Permittee, Permittee's justification(s) for its request, and the now-erased calculations in the permitting process. Rev. 4 with the 10/26/2016 changes to Table 6 now appears in Attachment 1 of Renewal 3. Ecology has all necessary authority to require the Permittee to provide a written request for the changes to Table 6 it wanted, even after the fact. Because Ecology performed the calculations on the white board, calculations that were subsequently erased, Ecology should easily be able to re-create these calculations in a form reviewable by the public. It is not clear why Ecology did not choose to do so.

At what point do the requirements of 40 C.F.R. 70.7 (h)(2) become irrelevant?

In interpreting language in 40 C.F.R. 70.7 (h)(2) EPA determined information that must be provided to support public review consists of all information deemed relevant by being used in the permitting process. EPA's view is captured as a finding in case law.

"EPA has determined that the phrase 'materials available to the permitting authority that are relevant to the permit decision,' **40 C.F.R. § 70.7(h)(2), means the information that the permitting authority has deemed to be relevant by using it in the permitting process. . .**" (emphasis added) *Sierra Club v. Johnson*, 436 F.3d 1269, 1284, (11th Cir. 2006). [See also WAC 173-401-800 (1)(d)(iv)]

Information requesting a change to an ammonia concentration limit and fan exhaust rate; information supporting or justifying such a request; and calculations along with the values used to populate the variables in calculations employed by Ecology to establish the new exhaust fan rate (in scfm) and ammonia concentration limit (in ppm) was certainly information used in the permitting process. Yet that information was never offered to support public review. Ecology acknowledges verbally-communicated information and destroyed records was used to affect changes to Table 6 of Rev. 4. Contrary to 40 C.F.R. 70.7 (h)(2) and WAC 173-401-800 (1)(d)(iv), Ecology failed to supply the public with information it used in the permitting process to affect changes in Table 6 of Rev.4.

In order for Ecology to receive approval to implement requirements of Part-70, Ecology, convinced EPA that Ecology has all necessary authority to independently implement and enforce all Part 70 requirements. When Ecology overlooked requirements in Part 70, such as 40 C.F.R. 70.7 (h) in favor of state guidance, it would appear to place its EPA-approved Part 70 program in jeopardy. Ecology acknowledges it overlooked requirements of 40 C.F.R. 70.7 (h)(2) when it destroyed Part 70-relevant records using state guidance provided under the "State Government General Records Retention Schedule". Ecology's chosen path seems particularly risky, given Ecology can so easily remedy its oversight. See 40 C.F.R. 70.10 (c)(1)(i)(C)⁵² and 40 C.F.R. 70.10 (b)⁵³.

⁵² Under 40 C.F.R. 70.10 (c)(1)(i)(C), the Administrator may withdraw Part 70 program approval: "(i) Where the permitting authority's legal authority no longer meets the requirements of this part, including the following: (C) Failure to comply with the public participation requirements of § 70.7(h) of this part"

40 C.F.R. 70.10 (c)(1)

⁵³ "State failure to administer or enforce. Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this part and of any agreement between the State and the Administrator concerning operation of the program." 40 C.F.R. 70.10 (b)

Under 40 C.F.R. 70.7 (a)(1)(ii), Ecology, as the permitting authority, cannot issue an AOP until Ecology “has complied with the requirements for public participation under paragraph (h) [40 C.F.R. 70.7 (h)]”. [See also WAC 173-401-700 (1)(c).] Because Ecology didn’t comply with 40 C.F.R. 70.7 (h)(2) and acknowledges it didn’t comply, Ecology also cannot comply with 40 C.F.R. 70.7 (a)(1)(ii).

When Ecology overlooked requirements in 40 C.F.R. 70.7 (h)(2) in determining and implementing Table 6 changes based upon verbal information and destroyed records, Ecology also denies the public information needed to ascertain whether monitoring is sufficient to assure continuous compliance [40 C.F.R. 70.6 (a)(3)(i)(B); WAC 173-401-615 (1)(b)], and impacts whether existing records are sufficient to allow the Administrator of EPA to discharge its duty under section 505(b)(2) of the federal *Clean Air Act* (CAA) [40 C.F.R. 70.7 (h)(5)].

