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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

HEART OF AMERICA  
NORTHWEST, a non-profit  
corporation,

Plaintiff,

v.

STEVEN CHU, United States  
Secretary of Energy, and the  
UNITED STATES DEPARTMENT  
OF ENERGY,

Defendants.

**Case No.: CV-10-210-RMP**

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

1  
2 **INTRODUCTION**

3 1. This is an action for declaratory and injunctive relief arising from the United  
4 States Department of Energy's (USDOE) 2004 decision to transport low-level radioactive  
5 waste (LLW) and "mixed" radioactive/hazardous low-level waste (MLLW) from  
6 USDOE sites across the nation to the Hanford Nuclear Reservation for disposal. USDOE  
7 issued its Record of Decision<sup>1</sup> (2004 HSW RoD) to ship 82,000 cubic meters  
8 (approximately three million cubic feet) of these wastes to Hanford for disposal in  
9 landfills without complying with the requirements of the National Environmental Policy  
10 Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4370; and, in violation of the Administrative  
11 Procedure Act (APA), 5 U.S.C. §§ 500-596; Washington's Model Toxics Control Act  
12 (MTCA), RCW Chapter 70.105D; Washington's Hazardous Waste Management Act  
13 (HWMA), RCW Chapter 70.105 (implementing the federal Resource Conservation and  
14 Recovery Act [RCRA], including the Federal Facilities Compliance Act, 42 U.S.C. §  
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20 <sup>1</sup> Record of Decision for the Solid Waste Program, Hanford Site, Richland, WA: Storage  
21 and Treatment of Low-Level Waste and Mixed Low-Level Waste; Disposal of Low-  
22 Level Waste and Mixed Low-Level Waste, and Storage, Processing, and Certification of  
23 Transuranic Waste for Shipment to the Waste Isolation Pilot Plant, 69 Fed. Reg. 39449  
24 (June 30, 2004).  
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1 6924 et seq) and the Comprehensive Environmental Response, Compensation, and  
2 Liability Act (CERCLA) Offsite Waste Rule, 42 U.S.C. § 9621(d)(3).

3 2. USDOE continues to rely upon, and seeks to implement, this 2004 HSW  
4 RoD in violation of NEPA, the APA, MTCA, HWMA, RCRA and CERCLA.

5 3. LLW encompasses a broad range of radioactive wastes, including extremely  
6 radioactive wastes. The radioactive wastes proposed for disposal at Hanford include  
7 Iodine 129, Technetium 99, and Uranium, which are highly radioactive and/or extremely  
8 long-lived. In addition, Iodine 129 and Technetium 99 are very mobile in soil and  
9 groundwater.  
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12 4. MLLW includes a very broad array of heavy and toxic metals, solvents, and  
13 volatile organic chemicals. Many of these hazardous and dangerous wastes  
14 persistently bioaccumulate, and are corrosive, ignitable, carcinogenic, and/or mutagenic.  
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17 5. Some of the wastes that USDOE has proposed to ship to and dispose of at  
18 Hanford are too radioactive to be characterized due to the lack of shielded  
19 characterization facilities at Hanford or at the site of generation. These wastes are  
20 hazardous substances and hazardous constituents under both CERCLA, 42 U.S.C. §  
21 9621, and Washington's Hazardous Waste Management Act (HWMA), RCW Chapter  
22 70.105. Federal and State hazardous waste laws require that hazardous wastes and state-  
23 designated "dangerous" wastes are treated prior to disposal or prolonged storage. *See*  
24 Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. § 6924 et seq, and  
25 HWMA, WAC 173-303-140(2)(a). Washington State law also prohibits landfill disposal  
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1 of wastes designated as “extremely hazardous wastes.” WAC 173-303-140(4)(a). Many  
2 of the wastes proposed for disposal at Hanford are extremely hazardous wastes, and  
3 USDOE violated NEPA when it failed to disclose or describe these wastes, or the  
4 restriction on their disposal, in its Final HSW EIS<sup>2</sup> which was the basis for the 2004  
5 HSW RoD. RCRA and HWMA also bar use of unpermitted landfills for disposal of  
6 hazardous and mixed wastes (RCW Chapter 70.105.130, WAC 173-303, including but  
7 not limited to WAC 173-303-140 [land disposal restrictions pursuant to state law and  
8 RCRA], WAC 173-303-141 [barring offering of waste for disposal to a facility which  
9 lacks a permit], WAC 173-303-800 [requiring permits], WAC 173-303-806 [final facility  
10 permits]). USDOE has operated and disposed of mixed wastes in a landfill (trenches  
11 designated 31 and 34) at Hanford since the mid-1990’s without a permit, in violation of  
12 the provisions of RCRA and HWMA, and have continued to do so pursuant to USDOE’s  
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21 <sup>2</sup> See Final Hanford Site Solid (Radioactive and Hazardous) Waste Program  
22 Environmental Impact Statement, DOE/EIS—0286F, (January 2004), *available at*  
23 <http://nepa.energy.gov/finalEIS-0286F.htm>  
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1 2004 HSW RoD.<sup>3</sup> USDOE also contracted for the disposal of certain offsite wastes  
2 pursuant to a 2005 agreement with Washington State.<sup>4</sup>

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4 6. In addition to the 82,000 cubic meters of LLW and MLLW which USDOE  
5 has decided to transport to and dispose of at Hanford, USDOE has issued a formal,  
6 related proposal<sup>5</sup> to ship wastes designated as “Greater Than Class C” (GTCC) and  
7 “GTCC-like” wastes to Hanford for disposal. GTCC and “GTCC-like” wastes are also  
8 classified as extremely hazardous. These wastes include some highly radioactive  
9 “Remote-Handled” wastes that USDOE had previously designated as “Remote-Handled  
10 Transuranic” wastes (RH-TRU). RH-TRU includes long-lived radionuclides with an  
11 atomic number greater than Uranium—such as Plutonium 239—with a half life of 24,000  
12 years. This Court previously enjoined USDOE from shipping RH-TRU to Hanford  
13 without an adequate Environmental Impact Statement (EIS) in an action previously  
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18 <sup>3</sup> USDOE utilized Trenches 31 and 34 since 2004 for undetermined quantities of off-site  
19 US Defense Department and classified USDOE wastes, as well as for on-site wastes.

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21 <sup>4</sup> The moratorium agreed to in a court order with Washington State included several  
22 exemptions for off-site mixed wastes for disposal in this unpermitted landfill.

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24 <sup>5</sup> Notice of Intent To Prepare an Environmental Impact Statement for the Disposal of  
25 Greater-Than-Class-C Low-Level Radioactive Waste, 72 Fed. Reg. 40135 (July 23,  
26 2007).

1 brought by Heart of America Northwest and the State of Washington. *See Washington*  
2 *vs. Abraham*, 354 F.Supp.2d 1178 (2005). The RH-TRU and GTCC wastes have been  
3 formally designated by USDOE to include hazardous chemical wastes and are too  
4 radioactive to be characterized.  
5

6 7. USDOE's decision to dispose of 82,000 cubic meters of LLW and MLLW at  
7 Hanford is arbitrary and capricious, not in accordance with the law, and without  
8 observance of procedures required by law in that it violated NEPA, APA, and applicable  
9 implementing regulations. It is also arbitrary and capricious because it relies on outdated  
10 and incorrect information concerning the volume and sources of wastes, and the potential  
11 impacts from transportation of these wastes to the Hanford site. USDOE's decision also  
12 failed to adequately consider site-specific impacts to groundwater, health, and the  
13 environment from the storage and disposal of such wastes at the Hanford site, including  
14 the cumulative impacts from existing wastes and related decisions or proposals.  
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18 8. Future shipments of waste to Hanford, similar to shipments in the past, are  
19 most likely to travel on Interstate Highway 90 (through Spokane, WA), Interstate  
20 Highway 5 (through Portland, OR), Interstate Highway 84 (through Eastern Oregon,  
21 including the crossing of the Blue Mountains and Emigrant Pass, and the Columbia  
22 Gorge), and Interstate Highway 82 (through Eastern WA and Oregon, including crossing  
23 over the Columbia River).  
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26 9. Plaintiff requests a judgment declaring that USDOE's decision to transport  
27 and dispose of LLW and MLLW at Hanford violates NEPA and applicable implementing  
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1 regulations, is arbitrary and capricious in violation of the APA, would violate the  
2 CERCLA Offsite Waste Rule, is not in accordance with the law, and is without  
3 observance of procedures required by law. Further, Plaintiff seeks preliminary and  
4 permanent injunctive relief barring USDOE from relying upon or implementing its 2004  
5 HSW RoD. The 2004 HSW RoD authorizes the shipment of 82,000 cubic meters (nearly  
6 3 million cubic feet) of LLW and MLLW to Hanford for disposal and relies on outdated  
7 facts and studies and a legally inadequate environmental impact statement.  
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10 10. Plaintiff also seeks an award of costs and attorney fees pursuant to the Equal  
11 Access to Justice Act, 5 U.S.C. § 504.  
12

