

Effective Date: XX/XX/XXXX
Expiration Date: XX/XX/XXXX

Hanford Air Operating Permit
Permit No. 00-05-06
Renewal 3

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**STATEMENT OF BASIS
HANFORD SITE AIR OPERATING PERMIT
NO. 00-05-006
RENEWAL 3**

**ATTACHMENT 3
BENTON CLEAN AIR AGENCY PERMIT**

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3 **STATEMENT OF BASIS**
4 **HANFORD SITE AIR OPERATING PERMIT**
5 **NO. 00-05-006**
6 **RENEWAL 3**

7 **ATTACHMENT 3**
8 **BENTON CLEAN AIR AGENCY PERMIT**
9

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11
12 This attachment includes regulatory requirements at the Hanford Site for outdoor burning
13 enforced by the Benton Clean Air Agency (BCAA). In 1994, the Washington State Department
14 of Ecology (Ecology) delegated outdoor burning regulatory responsibilities to BCAA. The text
15 of the March 11, 1994 delegation letter from Ecology to BCAA is provided in this statement of
16 basis (Enclosure 1).
17

18 Since the issuance of the delegation letter in 1994, a number of personnel and terminology
19 changes have taken place. Specific changes, although not affecting regulatory delegation, are
20 summarized below:
21

- 22 1. The Benton-Franklin Counties Clean Air Agency (BFCCAA) was renamed Benton Clean
23 Air Authority (BCAA) in January 1995 due to reorganization. The organization's name
24 was further revised on September 20th of 2007 from Benton Clean Air Authority (BCAA)
25 to Benton Clean Air Agency (BCAA).
- 26 2. BCAA is currently located at 526 South Steptoe Street, Kennewick, WA, 99336.
- 27 3. "Open burning" was renamed "outdoor burning" in March 2000 by revising
28 WAC 173-425.
29

30 The March 11, 1994 delegation letter also delegated asbestos handling regulatory responsibility
31 to BCAA. However, BCAA relinquished asbestos regulatory responsibility at the Hanford Site
32 in 2016. Effective December 1, 2016, Ecology assumed responsibility and regulatory authority
33 to ensure compliance with 40 CFR Part 61, Subpart M, National Emission Standard for
34 Asbestos, at the Hanford Site. A copy of the letter acknowledging BCAA's relinquishment of
35 asbestos regulatory authority, 16-NWP-205, is also provided as Enclosure 2.
36

37 At the Hanford Site, BCAA enforces Washington Administrative Code 173-425 and BCAA
38 Regulation 1, Article 5, regarding Outdoor Burning. Attachment 3 of the AOP identifies the
39 BCAA outdoor burning requirements.
40

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Permit No. 00-05-06
Renewal 3

- 1 Enclosure 1: The 1994 delegation letter from Ecology to BCAA for asbestos handling and
- 2 outdoor burning.
- 3

DRAFT

1 March 11, 1994

2
3 David A. Lauer, Director
4 Benton-Franklin Counties
5 Clean Air Authority
6 650 George Washington Way
7 Richland, WA 99352-4289

8
9 Dear Mr. Lauer:

10
11 Re: Delegation of Asbestos and Open Burning Regulatory Responsibility

12
13 After receiving your letter of December 15, 1993, regarding asbestos and open burning at the Hanford Site, I
14 realized your immediate concern about these two issues. I have asked Mr. Joe Stohr, Manager of the Technical
15 Assistance and Regulatory Coordination Section, to work on these issues.

16
17 In discussing this matter with Mr. Myron Saikewicz, Manager of the Engineering Section at Ecology's Air
18 Quality Program, we agreed that the Benton-Franklin Counties Clean Air Authority (BFCCAA) should continue
19 to handle asbestos and open burning issues at the Hanford Site. The Nuclear Waste Program is not planning to
20 actively exercise its preemptive authority under RCW 70.105.240 and regulate asbestos and open burning at the
21 Hanford Site. I feel that the Benton-Franklin Counties Clean Air Authority has the needed qualifications and
22 experience to accomplish these regulatory functions at Hanford.