Part 70 specifies that “[a]ll terms and conditions in a part 70 permit, including any provisions designed to limit a source’s potential to emit, are enforceable by the Administrator and citizens under the Act.” [40 C.F.R. 70.6 (b)(1); WAC 173-401-625.] Citizen enforcement under the CAA is frustrated when Ecology and the Permittee act to make unavailable, records used in the permitting process, such as emissions calculations, needed by the public to evaluate options for enforcement of terms and conditions in an AOP.

Pursuant to 40 C.F.R. 70.8 (c)(3)(iii) “[f]ailure of the permitting authority to do any of the following also shall constitute grounds for an objection: . . . (iii) Process the permit under the procedures approved to meet § 70.7(h) of this part”. [40 C.F.R. 70.8 (c)(3)(iii).]

Also implicated by Ecology’s failure to abide by public review requirements codified in 40 C.F.R. 70.7 (h) are 40 C.F.R. 70.10 (c)(1)(i)(C), and 40 C.F.R. 70.10 (b).

3.4.4 The Administrator must object

Contrary to 40 C.F.R. 70.7 (h)(2) Ecology, the permitting authority, didn’t provide any information used in the permitting process for establishment of terms and conditions implementing 40 C.F.R. 61, Subpart H, a federally applicable requirement under Part 70 and for changes made to federally-enforceable requirements implementing terms and conditions in an Ecology Order. Specifically, Objection 4 pertains to: 1. the avoidance of public review of materials used in the permitting process by using verbally-communicated information to implement requirements of 40 C.F.R. 61 Subpart H for 2 emissions units (EUs) 1371 and 1384, and; 2. the use of verbal information and destroyed records to change an operating condition and an emission limit in an Ecology order (DE11NWP-001, Rev. 4; see Exhibit 4).

In accordance with the CAA, the Administrator “shall issue an objection [to the issuance of a Title V permit] . . . if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of [the CAA]” or is not in compliance with Part 70, the regulation implementing Title V.⁵⁴ Under case law, the Administrator has discretion defining a reasonable interpretation of the

⁵⁴ CAA § 502 (b)(2) [42 U.S.C. 7661d (b)(2)]; see also “The Administrator will object to the issuance of any proposed permit determined not to be in compliance with applicable requirements or requirements under this part [70]”. 40 C.F.R. 70.8(c)(1)

term “demonstrate” in CAA § 505 (b)(2) [42 U.S.C. 7661d (b)(2)]⁵⁵. However, once the petitioner demonstrates the permit is not in compliance, the Administrator has no option but to object to the permit⁵⁶.

Petitioner raised this object with “reasonable specificity” primarily in Petitioner’s comments 135, 145 c) and 150. *See* Exhibit 1, Enclosure 1, comment 135; Exhibit 2, comments 145 c) and 150. These comments, and others, were received by Ecology during an announced public comment period on *draft* Renewal 3.

Petitioner offers as evidence Permittees letter 13-ECD-0068, dated 8/14/2013, which requests a modification to Health’s license and provides a notification of off-permit change to the Hanford Site AOP, # 00-05-006. Exhibit 8, pgs. 33-38. About 12 days after the date of Permittee’s letter 13-ECD-0068, Health requested considerable additional information, including “all information required in WAC 246-247-110 Appendix A – Application information requirements”. (*See* AIR 13-822, Exhibit 8, pgs. 28-29.) Petitioner also provides a copy of WAC 246-247-110, titled “Appendix A – Application information requirements”, in Exhibit 8, pgs. 30-31.

Petitioner offers as evidence Health Letter AIR 13-822 requesting the Permittee supply considerable additional information including all information required in an application under Health’s regulation. (Exhibit 8, pgs. 28-29.) Permittee also offers as evidence written acknowledgements by both Ecology and Health that information requested by Letter AIR 13-822 was used to create terms and conditions implementing requirements of 40 C.F.R. 61 Subpart H in Notice of Construction (NOC) 899 for EU 1371 and NOC 908 for EU 1384, and that this information was supplied verbally. (NOC 899 for EU 1371 was issued as final on 10/31/2013 via letter AIR 13-1107, and replaced by NOC 1254, per letter AIR 17-710, dated 7/27/2017. NOC 908 for EU 1384 was also issued as final on 10/17/2013 and was replaced on 7/27/2017 by NOC 1255 which was issued pursuant to letter AIR 17-710.) Ecology acknowledges verbally-communicated information was used to create NOC 899 in its response to Petitioner’s comment 135:

“The license writer recalls that the additional information requested in AIR 13-822 was communicated to Health by the Permittee verbally (e.g. in a meeting, on the phone, etc.) and this information was used to mark up NOC 899 that was sent to the Permittee” Exhibit 3, pgs. 123 & 124 of 660

Because NOC 899 (dated 9/19/2013) and NOC 908 (also dated 9/19/2013) did not exist before Permittee’s verbal information was supplied to address shortcomings identified in Letter AIR 13-822 (dated 8/26/2013), this verbally-communicated information was used to create NOC 899 and NOC 908.