### 13 JURISDICTION AND VENUE

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15 11. This action arises under NEPA and its implementing regulations. However,  
16 because NEPA does not contain a citizen suit provision, Plaintiff seeks Judicial Review  
17 pursuant to the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706, which  
18 authorizes judicial review of all agency actions. This Court also has jurisdiction over this  
19 action pursuant to 28 U.S.C. §§ 2201 and 2202; and, 42 U.S.C. §§ 9659 and 9613.  
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21  
22 12. The United States has waived sovereign immunity with respect to the claims  
23 asserted herein under 5 U.S.C. § 702 (APA), 42 U.S.C. § 6961 (RCRA), and 42 U.S.C. §  
24 9620 (CERCLA).  
25

26 13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e); and, 42  
27 U.S.C. 9613(b) and 9659(b)(1).  
28

## PARTIES

1  
2 14. Plaintiff Heart of America Northwest (HoA) is a non-profit corporation  
3 based in Seattle, WA, whose mission is to advance the region's quality of life through  
4 research, publications, dissemination of information, and advocacy. Protecting and  
5 enhancing public health and the natural environment, including the quality of land and  
6 water, is central to the organization's mission to advance the region's quality of life. The  
7 organization was specifically founded to promote the cleanup of Hanford Nuclear  
8 Reservation, and to prevent the use of Hanford as a national radioactive waste dump.  
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11 15. Since its founding in 1987, HoA has been the region's leading citizens'  
12 group researching the impacts of contamination at Hanford and advocating for Hanford's  
13 safe and timely cleanup. HoA has over 16,000 members with more than 400 who live in  
14 Spokane, WA, almost all of whom may be impacted by shipments on Interstate Highway  
15 90, and heavy load truck detours that pass through local communities, school districts and  
16 local hospitals. Approximately 230 of HoA's member families live in the communities  
17 surrounding Hanford or within the fifty miles that will be affected by the shipment of  
18 waste along Interstate Highway 84. Over 1,200 of HoA's members live in Oregon, and  
19 are placed at risk by shipments of radioactive waste along Interstate Highways 5, 205 and  
20 84 through Portland and other communities. Several hundred members of HoA live  
21 downstream of Hanford on the Columbia River, and use water from the River for  
22 drinking water, recreation, fishing and economic activity. Many of HoA's members use  
23 the stretch of the Columbia River that flows through the Hanford Nuclear Reservation  
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1 (including the portion designated the Hanford Reach National Monument), past nine  
2 major Plutonium production reactors and hundreds of disposal sites, for recreation and  
3 fishing. Releases of hazardous substances, including radionuclides, from Hanford  
4 disposal sites have already affected the interests of Plaintiffs' members and their rights to  
5 a healthful environment; and, USDOE's own projections of future releases from landfills  
6 proposed to be used for offsite waste show that significant impacts will occur to  
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8 Plaintiff's members' interests in using the River and groundwater and other resources at  
9  
10 Hanford.

11         16. The interests of the Plaintiff's members would be affected by the  
12 Defendants' shipment of radioactive and hazardous waste through Oregon and  
13 Washington due to the Defendants' failure to adequately consider the effects of this  
14 action as required by NEPA.  
15

16         17. The proposed shipments would be sent by truck through both urban and rural  
17 areas, over the Columbia River, over dangerous mountain passes, and over countless  
18 streams and rivers throughout Oregon, Washington and beyond.  
19

20         18. Many of the Plaintiff's members, officers and staff (collectively "members")  
21 live in Oregon and Washington within close proximity to the proposed waste shipment  
22 routes and would be directly and adversely affected by the Defendant's shipments.  
23 Plaintiff's members would be directly affected by any accident or intentional act that  
24 resulted in the release of LLW or MLLW into the environment during the approved  
25 shipments.  
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1           19.    Additionally, Plaintiff's members regularly use the roads and highways on  
2 the waste shipment routes and would be adversely affected by radiation as a result of  
3 their proximity to radioactive shipments while in traffic. USDOE documents  
4 acknowledge that some of these shipments will include wastes which are highly  
5 radioactive and create risk to those exposed along the routes even if there is no accident  
6 or malicious attack involving the shipments.  
7

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9           20.    Plaintiff's members have a real and reasonably based fear about the potential  
10 for radiation exposure during the planned transport, as well as the higher-level of  
11 exposure that might result from an accident or other unplanned release. Plaintiff's fears  
12 are significantly increased in light of the elevated risk of terrorist attack during shipment  
13 that could result in the intentional release of hazardous material such as plutonium.  
14

15           21.    The approved shipments also threaten the interests of Plaintiff's members in  
16 protecting the Columbia River and countless streams, rivers and tributaries to the  
17 Columbia and other waters that the Defendants' waste shipments would cross and could  
18 seriously affect in the event of a release. Plaintiff's members regularly use and enjoy  
19 these waters for a host of recreational purposes including fishing, swimming, boating and  
20 aesthetic enjoyment, as well as for commercial and scientific purposes. These interests  
21 would be impaired by the proposed shipments in the case of a release or spill during  
22 transport.  
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1 22. Plaintiff's members would also be adversely affected by the planned  
2 disposal or storage of additional LLW and MLLW at Hanford. Serious problems with  
3 radioactive and hazardous waste contamination already exist at Hanford and the disposal  
4 or storage of additional waste would exacerbate and adversely affect Plaintiff's interests  
5 in and enjoyment of the Columbia River and the area in and around Hanford.  
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7 23. Plaintiff's members regularly use the Columbia River, its tributaries, and  
8 areas in and around Hanford for activities including fishing, bird watching, hiking,  
9 aesthetic appreciation, photography and wildlife observation. These uses would be  
10 adversely affected by the storage or disposal of additional waste at Hanford.  
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12 24. Plaintiff's members intend to continue to use and enjoy the Columbia River  
13 and its tributaries frequently and on an ongoing basis in the future. They also intend to  
14 continue to live and work in close proximity to the radioactive waste transportation routes  
15 and travel along these routes. All of these interests would be adversely affected by the  
16 Defendants' failure to prepare an adequate NEPA review that would provide critical  
17 information to the public and which could lead to alternatives to the planned waste  
18 shipments and storage, appropriate mitigations, or a no-action alternative.  
19

20 25. Plaintiff also has an organizational interest in the proper and lawful  
21 operations of the USDOE that will be adversely affected and irreparably injured if  
22 USDOE continues to implement its shipment and disposal decision absent adequate  
23 review under NEPA. Plaintiff has demonstrated a longstanding and consistent interest in  
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1 reviewing, investigating, and commenting on USDOE's actions related to Hanford and  
2 the Columbia River Basin. Plaintiff consistently participates in meetings with  
3 governmental agencies regarding decisions relating to Hanford, conducts research on  
4 contaminant releases at Hanford, and assesses USDOE's compliance with environmental  
5 laws. Plaintiff commented extensively on USDOE's draft and revised draft HSW EIS,  
6 which preceded issuance of the Final HSW EIS. Plaintiff's comments (and those of  
7 hundreds of Plaintiffs' members) objected to numerous inadequacies in the impact  
8 statement regarding human health, groundwater, cumulative, transportation and river-  
9 related impacts. Following issuance of the Final HSW EIS, Plaintiff participated in  
10 discussions and communications advising USDOE not to rely on the Final HSW EIS for  
11 issuance of a decision to dispose of wastes at Hanford.  
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15         26. All of the injuries described above are actual, concrete injuries caused by the  
16 USDOE's actions and their failure to comply with mandatory duties under NEPA, and  
17 other federal laws. The injuries would be redressed by the relief sought.  
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19         27. Defendant Steven Chu is the Secretary of the USDOE, and is the chief  
20 administrative officer of USDOE. Secretary Chu is the official ultimately responsible for  
21 the waste management decisions of USDOE, including USDOE decision-making with  
22 respect to storage, treatment, and disposal of USDOE's radioactive and mixed radioactive  
23 and hazardous wastes.  
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1           28. Defendant USDOE is an executive department of the United States, created  
2 pursuant to 42 U.S.C. § 7131. USDOE owns and operates the Hanford Site near  
3 Richland, WA. Hanford is one of the most contaminated places on the planet. USDOE  
4 has decided, pursuant to a flawed NEPA process, to utilize the Hanford site for storage of  
5 82,000 cubic meters of LLW and MLLW. Defendant USDOE and its officers are  
6 responsible for the lawful management and operation of the Hanford Nuclear Reservation  
7 and the shipment and oversight of radioactive waste to Hanford.  
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10           29. USDOE's plan to transport radioactive and mixed radioactive hazardous  
11 wastes to Hanford, and to dispose of such wastes based on outdated information, poses  
12 significant risks to human health and the environment. These risks include threats of  
13 potential pollution to groundwater and surface waters of the State, such as the Columbia  
14 River, and to adjoining state-owned lands which are used by the State and its people for  
15 commerce, fishing, recreation, habitat, aesthetics, tourism, and maintaining the cultural  
16 identity of the State. Further, the shipments of additional radioactive waste to Hanford for  
17 its eventual treatment and/or indefinite storage will only complicate USDOE's already  
18 troubled effort to cleanup existing radioactive and hazardous wastes, including LLW and  
19 MLLW currently located at Hanford, and will frustrate the State's regulatory efforts to  
20 require USDOE to bring its activities and facilities at the Hanford Site into compliance  
21 with applicable law.  
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2 **FACTS**