23
24 Ecology exercises "preemptive" authority for all regulatory functions at certain hazardous waste management
25 facilities, including Hanford, based upon RCW 70.105.240. Since Hanford is a federal facility, Ecology
26 exercises this authority only in areas where the federal government has waived its sovereign immunity. Under
27 the Federal Clean Air Act, the federal government has waived sovereign immunity at Hanford. Ecology,
28 therefore, can preempt local government or other state agencies in regulating asbestos and open burning at
29 Hanford.

30
31 Ecology remains reluctant to assume preemptive responsibility in areas where local government is clearly
32 qualified to accomplish such regulatory responsibilities and where it is more appropriate for Ecology to delegate
33 such responsibility. In the case of asbestos and open burning regulations, I believe it is appropriate to delegate
34 such authority to the BFCCAA. This delegation, therefore, extends to BFCCAA, the authority to ensure
35 compliance with 40 CFR 61, Asbestos, Handling, Notifications, and Reporting. WAC 173-425, and applicable
36 local regulations at the Hanford Site.

37
38 In order to further clarify the issues, I would like to respond to the questions addressed in your letter as follows:

39
40 1. The BFCCAA will continue to serve the role that your agency currently has as the recipient of
41 asbestos notifications required under 40 CFR 61.145(b).

42
43 2. Ecology does not grant BFCCAA the authority to collect permit fees. The BFCCAA must decide
44 for itself whether to collect such fees based on its regulatory authority.

45
46 3. Your agency will be responsible for permitting and inspecting fire training areas, and open
47 burning at the Hanford Site.

48
49 4. Your agency will be lead for enforcing the regulations regarding demolition by burning and for
50 gaining compliance with the state open burning regulations at the Hanford Site. Mr. Dave Nylander of our
51 Kennewick Office needs to be contacted by your office on these issues.

52
53 Please be advised that Ecology can withdraw this delegation at any time. However, we will not exercise this
54 option without providing prior notice to BFCCAA. In addition, we believe that RCW 70.105.240 does not give
55 Ecology the option of delegating its final decision-making authority over preempted matters, notwithstanding
56 any delegation to exercise day-to-day regulatory responsibility. Therefore, we request that your office inform

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Mr. Dave Nylander of our Kennewick Office, prior to taking any final permitting or enforcement actions at Hanford.

We look forward to a positive and cooperative working relationship with BFCCAA, as we work to assure the health and safety of the citizens of the state. Questions regarding this matter should be addressed to Mr. Bob King at (206) 407-7147. Thank you for bringing this matter to our attention.

Sincerely,

Original signed by Dru Butler

Dru Butler
Program Manager
Nuclear Waste Program

DB:BK:db

cc: James Bauer, DOE-RL

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1 Enclosure 2: The 2016 letter from Ecology to BCAA acknowledging the relinquishment of
2 asbestos regulatory responsibility and delegation of outdoor burning regulatory
3 responsibility.
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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

3100 Port of Benton Blvd • Richland, WA 99354 • (509) 372-7950
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

November 30, 2016

16-NWP-205

Ms. Robin Bresley Priddy
Benton Clean Air Agency
526 South Steptoe Street
Kennewick, Washington 99336

Re: Relinquishment of Asbestos Regulatory Responsibility from the Benton Clean Air Agency
and Delegation of Outdoor Burning Regulatory Responsibility

References: See page 3

Dear Ms. Priddy:

Asbestos and outdoor burning regulatory responsibility at the Hanford Site was delegated to the Benton Clean Air Agency (BCAA) in a letter, dated March 11, 1994, from the Department of Ecology (Ecology) (Reference 1). BCAA informed Ecology it was relinquishing asbestos regulatory responsibility at the Hanford Site in a letter to Ecology, dated November 3, 2016 (Reference 2). Ecology acknowledges this relinquishment and will assume responsibility to regulate asbestos at the Hanford Site.