Health acknowledges, in an internal email, there was no actual application received for addition of EUs 1371 and 1384:

⁵⁵ “The ambiguity of this provision in the statute [42 U.S.C. 7661d (b)(2)] suggests that Congress has left the meaning of “demonstrate” open for EPA to supply a reasonable interpretation under *Chevron* [*Chevron USA Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)].” *MacClarence v. U.S. E.P.A.*, 596 F.3d 1123, 1131 (9th Cir. 2010)

⁵⁶ “Simply put, the Administrator is required to object to permits that violate the Clean Air Act. This duty to object to such permits is a nondiscretionary duty.” *New York Public Interest Research Group v. Whitman*, 321 F. 3d 316, 333 (2d Cir. 2003)

“Okay, well, as far as the missing application for addition of the two radial filters (EU 1371 and 1384)...it appears to be correct that we didn’t receive an actual application.” Email from S.D. Berven, DOH to P.J. Martell, DOH, and P. Gent, Ecology, subject: “AOP Comments”, dated Mar. 23, 2018, 1:37 PM.
Exhibit 2, Comment 150; Exhibit 8 pgs. 19-23

Information communicated verbally was used in the permitting process to implement requirements of 40 C.F.R. 61 Subpart H for EUs 1371 and 1384, in NOC 899 and NOC 908, respectively. This verbally-supplied information was not provided to the public to support public review. Contrary to 40 C.F.R. 70.7 (h)(2) the public was not provided all information deemed relevant by being used in the permitting process for EUs 1371 and 1384.

Ecology justifies providing zero information to the public for terms and conditions implementing requirements of Subpart H by offering its incorrect opinion that these 2 emissions units (EUs) were the product of Health’s issuance process and therefore are not subject to issuance requirements in 40 C.F.R. 70.7 (h)(2). [*See also* WAC 173-401-800 (1)(d)(iv).] Ecology is the Part 70 permitting authority. It is Ecology, not Health, that is obligated to issue Renewal 3 in accordance with requirements of Part 70. As permitting authority, Ecology has all necessary authority and the codified obligation [40 C.F.R. 70.10 (b)] to correct any defect in Health’s issuance process that implicates Part 70, including, Health’s improper use of verbal information to implement requirements of 40 C.F.R. 61 Subpart H.

Objection 4 also encompasses Ecology’s failure to provide the public with information used to affect a change to an operating condition and a change to an emission limit in Table 6 of Ecology Order DE11NWP-001, Rev. 4 (Rev. 4). Petitioner offers as evidence a copy of Table 6, as originally issued and a copy of Table 6 after the changes were made. Exhibit 4, p. 13 of 30 and Exhibit 8, p. 32. Petitioner describes the nature of the changes:

“Table 6 of Rev. 4 is titled “Ammonia Concentration Limits (ppm)”. In Rev. 4 ammonia is used as a surrogate for predicting the concentration in emissions of TAPs, including VOCs, dimethyl mercury, n-nitrosodimethylamine (NDMA), and chromium hexavalent: soluble, except chromic trioxide. Therefore, any change in the “ammonia concentration limit” in Table 6 reflects a change in the allowable concentration of VOCs, dimethyl mercury, NDMA, chromium hexavalent: soluble, except chromic trioxide, and other TAPs. The specific change in concentration for each pollutant depends upon a previously-established ratio between ammonia and the particular pollutant.”

Petitioner’s comment 145 c), above, and Exhibit 2, comment 145 c)

Ecology shows requirements for control of the above emissions to be federally enforceable (“State-Only: No”). *See generally* Exhibit 5.