3 30. The Hanford Nuclear Reservation is a 560-square mile site that borders the  
4 Columbia River. For over fifty years starting in 1943, the United States produced  
5 plutonium for nuclear weapons production at Hanford. These activities resulted in  
6 massive contamination from both radioactive and non-radioactive hazardous wastes at  
7 Hanford that is unparalleled anywhere in the western hemisphere.  
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10 31. As a consequence of over fifty years of nuclear weapons research,  
11 production, and reprocessing, USDOE and its predecessors generated large quantities of  
12 LLW and MLLW at sites across USDOE's national nuclear weapons and nuclear energy  
13 research complex, and USDOE proposes to continue generating such wastes at its  
14 facilities. Relying on the 2004 HSW RoD and Final HSW EIS, USDOE proposes to  
15 dispose of 82,000 cubic meters of LLW and MLLW at Hanford from on-going activities  
16 at these other USDOE sites, most of which is waste that has yet to be generated. See  
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1 Notice for Hanford Draft Tank Closure and Waste Management EIS (Draft TCWMEIS),<sup>6</sup>  
2 and Appendix D of the Draft TCWMEIS.<sup>7</sup>

3 32. There are over 1,500 known contamination sites on the Hanford Nuclear  
4 Reservation and USDOE acknowledges that groundwater contamination is presently  
5 leaching high-impact pollutants, including chromium, strontium, and uranium, directly  
6 into the Columbia River. More than 450 billion gallons of radioactive waste have been  
7 released into the soil over the last fifty years. Recent data has shown that high levels of  
8 radioactive or chemical contaminants are accumulating in aquatic species as a result of  
9 this pollution. Annual groundwater monitoring reports issued by USDOE show levels of  
10 radioactive and hazardous/toxic contaminants entering the Columbia River through  
11 shoreline seeps and upwellings. These contaminants include levels of radioactive  
12 Strontium 90 over 1,500 times the federal Drinking Water Standard, and toxic chromium  
13 far above levels known to cause harm to juvenile salmon.  
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18 33. Underground contamination from radioactive pollutants, heavy metals, and  
19 toxic wastes covers an area of greater than 180 square miles.  
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21 <sup>6</sup> Notice of Intent to Prepare the Tank Closure and Waste Management Environmental  
22 Impact Statement for the Hanford Site, Richland, WA, 71 Fed. Reg. 5655, 5658  
23 (February 2, 2006).  
24

25 <sup>7</sup> Appendix D available at [http://www.hanford.gov/orp/uploadfiles/EIS-0391\\_D-](http://www.hanford.gov/orp/uploadfiles/EIS-0391_D-AppendixD.pdf)  
26 [AppendixD.pdf](http://www.hanford.gov/orp/uploadfiles/EIS-0391_D-AppendixD.pdf).  
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1           34.    There are already 54 million gallons of high-level radioactive waste stored at  
2 Hanford in 177 tanks, at least 67 of which collectively have leaked over a million gallons.  
3 Approximately 640,000 cubic meters of LLW has either already been disposed of or is  
4 planned for storage by USDOE. An additional 920,000 cubic meters of MLLW is either  
5 already disposed of or planned for disposal in trenches at Hanford. There are over forty-  
6 three miles of unlined soil trenches in which USDOE disposed of a vast quantity of  
7 radioactive and chemical wastes in drums, boxes and similar containers, plus many more  
8 miles of ditches into which USDOE disposed hundreds of billions of gallons of untreated  
9 liquid wastes.

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13           35.    USDOE is responsible for the treatment, storage, and disposal of LLW and  
14 MLLW from its past nuclear energy and weapons research, production, and reprocessing;  
15 from decontamination and decommissioning of former nuclear weapons research,  
16 production, and reprocessing sites; and, from on-going or new weapons production,  
17 research and reprocessing missions.

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19           36.    Among the wastes generated during plutonium production at Hanford were  
20 large quantities of Transuranic waste (TRU). TRU is waste that has been contaminated  
21 with radioactive elements that have an atomic number higher than that of Uranium. By  
22 definition, TRU contains more than 100 nanocuries of alpha-emitting transuranic isotopes  
23 per gram of waste, which have half-lives of thousands of years. TRU contains radioactive  
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1 elements such as Plutonium. Some TRU also contains hazardous constituents (mixed  
2 low-level wastes) that are regulated by the RCRA.

3         37. LLW and MLLW are classified according to the radiation dose at a package  
4 surface. "Contact-handled" LLW and MLLW have a radiation dose at package surface of  
5 200 millirem per hour or less. This packaged waste can be handled directly by personnel.  
6 "Remote-handled" LLW and MLLW have a radiation dose at package surface of greater  
7 than 200 millirem per hour, and must be handled with special machinery designed to  
8 shield workers from radiation.

9         38. Between 1970 and 1985, USDOE "retrievably stored" in Hanford's unlined  
10 soil trenches (part of the "Low-Level Burial Grounds") approximately 16,000 cubic  
11 meters (equivalent to 80,000 fifty-five gallon drums) of known or suspect TRU wastes in  
12 drums and other containers. A significant portion of this waste remains on the Hanford  
13 Site today. Approximately half of the waste, when retrieved and characterized, does not  
14 designate as TRU and is disposed on-site as LLW or MLLW. MLLW is currently re-  
15 disposed in a lined trench which was never permitted pursuant to RCRA or the HWMA.

16         39. On June 29, 2004, USDOE published its 2004 HSW RoD in the Federal  
17 Register supporting USDOE's preferred alternative in the Final HSW EIS to ship LLW  
18 and MLLW to Hanford from all over the country, for treatment and disposal. *See* 69 Fed.  
19 Reg. at 39449-39455. The Final HSW EIS was based in part on the environmental  
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1 impact analysis provided in the Revised HSW EIS<sup>8</sup> (which was created pursuant to an  
2 earlier draft EIS from April, 2002 which tried to analyze the potential environmental  
3 impacts of transporting and storing TRU waste).<sup>9</sup> The Revised HSW EIS's purpose was  
4 to update the 2002 Draft EIS to account for the Year 2000 census data.  
5

6 40. The 2004 HSW RoD authorized USDOE to import and bury 82,000 cubic  
7 meters of off-site wastes in a new landfill at Hanford (called the IDF landfill):  
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10 DOE has decided to implement the preferred alternative described in the  
11 Final HSW EIS, modified as described below. This decision is based on the  
12 environmental impact analyses in the HSW EIS, including analysis of  
13 impacts to worker and public health and safety; costs; applicable regulatory  
14 requirements; and public comments. DOE will limit the volumes of LLW  
15 and MLLW received at Hanford from other sites for storage to 62,000 m<sup>3</sup> of  
16 LLW and 20,000 m<sup>3</sup> of MLLW. Also, effective immediately, DOE will  
17 dispose of LLW in lined storage facilities, a practice already used for  
18 MLLW. In addition, DOE will construct and operate a lined, combined-use  
19 storage facility in Hanford's 200 East Area for storage of LLW and MLLW,  
20 and will further limit offsite waste receipts until the facility is constructed.