Ecology exercised preemptive authority for all regulatory functions at Hanford, based upon Revised Code of Washington (RCW) 70.105.240. Ecology remains reluctant to assume preemptive responsibility in areas where local government is clearly qualified to accomplish such regulatory responsibilities and where it is more appropriate for Ecology to delegate such responsibility. In the letter, dated March, 11, 1994, Ecology deemed it appropriate to delegate asbestos and outdoor burning regulations at the Hanford site to the BCAA.

Ecology will assume regulatory authority to ensure compliance with 40 CFR Part 61, Subpart M, National Emission Standard for Asbestos, effective December 1, 2016. This is at the request of BCAA and not Ecology exercising preemptive authority under RCW 70.105.240. If BCAA would like to resume regulatory authority of asbestos in the future, please notify Ecology to discuss reestablishment of the delegation.

The BCAA retains the delegated authority to ensure compliance with Washington Administrative Code 173-425, Outdoor Burning, and any applicable local regulations in regards to Outdoor Burning at the Hanford Site.



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Ms. Robin Bresley Priddy
November 30, 2016
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16-NWP-205

To finalize the relinquishment of asbestos authority from BCAA, Ecology recommends that BCAA and the United States Department of Energy – Richland Operations Office discontinue the *Memorandum of Agreement Relating to Removal of Asbestos Materials and Demolitions on the Hanford Site* as it is currently written. Ecology is not a party to the Memorandum of Agreement, has no authority over the agreement, and is not bound by the agreement.

As specified in the March 11, 1994 letter, the following statements still apply to the delegation of outdoor burning regulatory responsibility:

- Ecology does not grant BCAA the authority to collect permit fees. BCAA must decide for itself whether to collect such fees based on its regulatory authority.
- BCAA will be responsible for permitting and inspecting fire training areas, and open burning at the Hanford Site.
- BCAA will be lead for enforcing the regulations regarding demolition by burning and for gaining compliance with the state open burning regulations at the Hanford Site. The Nuclear Waste Program needs to be contacted by BCAA on these issues.

Please be advised that Ecology can withdraw this delegation at any time. However, Ecology will not exercise this option without providing prior notice to BCAA. In addition, Ecology believes that RCW 70.105.240 does not give Ecology the option of delegating its final decision-making authority over preempted matters, notwithstanding any delegation to exercise day-to-day regulatory responsibility. Therefore, Ecology requests that BCAA inform the Nuclear Waste Program prior to taking any final permitting or enforcement actions at Hanford.

If you have any questions, please contact Philip Gent, Lead Air Engineer, at (509) 372-7983 or philip.gent@ecy.wa.gov.

Sincerely,



Alexandra K. Smith
Program Manager
Nuclear Waste Program

lb/tkb

cc: See page 3

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Ms. Robin Bresley Priddy
November 30, 2016
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References:

1. Letter dated March 11, 1994, from Dru Butler, Ecology, to David Lauer, Benton-Franklin Counties Clean Air Authority, "Delegation of Asbestos and Open Burning Regulatory Responsibility"
2. Letter dated November 3, 2016, from Robin Bresley Priddy, BCAA, to Alex Smith, Ecology, "Relinquishment of Role in Asbestos Program from the Benton Clean Air Agency to the Department of Ecology"

cc electronic:

Dennis Faulk, EPA
Rhonda Snoddy, EPA
Dennis Bowser, USDOE-ORP
Bryan Trimberger, USDOE-ORP
Eric Faust, USDOE-RL
Robin Priddy, BCAA
Reed Kaldor, MSA
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Philip Gent, Ecology
Daniel Heuston, Ecology
Ron Skinnarland, Ecology
Alex Smith, Ecology
Environmental Portal
Hanford Facility Operating Record
USDOE-ORP Correspondence Control
USDOE-RL Correspondence Control

cc: Rod Skeen, CTUIR
Gabriel Bohnee, NPT
Russell Jim, YN
Steve Hudson, HAB
Administrative Record
NWP Central File

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