Petitioner offers Ecology’s acknowledgement that Ecology destroyed all records used to affect the changes to Table 6 in addition to Ecology’s justification for destroying these records:

“The records requested in the comment are calculations that were performed on a whiteboard during a meeting between Ecology staff and the permittee, USDOE, discussing the operation change in exhauster flow rate. The calculation written on the whiteboard was a transitory record that falls within the “Brainstorming and Collaborating” category (Disposition Authority Number GS 50006) under the State Government General Records Retention Schedule. Notably, the retention schedule specifically calls out “notes written on whiteboards” as being part of that category. As a transitory record, that was to be retained until no longer needed for agency business and then destroyed. Accordingly, Ecology staff erased the whiteboard at the end of the meeting. Ecology and the permittee, USDOE, were in agreement with the change calculated on the whiteboard, . . . Therefore, Ecology has provided the public with all records that are deemed significant and relevant in the permitting process.

...

The changes were driven by the permittee’s, USDOE, operational need to decrease the maximum 241-AP exhauster flow rate from 3,000 standard cubic feet per minute (scfm) to 1,750 scfm. The change in

ammonia concentration at the specified flow rate from 100 parts per million (ppm) to 175 ppm retains the same mass release rate in grams per second with the decreased ventilation rate. . . .”

Exhibit 3, pgs. 136 & 137 of 660

Information communicated verbally in the meeting and information destroyed by Ecology includes Permittee’s request for the change to the ammonia concentration limit and the fan exhaust rate; information supporting or justifying this request; and calculations along with the values used to populate the variables in calculations employed by Ecology to establish the new exhaust fan rate (in scfm) and ammonia concentration limit (in ppm). This information drove the changes to Table 6 and is reflected in these changes. Therefore, this verbal and destroyed information was used in the permitting process.

EPA and the 11th Circuit Court of Appeals have determined that “materials deemed relevant to the permitting process consists of all information the permitting authority deemed to be relevant by using it in the permitting process.” (See Sierra Club v. Johnson, 436 F.3d 1269, 1284, (11th Cir. 2006). A similar provision is located in WAC 173-401-800 (1)(d)(iv). Thus, EPA and the 11th Circuit both take a position contrary that expressed in Ecology’s responses with regard to: 1. information used as a basis to create terms and conditions implementing requirements of 40 C.F.R. 61 Subpart H for EUs 1371 and 1384; and 2. information used to affect changes to an operating condition and an emission limit in Table 6 of Rev. 4.

Under 40 C.F.R. 70.7 (a)(1)(ii), Ecology, as the permitting authority, cannot issue an AOP until Ecology “has complied with the requirements for public participation under paragraph (h) [40 C.F.R. 70.7 (h)]”. [See also WAC 173-401-700 (1)(c).] Because Ecology acknowledges it didn’t comply with 40 C.F.R. 70.7 (h)(2), Ecology also cannot comply with 40 C.F.R. 70.7 (a)(1)(ii).

When Ecology overlooked requirements in 40 C.F.R. 70.7 (h)(2) in determining terms and conditions implementing Subpart H based upon verbal information and when determining and implementing Table 6 changes to an operating condition and to an emission limit based upon verbal information and destroyed records, Ecology also denies the public those records needed to ascertain whether monitoring is sufficient to assure continuous compliance [40 C.F.R. 70.6 (a)(3)(i)(B)], and impacts whether existing records are sufficient to allow the Administrator of EPA to discharge its duty under section 505(b)(2) of the federal *Clean Air Act* (CAA) [40 C.F.R. 70.7 (h)(5)].

Part 70 specifies that “[a]ll terms and conditions in a part 70 permit, including any provisions designed to limit a source’s potential to emit, are enforceable by the Administrator and citizens under the Act.” [40 C.F.R. 70.6 (b)(1).] Citizen enforcement under the CAA is frustrated when Ecology and the Permittee act to make unavailable, records, such as actual NOC application materials and emissions calculations, needed by the public to evaluate options for enforcement of terms and conditions in an AOP.

Pursuant to 40 C.F.R. 70.8 (c)(3)(iii) “[f]ailure of the permitting authority to do any of the following also shall constitute grounds for an objection: . . . (iii) Process the permit under the procedures approved to meet § 70.7(h) of this part”. [40 C.F.R. 70.8 (c)(3)(iii).]