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21 <sup>8</sup> See Notice of Revised Scope for the Hanford Site Solid (Radioactive and Hazardous)  
22 Waste Program, Environmental Impact Statement, 68 Fed. Reg. 7110 (February 12,  
23 2003).

24 <sup>9</sup> Hanford Site Solid (Radioactive and Hazardous) Waste Program Proposal to Enhance  
25 Waste Management Practices, Low-Level Radioactive; Low-Level Mixed; Transuranic  
26 Radioactive; Richland, Washington, DOE/EIS-0286D, (April, 2002).  
27

1 LLW and MLLW requiring treatment will be treated at either offsite  
2 facilities or existing or modified onsite facilities, as appropriate.

3 69 Fed. Reg. at 39449

4  
5 41. In October, 2009, USDOE issued the Draft Tank Closure and Waste  
6 Management EIS (Draft TCWM EIS). The Draft TCWM EIS states that USDOE will  
7 begin implementing the decisions set forth in the 2004 HSW RoD, rather than looking  
8 afresh at the question of whether any off-site waste (or what amounts or what types)  
9 should be disposed at Hanford.<sup>10</sup> In the Draft TCWM EIS, USDOE states it has a  
10 “preferred alternative” to utilize the IDF landfill for disposal of the 82,000 cubic meters  
11 of off-site waste authorized under the 2004 HSW RoD, rather than taking a hard look at  
12 WHETHER any off-site waste should be disposed at Hanford. USDOE has formally  
13 refused requests by the State of Oregon and Plaintiff to withdraw the 2004 HSW RoD  
14 and analyze the question of whether any offsite waste should be disposed at Hanford in a  
15 new draft TCWM EIS. If USDOE implements decisions based on the 2004 HSW RoD  
16 and the Final HSW EIS, its actions will also be arbitrary and capricious in violation of the  
17 APA.  
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22 42. The Draft TCWM EIS clearly states that USDOE intends to continue to rely  
23 upon and implement the 2004 HSW RoD, cited and quoted above, to import and dispose  
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26 <sup>10</sup> See Draft TCWM EIS, DOE/EIS—0391.

1 of 82,000 cubic meters of off-site waste in landfills at Hanford. The Notice for the Draft  
2 TCWM EIS states that USDOE will only decide *where* it will dispose of the 82,000 cubic  
3 meters of off-site waste at Hanford, rather than *whether* USDOE should import and  
4 dispose of more waste at Hanford:  
5

6 *Disposal of Hanford's and DOE Offsite LLW and MLLW*—The decision to  
7 be made concerns the onsite location of disposal facilities for Hanford's  
8 waste and other DOE sites' LLW and MLLW. DOE committed in the HSW  
9 EIS RoD that henceforth LLW would be disposed of in lined trenches. Thus,  
10 the decision would concern whether to dispose of the waste in the 200-West  
11 Area or at the Integrated Disposal Facility in the 200-East Area.<sup>11</sup>

12 Thus, USDOE violated NEPA by failing to include examination of  
13 reasonable alternatives to disposal of 82,000 cubic meters of waste at Hanford in  
14 the scope of its new draft TCWMEIS; and, by continuing to rely upon the 2004  
15 HSW RoD, which is not supported by an adequate environmental impact  
16 statement.  
17

18 43. USDOE agreed in the 2004 HSW RoD that the procedures and analyses  
19 performed in the Final HSW EIS were inadequate. 69 Fed. Reg. at 39454. When  
20 discussing the inadequacies of groundwater analyses provided in the Final HSW EIS,  
21 USDOE noted that “there are uncertainties in the HSW EIS data about the geology and  
22 groundwater at Hanford and in the analytical approaches available to estimate potential  
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<sup>11</sup> 71 Fed. Reg. at 5658.  
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1 environmental impacts.” *Id.* Rather than considering a worst-case scenario for  
2 environmental impacts, USDOE “accounted for uncertainties by using conservative  
3 assumptions” in the groundwater analyses. *Id.* USDOE was arbitrary and capricious in  
4 deciding that the uncertainties in the Final HSW EIS calculations were acceptable.  
5

6 44. In 2005, Judge McDonald issued an order granting preliminary injunction  
7 regarding the importation of LLW and MLLW to Hanford. *See Abraham*, 354 F.Supp.2d  
8 1178. The District Court later issued an order expanding that preliminary injunction,  
9 commenting on the lack of analyses presented by USDOE regarding groundwater in their  
10 Final HSW EIS. *State v. Bodman*, No. CV-03-5018-AAM, 2005 WL 1130294, (E.D.  
11 Wash. May 13, 2005). The District Court stated that if the groundwater analysis in the  
12 Final HSW EIS did not “pass muster” under NEPA, then an injunction would be  
13 warranted to prohibit the transport of additional waste to Hanford. *Id.* at 12.  
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17 45. USDOE requires that its contractors preparing NEPA analyses and impact  
18 statements implement an appropriate quality assurance program under USDOE Directive  
19 O 414.1C<sup>12</sup> to monitor their progress and ensure programmatic quality controls for  
20 maintenance of data and consistency while working on impact statements. In January,  
21 2006, in response to discovery of major data quality flaws in the Final HSW EIS revealed  
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24 <sup>12</sup> Department of Energy Self-Study Modules – DOE O 414.1C, *available at*,  
25 [http://www.hss.energy.gov/deprep/facrep/order-modules/o-414-1c\\_ssm-08.pdf](http://www.hss.energy.gov/deprep/facrep/order-modules/o-414-1c_ssm-08.pdf).  
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27

1 during the discovery process in *Bodman*, USDOE conducted a self-review of data quality  
2 on the Final HSW EIS.<sup>13</sup> It was found by USDOE that Battelle (the primary contractor)  
3 unlawfully failed to implement an appropriate quality assurance program for its work on  
4 the Final HSW EIS. *Id.* at 5. The Review also concluded that the Document Manager  
5 assigned to the Final HSW EIS was not qualified or adequately trained to perform his  
6 duties required by USDOE Directive O 451.1B (“NEPA Compliance Program”). *Id.* at 5.  
7  
8 In fact, the Document Manager was found to have had no prior NEPA EIS experience  
9 and was not formally trained in NEPA requirements. *Id.* USDOE’s own federal  
10 oversight was inadequate to ensure that these QA requirements were being followed and  
11 that adequate documentation was being performed. *Id.* at 3.  
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14 46. In the same USDOE Data Quality Review mentioned above, the USDOE-  
15 Richland Transportation team reviewed data which calculated the number of accidents,  
16 fatalities, and latent cancer fatalities associated with the alternatives considered in the  
17 Final HSW EIS transportation analysis. *Id.* at 6. Of the 1,190 entries examined, 50  
18 “errors” were identified. *Id.* These “errors” included mislabeled electronic files in the  
19 project’s records, potential errors in references, data inconsistencies between Final HSW  
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23 <sup>13</sup> Report of the Review of the Hanford Solid Waste Environmental Impact Statement  
24 (EIS) Data Quality, Control and Management Issues, January, 2006, *available at*  
25 <http://www.hanford.gov/orp/uploadfiles/QA-QC%20Review-Report.pdf>.  
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1 EIS Appendices, and data transcription/editorial errors – yet the Draft TCWM EIS relies  
2 on these numbers. *Id.*

3 47. The 2004 HSW RoD failed to correct these serious errors and acknowledged  
4 violations of Orders and rules for preparation of impact statements, or to ensure USDOE  
5 performed further route-specific analysis or new groundwater contamination analyses and  
6 risk assessments prior to importing to, and disposing of, any additional off-site wastes at  
7 Hanford. The most recent Draft TCWM EIS has also failed to provide current route-  
8 specific information. It has relied solely on the six-year-old analysis provided in the  
9 Final HSW EIS (which relies on Year 2000 census data provided in the Revised HSW  
10 EIS) and has not administered a new route analysis that would account for Year 2010  
11 census data. Judge McDonald agreed in his order to expand the preliminary injunction  
12 because the Final HSW EIS was inadequate in that it failed to consider the new  
13 construction and census data surrounding these transportation routes. *Bodman*, 2005 WL  
14 1130294, at 19-20. USDOE must provide an updated route-specific environmental  
15 analysis to avoid being arbitrary and capricious.

16 48. The 2004 HSW RoD also specifically states that if USDOE decides to ship  
17 any additional LLW or MLLW to Hanford for storage, processing, or certification,  
18 USDOE will issue a revised RoD. 69 Fed. Reg. at 39455. USDOE decided in a  
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1 subsequent RoD not to ship the RH-TRU to Hanford.<sup>14</sup> However, USDOE provided a  
2 separate formal proposal to ship to Hanford and dispose in shallow landfills or boreholes  
3 at Hanford, large quantities of other extremely radioactive mixed wastes, which it refers  
4 to as GTCC and GTCC-like wastes.<sup>15</sup> USDOE intends to include waste it previously  
5 referred to as RH-TRU in this decision to dispose of GTCC and GTCC-like waste, for  
6 which Hanford is a candidate site. *Id.* This waste, unlike other TRU waste designated  
7 for disposal at the WIPP deep geologic repository in New Mexico, has no current legal  
8 disposal path. Although USDOE determined in 1970 that TRU should be disposed of in  
9 a deep geologic repository, Federal law bars storage of non-defense TRU wastes at  
10 WIPP. WIPP Land Withdrawal Act, Public Law 104-201. Under a 2000 RoD<sup>16</sup> which  
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16 <sup>14</sup> Amendment to the Record of Decision for the Department of Energy's Waste  
17 Management Program: Treatment and Storage of Transuranic Waste, 73 Fed. Reg.  
18 12301, 12402-12403 (March 7, 2008).

19 <sup>15</sup> Notice of Intent To Prepare an Environmental Impact Statement for the Disposal of  
20 Greater-Than-Class-C Low-Level Radioactive Waste, 72 Fed. Reg. 40135 (July 23,  
21 2007).

22 <sup>16</sup> Record of Decision for the Department of Energy's Waste Management Program:  
23 Treatment and Disposal of Low-Level Waste and Mixed Low-Level Waste; Amendment  
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1 designates Hanford as one of two LLW and MLLW storage sites for the USDOE nuclear  
2 weapons and power complex, USDOE has already determined that Hanford and the  
3 Nevada Test Site are its chosen facilities for disposal.  
4

5 49. The Draft TCWM EIS identifies that impacts to groundwater from the  
6 proposed addition of 82,000 cubic meters of off-site waste will exceed relevant Drinking  
7 Water Standards for thousands of years.<sup>17</sup> The U.S. Environmental Protection Agency  
8 (EPA) formally commented on the Draft TCWM EIS stating that:  
9

10 Under the Preferred Waste Management Alternative, there would also be Tc-  
11 99 and I-129 releases to the groundwater from the Integrated Disposal  
12 Facility (IDF) in the 200 East Area, with concentrations 25 and 15 times  
13 higher than the standards for Tc-99 and I-129 at the IDF, core zone  
14 boundary and the Columbia River, respectively.<sup>18</sup>

15 The impacts to human health (e.g., cancer risks greatly exceeding  
16 Washington State MTCA or US EPA CERCLA standards for Native Americans  
17  
18 of the Record of Decision for the Nevada Test Site, 68 Fed. Reg. 10061 (February 25,  
19 2000).

20 <sup>17</sup> Draft TCWM EIS, Appendix U, Table U-2, *available at*:

21 [http://www.hanford.gov/orp/uploadfiles/EIS-0391\\_D-AppendixU.pdf](http://www.hanford.gov/orp/uploadfiles/EIS-0391_D-AppendixU.pdf).

22  
23 <sup>18</sup> U.S. Environmental Protection Agency (EPA) May 3, 2010 Comments on Draft  
24 TCWM EIS, page 2. (The IDF landfill is USDOE's proposed "preferred alternative" for  
25 storage of off-site waste at Hanford implementing the 2004 RoD).  
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1 exercising Treaty rights to utilize groundwater and resources on the Hanford site  
2 and along the River) and the environment (e.g., radioactive Plutonium, Uranium,  
3 Iodine and Technetium levels projected to greatly exceed federal Drinking Water  
4 Standards) identified in the Draft TCWMEIS are far greater than impacts projected  
5 in the inadequate Final HSW EIS, whose preparation was marred by significant  
6 violations of USDOE's own rules for data quality and conduct of its contractors in  
7 preparing environmental impact statements. Pursuant to NEPA, these new  
8 analyses of cumulative and direct impacts should trigger re-analysis of alternatives  
9 to USDOE's proposal to import and dispose of 82,000 cubic meters of offsite  
10 waste at Hanford. Instead, USDOE continues to rely on the 2004 HSW RoD and  
11 plans to implement it, examining in the scope of the Draft TCWMEIS only where  
12 at Hanford it will dispose of this quantity of wastes.  
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17 50. Battelle, which played a major role as a contractor for USDOE preparing the  
18 Final HSW EIS, is a significant generator of wastes at Hanford and landlord of facilities  
19 at Hanford. At the time it was preparing the Final HSW EIS, Battelle was also generating  
20 waste at other sites around the country, and was actively seeking to send some of the  
21 wastes to Hanford (e.g., from Battelle's Columbus, Ohio facility) . As such, Battelle had  
22 significant financial and business-related interests in the outcome of the proposals for  
23 waste treatment, storage, and disposal at Hanford, including the use of Hanford for  
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1 disposal of off-site waste and disposal of wastes from its on-site facilities in violation of  
2 40 C.F.R. § 1506.5(c).

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4  
5 **CLAIMS FOR RELIEF**

6 **COUNT 1: Violation of § 102(2)(C) of National Environmental Policy Act**

7 51. NEPA requires that all federal agencies prepare a detailed EIS on every  
8 proposal for a major federal action significantly affecting the quality of the human  
9 environment. 42 U.S.C. § 4332(2)(c). The EIS must contain a detailed discussion of  
10 environmental impacts (40 C.F.R. § 1502.16), including cumulative environmental  
11 impacts (40 C.F.R. § 1508.7), alternatives to the proposed action (40 C.F.R. § 1502.14),  
12 and appropriate measures to mitigate adverse environmental impacts (40 C.F.R.  
13 §§ 1502.14 and 1502.16).

14 52. USDOE's decision to transport and to dispose of 82,000 cubic meters of  
15 LLW and MLLW in shallow landfills at Hanford is a major federal action significantly  
16 affecting the quality of the human environment for which NEPA requires the preparation  
17 of an EIS.

18 53. The Final HSW EIS was inadequate under NEPA to support USDOE's 2004  
19 HSW RoD to import and dispose of 82,000 cubic meters of offsite waste at Hanford.  
20 Rather than planning to re-analyze all reasonable alternatives to the disposal of 82,000  
21 cubic meters of offsite waste at Hanford, USDOE has repeatedly said that it will continue  
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1 to rely upon the 2004 HSW RoD decision to import and bury this quantity of waste,  
2 despite formally finding that the Final HSW EIS on which it was based was marred by  
3 significant violations of rules and USDOE Orders for preparation of environmental  
4 impact statements. The cumulative impacts of adding additional waste to Hanford—a  
5 facility that is already woefully out of compliance with environmental requirements—  
6 was not adequately considered in the Final HSW EIS or 2004 HSW RoD in violation of  
7 NEPA, as shown by the new analyses conducted for the Draft TCWM EIS. USDOE  
8 persists in violating NEPA by failing to consider the reasonable alternatives to the 2004  
9 HSW RoD to import and bury 82,000 cubic meters of waste at Hanford, and instead has  
10 chosen solely to decide in the Draft TCWM EIS where at Hanford it will dispose of this  
11 quantity of waste.  
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15 54. NEPA requires that USDOE prepare an adequate site-wide EIS, which  
16 considers all reasonable alternatives to its proposal to truck 82,000 cubic meters of  
17 additional offsite wastes to Hanford for disposal. A site-wide EIS is appropriate given  
18 the large and complex nature of the Hanford Site, the multiple treatment, storage, and  
19 disposal facilities at Hanford, the hundreds of contaminated sites and waste streams, the  
20 non-compliant storage of thousands of cubic meters of LLW and MLLW already at  
21 Hanford, the potential danger of shipment along Interstate Highways 5, 84, and 90, and  
22 the lack of up-to-date route-specific analysis of these routes which includes updating  
23 census data. USDOE's own regulations require the preparation of a site-wide analysis,  
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1 and require that it be updated at least every five years. 10 C.F.R. § 1021.330. To date,  
2 USDOE has failed to conduct such an analysis and update in deciding to continue to rely  
3 upon its 2004 HSW RoD, and has instead relied on outdated and inaccurate information  
4 to prepare the Draft TCWM EIS, which it has limited to consider where at Hanford it will  
5 dispose of this quantity of waste. USDOE violates NEPA by failing to: withdraw the  
6 2004 HSW RoD; perform a new analysis of the direct and cumulative impacts from  
7 adding this quantity of wastes; consider new information on impacts; and, to analyze all  
8 reasonable alternatives to the import and disposal of 82,000 cubic meters of offsite  
9 wastes, in conjunction with the impacts of pending related proposals to import and  
10 dispose of additional wastes, in a new EIS.