Through evidence provided above, Petitioner has demonstrated the issuance process used for Renewal 3 is not compatible with requirements codified at 40 C.F.R. 70.7 (h)(2) and - 70.7 (a)(1)(ii), in addition to other related requirements in Part 70: 1. for 2 EUs and, 2. for changes to an operating condition and an emission limit in a table in an Ecology Order. Because of this defective issuance process, the Administrator must object.

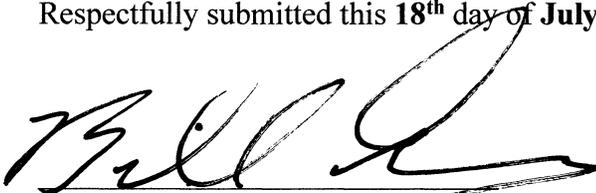
4.0 Conclusion

For the reasons argued above:

1. Ecology exceeded its authority when it developed and requires use of a new monitoring method, unapproved by EPA, for determining compliance with emission limits for federally-enforceable requirements, contrary to 40 C.F.R. 61.04 (c)(10) n.16;
2. Federally-enforceable conditions for some emissions units in Renewal 3 do not contain emissions limits, only references to other documents where these emission limits are located, contrary to CAA § 504(a) [42 U.S.C. 7661c (a)], 40 C.F.R. 70.6 (a)(1), and case law;
3. Ecology did not include in Renewal 3 applicable requirements from Administrative Order of Correction (AO) Number 20030006 for control of fugitive dust from the Marshalling Yard, now called the Material Handling Facility (MHF), contrary to 40 C.F.R. 70.7 (a)(1)(iv), 40 C.F.R. 70.6 (a)(1), and EPA's determination "that CAA-related requirements in Administrative Orders are appropriately treated as "applicable requirements" and must be included in title v permits; and
4. When Ecology based some Renewal 3 terms and conditions on information supplied verbally by the Permittee and information destroyed before public review, the public was deprived the opportunity to review information used in the permitting process, contrary to 40 C.F.R. 70.7 (h)(2)

Therefore, the Administrator has a nondiscretionary duty to object to the issuance of Renewal 3.

Respectfully submitted this 18th day of July, 2019.



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PETITION TO OBJECT
TO THE HANFORD SITE
TITLE V OPERATING PERMIT
NUMBER 00-05-006, RENEWAL 3

5.0 List of Exhibits

Exhibit 1:

Page 1	Petitioner's transmittal letter.
Pages 2-57	<i>Enclosure 1</i> , Petitioner's comments.
Pages 58- 210	<i>Enclosure 2</i> , W.R. Wilmarth et al., <i>Hanford Tank Vapor Assessment Report</i> , SRNL-RP-2014-00791, Oct. 30,2014.
Pages 211- 247	<i>Enclosure 3</i> , Henry S. Cole, Ph.D., Henry S. Cole & Associates, Inc., <i>Review and Comments on Washington State Department of Ecology Requirements for the Measurement and Control of Emissions from Hanford's Nuclear Waste Storage Tanks</i> , Feb. 2017.

Exhibit 2:

Page 1	Petitioner's transmittal letter, dated Sep. 13, 2018.
Pages 2-13	Petitioner's comments, #'s 145 through 151.

Exhibit 3:

Pages 1- 660	<i>Response to Comments Hanford Air Operating Permit Renewal 3, December 17, 2017 through April 6, 2018, July 22, 2018 through September 14, 2018, Summary of a [sic] public comment period and responses to comments. Publication no. 19-05-xxx. As transmitted to EPA with proposed Renewal 3 via Ecology Letter 19-NWP-082, dated May 16, 2019.</i>
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Exhibit 4:

Pages 1- 30	“NON-RADIOACTIVE AIR EMISSIONS NOTICE OF CONSTRUCTION APPROVAL ORDER CONDITIONS AND RESTRICTIONS DE11NWP-001, REVISION 4”, Mar. 3, 2016
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Exhibit 5:

Pg. in Proposed Renewal 3	Discharge point in Proposed Renewal 3
Pg. 62 (1/15)	1.4.23; P-WTP-001
Pg. 97 (2/15)	1.4.32; 241-AP, 241-SY & 241-AY/AZ Ventilation
Pg. 98 (3/15)	1.4.32; 241-AP, 241-SY & 241-AY/AZ Ventilation
Pg. 99 (4/15)	1.4.32; 241-AP, 241-SY & 241-AY/AZ Ventilation