14 55. CEQ Guidelines require that USDOE consider cumulative effects  
15 throughout the NEPA process. "Considering Cumulative Effects Under the National  
16 Environmental Policy Act," Council on Environmental Quality, January, 1997. This  
17 includes consideration of the cumulative effects of managing the waste already present at  
18 the Hanford site in addition to any waste that may foreseeably be shipped to Hanford in  
19 the future. To date USDOE has failed to do so.

22 56. The 2004 HSW RoD was an inadequate basis for USDOE's Draft TCWM  
23 EIS's decision to transport waste to Hanford because it relied on out-of-date information.  
24 The census data used to evaluate these factors was from the Year 2000, and populations  
25 along the likely transportation corridors have increased significantly since then.  
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1 Although the Final HSW EIS failed to correct the known mistakes in their analyses (*see*  
2 Data Quality HSW EIS, 19 n.9), and although the route-specific analysis did not cover  
3 the likely routes that would be used, USDOE adopted a RoD based on that information.  
4 After publicly acknowledging the serious legal inadequacies and data quality flaws of the  
5 Final HSW EIS, USDOE failed to withdraw the 2004 HSW RoD, and continues to rely  
6 upon it despite the acknowledged legal inadequacy of the Final HSW EIS on which the  
7 2004 HSW RoD was based. The Final HSW EIS violated NEPA, causing injury to  
8 Plaintiff by failing to disclose, discuss and consider the relevant state MTCA or EPA  
9 CERCLA cleanup and cancer risk standards applicable to projected releases of hazardous  
10 and carcinogenic substances (including radionuclides) and for performance of cleanup  
11 related landfills. The Final HSW EIS failed to disclose the lack of a RCRA permit for,  
12 and to consider the impacts from disposal of offsite waste in, an un-permitted landfill  
13 (Mixed Waste Trenches 31 and 34), which USDOE unilaterally chose to continue to  
14 utilize for certain offsite wastes after 2004.

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19 57. NEPA requires that USDOE prepare a Supplemental EIS if USDOE makes  
20 substantial changes in the proposed action that are relevant to environmental concerns, or  
21 where there are significant new circumstances or information relevant to environmental  
22 concerns and bearing on the proposed action or its impacts. 40 C.F.R. § 1502.9; 10  
23 C.F.R. § 1021.314.  
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1 58. Since 2000, new information regarding the population growth along  
2 proposed transportation routes has become available. Coupled with changing data  
3 concerning population increases around the Hanford site, this new information warrants  
4 the drafting of a Supplemental EIS. NEPA implementing regulations require that a  
5 Supplemental EIS be prepared when "there are significant new circumstances or  
6 information relevant to environmental concerns and bearing on the proposed action or its  
7 impacts." 40 C.F.R. 1502.9(c)(ii). Unforeseen population increases significantly alter  
8 the accuracy of critical risk assessments, and are therefore relevant to assessing the  
9 environmental impacts of shipping additional waste to Hanford USDOE's own new  
10 analyses in the Draft TCWM EIS project far greater human health and environmental  
11 impacts than projected in the Final HSW EIS. USDOE is therefore required to prepare a  
12 Supplemental EIS prior to any decision to transport LLW and MLLW to Hanford for  
13 treatment and/or storage (rather than limiting analyses to where at Hanford it will dispose  
14 of the 82,000 cubic meters of waste authorized in the 2004 HSW RoD). The  
15 Supplemental or new EIS should evaluate all alternatives for shipment, storage, disposal,  
16 and treatment of off-site LLW and MLLW at Hanford, including not shipping any  
17 additional wastes or limiting quantities and types of waste. USDOE has failed to prepare  
18 such a Supplemental EIS, while continuing to formally rely upon their decision in the  
19 2004 HSW RoD.  
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1           59. By virtue of USDOE's failure to comply with NEPA, USDOE's decision to  
2 transport additional wastes to Hanford without adequately analyzing alternatives to the  
3 treatment and/or disposal at the Hanford Site, without adequately considering the  
4 cumulative impacts of adding additional waste to Hanford, without consideration of all  
5 reasonable alternatives to disposing of additional wastes at Hanford, without  
6 consideration of related pending proposals to ship other similar wastes, and without  
7 preparing a Supplemental EIS considering if any additional wastes should be disposed at  
8 Hanford based on significant new circumstances and information, is arbitrary and  
9 capricious, incomplete, and inadequate.  
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13           60. Plaintiff will suffer irreparable harm in the event that USDOE is permitted to  
14 ship additional LLW and MLLW from other USDOE sites for storage, treatment or  
15 disposal at Hanford without first complying with NEPA's procedural requirements for  
16 assessment of potential adverse environmental impacts. Such harm includes the risks of  
17 contamination of groundwater, contamination of the Columbia River, potential  
18 contamination of drinking water, disruption of state roads and highways, and potential  
19 public health and environmental impacts in the event of a release of radioactive or  
20 hazardous wastes during transportation of waste to Hanford or while the waste is at the  
21 Hanford Site. Harm to Plaintiff's rights also arises from USDOE's use of an unpermitted  
22 landfill trench for disposal of off-site MLLW, pursuant to its "moratorium" agreement  
23 with Washington State – entered into despite the Final HSW EIS not having analyzed the  
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1 impacts of such use for off-site waste, nor the 2004 HSW RoD having authorized such  
2 continued use of the existing unpermitted landfill trench. Harm to Plaintiff's rights will  
3 also occur if USDOE relies on its 2004 HSW RoD and diverts resources from cleanup of  
4 on-site waste to acceptance of off-site waste without proper environmental analysis.  
5

6         61. USDOE acted arbitrarily and capriciously in adopting the 2004 HSW RoD  
7 based on the Final HSW EIS. The information relied upon was outdated and inaccurate,  
8 and the preparation of the impact statement relied upon failed to meet USDOE's own  
9 Orders and requirements, when USDOE issued the RoD. Although the Final HSW EIS  
10 failed to correct the known mistakes in USDOE's analyses, and although the route-  
11 specific analysis did not cover the likely routes that would be used, the USDOE  
12 arbitrarily and capriciously adopted a RoD based on that information. After publicly  
13 acknowledging the serious legal inadequacies and data quality flaws of the Final HSW  
14 EIS, USDOE failed to withdraw the 2004 HSW RoD, and continues to rely upon it  
15 despite the acknowledged legal inadequacy of the Final HSW EIS on which the 2004  
16 HSW RoD was based. Such reliance is arbitrary and capricious as well as a violation of  
17 the requirement to take a hard look at the environmental impacts from USDOE's  
18 proposed action under NEPA. Utilizing the un-permitted MLLW trench for disposal of  
19 off-site wastes after 2004, pending the adoption of a new EIS and opening of the IDF  
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1 landfill<sup>19</sup>, was also ultra vires, arbitrary and capricious, and in violation of NEPA due to  
2 failure to consider potential significant impacts to human health and the environment.  
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5 **COUNT 2: Contractor conflict of interest violates NEPA**

6 62. The Final HSW EIS, on which the 2004 HSW RoD relies, was prepared in  
7 significant part by a contractor, Battelle, who had a conflict of interest in violation of 40  
8 C.F.R. § 1506.5(c). At the time it was preparing the Final HSW EIS, Battelle was also  
9 generating waste at other sites around the country, and was actively seeking to send some  
10 of the wastes to Hanford while still generating wastes at Hanford . As such, Battelle had  
11 significant financial and business-related interests in the outcome of the proposals for  
12 waste treatment, storage, and disposal at Hanford, including the use of Hanford for  
13 disposal of off-site waste and disposal of wastes from its on-site facilities. Section  
14 1506.5(c) of the CEQ Regulations bars the use of a contractor who prepares or assists in  
15 preparing an EIS from having any interest in the outcome of the project.<sup>20</sup> The disclosure  
16 that Battelle failed to meet quality assurance rules for preparing an impact statement and  
17 failed to have a qualified manager, as determined by DOE's own formal review (Review  
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23 <sup>19</sup> Pursuant to an agreement with Washington state for disposal of limited categories of  
24 off-site waste.