- Exhibit 5: Pg. 100 (5/15) 1.4.32; 241-AP, 241-SY & 241-AY/AZ Ventilation
cont.
- Pg. 101 (6/15) 1.4.32; 241-AP, 241-SY & 241-AY/AZ Ventilation
Pg. 102 (7/15) 1.4.32; 241-AP, 241-SY & 241-AY/AZ Ventilation
Pg. 103 (8/15) 1.4.32; 241-AP, 241-SY & 241-AY/AZ Ventilation
Pg. 104 (9/15) 1.4.32; 241-AP, 241-SY & 241-AY/AZ Ventilation
Pg. 105 (10/15) 1.4.32; 241-AP, 241-SY & 241-AY/AZ Ventilation
Pg. 106 (11/15) 1.4.32; 241-AP, 241-SY & 241-AY/AZ Ventilation
Pg. 107 (12/15) 1.4.32; 241-AP, 241-SY & 241-AY/AZ Ventilation
Pg. 108 (13/15) 1.4.32; 241-AP, 241-SY & 241-AY/AZ Ventilation
Pg. 109 (14/15) 1.4.32; 241-AP, 241-SY & 241-AY/AZ Ventilation
- Pg. 18 (15/15) Ecology Pub.# 16-05-005; Response to Comments Air
Permit Revision to Facilitate Waste Retrieval from
Hanford Tank AY-102
- Exhibit 6: Pg. in *Proposed* Discharge point in *Proposed* Renewal 3
Renewal 3
- Pg. 45 (1/7) 1.4.14 Discharge Point: CWC
Pg. 53 (2/7) 1.4.18 Discharge Point: Emergency Diesel Generators
Pg. 57 (3/7) 1.4.20 Discharge Point: P-2706T 001
Pg. 84 (4/7) 1.4.27 Discharge Point: E-85 Fuel Station
Pg. 98 (5/7) 1.4.32; 241-AP, 241-SY & 241-AY/AZ Ventilation
Pg. 99 (6/7) 1.4.32; 241-AP, 241-SY & 241-AY/AZ Ventilation
Pg. 110 (7/7) 1.4.33 Discharge Point: Lagoon Treatment System
- Exhibit 7:
- Page 1- 3 BCAA Administrative Order of Correction No. 20030006,
dated March 12, 2003
- Pages 4- 6 Transmittal letter and Notice of Violation 20030006, dated
March 12, 2003
- Pages 7- 15 Waste Treatment Plant Marshalling Yard Project Dust
Control Plan, dated March 21, 2003
- Exhibit 8:
- Pgs. 1-5 Letter, from B. Green to K. McFadden, Branch Chief, Air
Permits and Toxics Branch, EPA Region 10, "RE:
Proposed Hanford Air Operating Permit (AOP) No. 00-
05-006, Renewal 3. (Renewal 3)", (sent cert. mail: 7018
3090 0000 2792 6705), Jun. 10, 2019

Exhibit 8	Pgs. 6-18	Letter Encl. 1: EP A order: <i>In the Matter Of U.S. Department Of Energy -Harford Operations</i> , Order on Petition No. X-2016-13 (Oct.15, 2018).
Cont.		
	Pgs. 19-23	Letter Encl. 2: public comments 135 & 150
	Pgs. 24-27	Letter Encl. 3: Ecology response to public comments 135 & 150 [I-7-135 & I-10-6]
	Pgs. 28-31	Letter Encl. 4: Letter AIR 13-822 & Appendix A to WAC 246-247-110 (“Appendix A – Application information requirements”)
	Pg. 32	Table 6 from DE11NWP-001, Rev. 4, with change dated 10/26/2016.
	Pgs. 33-38	Letter 13-ECD-0068, “U.S. DEPARTMENT OF ENERGY (DOE), OFFICE OF RIVER PROTECTION (ORP) REQUESTS APPROVAL TO MODIFY THE LICENSE TO OPERATE THE CATEGORICAL TANK FARM FACILITY WASTE RETRIEVAL AND CLOSURE PHASE II WASTE RETRIEVAL OPERATIONS TO INCLUDE OPERATION OF RADIAL FILTERS FOR THE MOBILE ARM RETRIEVAL SYSTEM (MARS) VACUUM”, Aug. 14, 2013