25 <sup>20</sup> See explanatory statement of rules at: 48 Fed. Reg. 34263 (1983).  
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1 of Data Quality HSW EIS, 19 n.9), makes this conflict an even more egregious violation  
2 of the NEPA process.

3           63. Battelle's conflict of interest and violations of DOE Orders governing data  
4 quality and qualifications for preparing an impact statement renders the Final HSW EIS  
5 inadequate under 42 U.S.C. § 4332(2)(c), and reliance on such an inadequately prepared  
6 EIS and subsequent issuance of a RoD violates both the APA, 5 U.S.C. §§ 500-596, and  
7 NEPA, 42 U.S.C. §§ 4321-4370.  
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11                                   **COUNT 3: Violation of the Administrative Procedure Act**  
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13           64. Due to USDOE's knowing and conscious failure to comply with NEPA, and  
14 CERCLA's Offsite Waste Rule (Count 6 below), Plaintiff has suffered legal wrongs  
15 because of agency action, and is adversely affected and aggrieved by agency action  
16 within the meaning of the APA, 5 U.S.C. § 702.  
17

18           65. USDOE's knowing and conscious failures to comply with NEPA and  
19 CERCLA are arbitrary and capricious, an abuse of discretion, not in accordance with law,  
20 and without observance of procedure required by law within the meaning of the APA,  
21 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.  
22

23           66. USDOE's continued reliance on the 2004 HSW RoD is arbitrary and  
24 capricious and in violation of NEPA.  
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1           67.     USDOE's failure to analyze alternatives to importing and burying 82,000  
2 cubic meters of offsite waste at Hanford and its announced intention in the Draft TCWM  
3 EIS to implement the 2004 HSW RoD and only analyze *where* at Hanford it will dispose  
4 of those 82,000 cubic meters, rather than consider *if* it should dispose of any off-site  
5 wastes at Hanford, violates both NEPA and the APA. Utilizing the un-permitted MLLW  
6 trench for disposal of off-site wastes after 2004, pending the adoption of a new EIS and  
7 opening of the IDF landfill<sup>21</sup>, was also ultra vires, arbitrary and capricious in violation of  
8 the APA, and in violation of NEPA due to failure to consider potential significant  
9 impacts to human health and the environment.  
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14           **COUNT 4: Failure to Prepare a Supplemental EIS is Arbitrary and Capricious**

15           68.     Defendants have failed to complete up-to-date analysis and testing on-site  
16 and along route-specific corridors and have instead relied on outdated information that is  
17 at least six years old and no longer relevant while continuing to rely on, and implement, its  
18 2004 HSW RoD in regard to disposing of 82,000 cubic meters of offsite waste at  
19 Hanford. USDOE violated NEPA by failing to include examination of reasonable  
20 alternatives to disposal of 82,000 cubic meters of waste at Hanford in the scope of its new  
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24 <sup>21</sup> Pursuant to an agreement with Washington state for disposal of limited categories of  
25 off-site waste.  
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1 Draft TCWM EIS – despite massive volumes of new data showing far greater significant  
2 probable impacts to human health and the environment (e.g., projected groundwater  
3 contamination levels) from existing wastes and proposed additions of off-site waste than  
4 the flawed Final HSW EIS projected; and, by continuing to rely upon the 2004 HSW  
5 RoD, which is not supported by an adequate EIS.  
6

7         69. Defendants have failed to evaluate, consider, and disclose to the public, new  
8 route-specific and site-specific direct, indirect, and cumulative effects associated with the  
9 waste shipments at issue in this case as required by NEPA and its implementing  
10 regulations. These include the specific impacts from trucking wastes through the cities of  
11 Portland, Oregon and Spokane, Washington, as well as numerous other communities.  
12

13         70. Defendants failed to consider the cumulative effects of USDOE’s proposals  
14 to dispose of additional GTCC, LLW and MLLW, despite the fact these actions are both  
15 “reasonably foreseeable” and “similar” to the decision to store the waste at issue here.  
16

17         71. Defendants did not adequately consider alternatives to disposing of the  
18 proposed quantities and types of waste authorized by the 2004 HSW RoD at Hanford or  
19 potential mitigation measures.  
20

21         72. Defendants failed to consider, evaluate, or disclose the potential impacts  
22 during storage or transportation of the waste at issue that could result from a reasonably  
23 foreseeable terrorist or criminal attack, or any alternatives or mitigation measures that  
24 could reduce the likelihood of such an act.  
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1 73. Defendants continue to rely upon and seek to implement the 2004 HSW  
2 RoD based on the Final HSW EIS despite the fact that the analyses in the Final HSW EIS  
3 were found to be inadequate, failed to meet the USDOE's own data quality requirements,  
4 and have now been found in a subsequent analysis to have greatly under estimated  
5 specific impacts from adding offsite waste to Hanford and underestimating cumulative  
6 specific impacts; and, fails to consider related pending proposals to import highly radioactive  
7 (GTCC) wastes.  
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11 **COUNT 5: Reliance on the 2004 HSW RoD as a Basis for the Draft TCWM EIS was**  
12  
13 **Arbitrary, Capricious, and not in Accordance with the Law.**

14 74. USDOE's reliance on the Final HSW EIS as a basis for the decision in its  
15 2004 HSW RoD to truck and dispose of the nearly three million cubic feet of radioactive  
16 and radioactive hazardous waste at issue is inconsistent with the requirements of NEPA  
17 and its implementing regulations.  
18

19 75. The Final HSW EIS fails to include the type of site-specific and route-  
20 specific consideration of effects, alternatives and mitigation required by NEPA under 42  
21 U.S.C. § 4332(2)(c), and does not reasonably support the 2004 HSW RoD challenged  
22 here.  
23

24 76. The Final HSW EIS and the 2004 HSW RoD which USDOE continues to  
25 seek to implement, failed to consider the direct, indirect and cumulative effects of other  
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1 USDOE actions that are “reasonably foreseeable” and “similar” in nature to the waste  
2 shipments and storage approved in the 2004 HSW RoD.

3 77. The Final HSW EIS is more than six years old, contains information that  
4 was gathered arbitrarily and capriciously, is out of date and incorrect, and fails to  
5 recognize the increased risk associated with the transportation of radioactive waste  
6 following the September 11, 2001 terrorist attacks. USDOE violated both NEPA and the  
7 APA, by failing to include in the scope of the Draft TCWM EIS examination of  
8 reasonable alternatives to, and potential significant impacts from, USDOE’s decision to  
9 import and dispose of 82,000 cubic meters of waste at Hanford, proposing to examine  
10 only where at Hanford it will dispose of that quantity of wastes. That decision was not  
11 supported by an adequate EIS pursuant to NEPA.  
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17 **COUNT 6: The 2004 HSW RoD Violates CERCLA’s Offsite Waste Rule.**

18 78. The 2004 HSW RoD is also invalid because it violates CERCLA’s Offsite  
19 Waste Rule. 42 U.S.C. § 9621(d)(3). The Offsite Waste Rule prohibits CERCLA sites,  
20 such as Hanford, that are releasing hazardous substances into the environment or  
21 violating other environmental laws from receiving offsite waste from other CERCLA  
22 facilities, including federal facilities. The Offsite Waste Rule specifically forbids receipt  
23 of offsite waste from other CERCLA sites if the receiving facility (e.g., Hanford) is not  
24 “operating in compliance with section 3004 and 3005 of the Solid Waste Disposal Act  
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1 [42 U.S.C. 6924, 6925] (or, where applicable, in compliance with the Toxic Substances  
2 Control Act [15 U.S.C. 2601 et seq.] or other applicable Federal law) and all applicable  
3 State requirements.”  
4

5 79. In violation of the CERCLA Offsite Waste Rule, USDOE decided in its  
6 2004 HSW RoD to import waste from other CERCLA sites, even though USDOE admits  
7 that it will be decades before existing releases are brought into compliance with  
8 applicable environmental regulations. USDOE has frequently been unable to maintain  
9 compliance with various orders, permits, and decrees at the Hanford Nuclear  
10 Reservation,<sup>22</sup> and numerous units at Hanford do not yet have enforceable agreements to  
11 control releases or to initiate remedial action. In fact, USDOE’s records and NEPA  
12 analyses, including the Draft TCWM EIS, confirm that the agency is aware that current  
13 releases pose a threat to human health and the environment. Numerous releases and units  
14 at Hanford do not have schedules for the start of RCRA or CERCLA investigations or  
15 schedules for completion of specific remedial or corrective actions, while many other  
16 schedules for interim remedial action or interim corrective action have been violated by  
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21 \_\_\_\_\_  
22 <sup>22</sup> USDOE acknowledges that numerous Hanford RCRA units are not yet subject to any  
23 order initiating an investigation or corrective action. USDOE also illegally operates a  
24 landfill for disposal of mixed wastes (trenches 31 and 34) for which it has never received  
25 a final facility permit under RCRA and HWMA.  
26  
27

1 Defendant USDOE. The mixed waste landfill trenches utilized by USDOE for on-site  
2 waste and certain off-site wastes (pursuant to the agreement with Washington State, but  
3 not authorized under the 2004 HSWEIS Record of Decision or considered in the  
4 HSWEIS) do not have a final facility permit and were opened and operated in violation  
5 of RCRA and the HWMA. Hanford's Single Shell High-Level Nuclear Waste tanks are  
6 also operated without final facility permits and outside the authority of RCRA or the  
7 HWMA. Thus, receipt of offsite waste from other CERCLA facilities is barred because  
8  
9 42 USC 9621(d)(3) bars receipt of any offsite CERCLA facility wastes if the receiving  
10 facility is not operated in accord with RCRA (42 USC 6924 and 6925) and all applicable  
11 state requirements (e.g. WAC 173-303-141 [barring offering of waste for disposal to a  
12 facility which lacks a permit], WAC 173-303-800 [requiring permits], WAC 173-303-  
13 806 [final facility permits]).

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17 80. The CERCLA Offsite Waste Rule bars using Hanford as a disposal site for a  
18 significant portion of the nearly three million cubic feet of waste that the 2004 HSW RoD  
19 and Final HSW EIS propose to import from other USDOE CERCLA sites and facilities.  
20 USDOE's decision will make the cleanup more difficult and increase the contamination  
21 risks by importing and disposing of wastes from other USDOE facilities in violation of  
22 the clear requirements of the Offsite Waste Rule.  
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1       **COUNT 7: The Final HSW EIS, on which the 2004 HSW RoD is based, violates**  
2               **NEPA by failing to consider relevant hazardous waste standards, including**  
3               **CERCLA's Offsite Waste Rule and Washington's Model Toxics Control Act.**  
4

5               81. The 2004 HSW RoD is invalid because the Final HSW EIS, on which the  
6 2004 HSW RoD is based, violates NEPA by failing to consider or discuss relevant  
7 hazardous waste standards. NEPA implementing regulations require that an agency  
8 consider the compliance requirements of any additional environmental laws, regulations,  
9 or executive orders during the NEPA process. 40 C.F.R. § 1502.25. The Final HSW EIS  
10 failed to meet this requirement by failing to discuss and consider the applicability of  
11 CERCLA's Offsite Waste Rule and the MTCA to the proposed action. Therefore, the  
12 Final HSW EIS was inadequate, and the public was deprived of its rights to review and  
13 comment upon this aspect of USDOE's proposal.  
14  
15

16               82. NEPA functions as an umbrella statute, meaning that it is a framework to  
17 coordinate or show compliance with any studies, reviews, or consultations required by  
18 any other environmental laws. Therefore, although NEPA itself is not the source of the  
19 obligation, the need to comply with other environmental laws such as CERCLA and  
20 MTCA, must be identified within the framework of the NEPA process. Violation of a  
21 federal law designed to protect health and the environment is a significant impact under  
22 NEPA. The values impacted from adding offsite waste are recognized by CERCLA (e.g.,  
23 due to impacts on the ability to oversee the cleanup, as well as adding to the site's "risk  
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1 budget," which may be fully used up by on-site wastes left in the soil). USDOE violated  
2 NEPA by failing to consider and disclose the CERCLA Offsite Waste Rule and the need  
3 for EPA and state concurrence for disposal of projected offsite wastes from other  
4 CERCLA sites in the Final HSW EIS; failing to disclose and consider how projected  
5 releases would cause injury in excess of relevant MTCA or CERCLA standards (e.g.,  
6 cancer risk standards applicable to releases of hazardous substances). These violations  
7 injured Plaintiff and the public by denying rights to review and comment on the potential  
8 application of the Offsite Waste Rule or how proposed actions would violate relevant  
9 cancer or environmental risk standards, and Plaintiff's rights to have USDOE consider  
10 these impacts in comparison to the relevant standards.  
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**PRAYER FOR RELIEF**

16  
17 WHEREFORE, Plaintiff respectfully requests that this Court,

18 1. Declare that USDOE's Final HSW EIS is inadequate to support USDOE's  
19 2004 HSW RoD to import and dispose of 82,000 cubic meters of offsite waste at the  
20 Hanford site;  
21

22 2. Declare that USDOE's decision to implement the 2004 HSW RoD is null  
23 and of no legal effect because it violated NEPA, constituted an abuse of the agency's  
24 discretion, and was arbitrary and capricious in violation of the APA.  
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1           3.     Declare USDOE's decision to import and dispose of offsite waste from other  
2 USDOE CERCLA sites to be invalid under the CERCLA Offsite Waste Rule, 42 USC §  
3 9621(d); and, invalid as arbitrary and capricious in violation of the APA, 5 U.S.C. §§  
4 500-596; and, invalid under NEPA, 42 U.S.C. § 4332(2)(c) for relying upon the Final  
5 HSW EIS, which failed to disclose and consider the Offsite Waste Rule with EPA  
6 review, and failed to disclose and consider relevant cleanup and health risk standards;  
7  
8

9           4.     Declare the USDOE's decision to limit the scope of its Draft TCWM EIS,  
10 which solely considers *where* at Hanford USDOE will choose to dispose of 82,000 cubic  
11 meters of offsite waste, rather than *if* any offsite waste should be disposed at Hanford,  
12 invalid pursuant to NEPA, 42 U.S.C. §§ 4321-4370 and the APA, 5 U.S.C. §§ 500-596,  
13 and order Defendants to prepare a new EIS with adequate analysis prior to issuing any  
14 new decision to import and dispose of any offsite waste at Hanford;  
15  
16

17           5.     Declare USDOE's use of landfill trench(es) (designated Trenches 31 and  
18 34), which have no permit issued pursuant to RCRA or the HWMA, for disposal of  
19 offsite mixed waste, containing hazardous and dangerous wastes, to be ultra vires and in  
20 violation of NEPA and the APA, and to enjoin Defendant's use of the trenches until such  
21 time as it is permitted following adoption of an adequate EIS considering impacts and  
22 alternatives pursuant to NEPA.  
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24

25           6.     Grant Plaintiff preliminary injunctive relief barring USDOE from continuing  
26 to rely upon or implement the 2004 HSW RoD;  
27

1           7.     Issue a permanent mandatory injunction barring USDOE from relying upon  
2 or implementing the 2004 HSW RoD until USDOE has complied with the APA, NEPA,  
3 and NEPA implementing regulations, including: i) preparation of a Supplemental EIS  
4 that relies on current risk information, 40 C.F.R. § 1502.9(c), (including the risk of  
5 terrorism and sabotage) and current 2010 census data to assess the risks associated with  
6 transport of the subject wastes to the Hanford Site; ii) preparation of an adequate EIS that  
7 evaluates all reasonable alternatives and impacts associated with storage, treatment, and  
8 disposal of LLW and MLLW at Hanford, including impacts on cleanup at the Hanford  
9 site, 42 U.S.C. § 4332(C); and iii) the publication of a lawful RoD based on consideration  
10 of the above environmental documents.  
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14           8.     Issue an order requiring USDOE to rescind the 2004 HSW RoD;

15           9.     Allow Plaintiff to recover the costs of this action, including attorneys fees  
16 pursuant to the Equal Access To Justice Act (EAJA), 5 U.S.C. § 504.  
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18           8.     Grant such other and further relief as the Court deems just and proper.  
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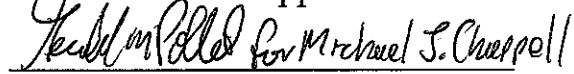
21 DATED this 17<sup>th</sup> day of August, 2010.  
22

23 /s/ Gerald M. Pollet

24 

25 Gerald M. Pollet, WSBA #13620  
26 Attorney for Plaintiff  
27

23 /s/ Michael J. Chappell

24 

25 Michael J. Chappell, WSBA #41397  
26 Attorney for Plaintiff  
27