

MEMORANDUM OF AGREEMENT
BETWEEN
THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
AND
THE PORT GAMBLE S'KLALLAM TRIBE
REGARDING HANSVILLE LANDFILL CONTAMINATED SITE

I. Preamble

1 The Port Gamble S'Klallam Tribe ("Tribe") as a sovereign government and the
2 Washington State Department of Ecology ("Ecology") desire to provide for an
3 effective, cooperative working relationship with regard to environmental concerns
4 raised by the Hansville Landfill Site ("Site").

5 The purpose of this Memorandum of Agreement ("MOA") is to identify the
6 respective roles and governmental responsibilities of the Tribe and Ecology
7 (collectively, "the Parties") related to remedial investigation and action at the
8 Hansville Landfill Site and areas contaminated by hazardous substances released from
9 the landfill. The Tribe and Ecology enter into this MOA in order to ensure that the
10 Tribe has a substantial and meaningful involvement in the Model Toxics Control Act
11 ("MTCA") process for selecting remedial action at the Site, including the
12 development, evaluation and implementation of an effective remediation strategy.

13 The Parties agree that the Site, known as the Hansville Landfill, is located
14 immediately adjacent to the external boundary of the Port Gamble S'Klallam
15 Reservation, the homeland of the Port Gamble S'Klallam Tribe, a federally recognized
16 sovereign Indian Tribe signatory to the Treaty of Point-No-Point with the United
17 States. Contamination from the Site has migrated across the boundaries of the Port
18 Gamble S'Klallam Reservation and poses a threat or potential threat to the health of
19 tribal members, natural resources owned or held in trust by the United States for the
20 benefit of the Tribe, and to the tribal environment.

Ecology has included the Hansville Landfill Site on its list of contaminated sites. Ecology has assigned its highest priority ranking to the Site and is proceeding with remediation pursuant to the MTCA.

The Tribe has governmental and proprietary interests in achieving a level of environmental protection at this Site which will protect the health and safety of the Reservation community, its water supply, and natural resources. Ecology seeks the involvement of the Tribe to facilitate the timely implementation of an effective cleanup remedy at this Site, in recognition of the specific interests of the Tribe.

Both Ecology and the Tribe are natural resource trustees for natural resources located at or about the Site pursuant to Section 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). In recognition of each other's status as natural resource trustees, this MOA will set forth the procedures by which Ecology and the Tribe will communicate and cooperate in their roles as natural resource trustees.

The Tribe and Ecology recognize that each has and reserves all rights, powers, and remedies now or hereafter existing at law or in equity, or by statute, treaty or otherwise. This MOA does not modify, diminish, or alter the rights and entitlements of the Parties. The Tribe's joinder to this Agreement and its participation in the MTCA process shall not constitute a waiver of sovereign immunity by the Tribe.

This MOA is intended solely to facilitate intergovernmental coordination between the Parties, and does not create any rights in third parties, give any right to judicial review, or waive any legal rights of the Parties under Federal, State, Tribal laws, or any other provision of law.

II. Objectives

The Parties agree to the following specific objectives for this MOA:

1. To further establish and define a working "government-to-government" relationship between the Tribe and Ecology and clarify such relationship with respect to all MTCA remedial activities and other issues concerning the Site; and to ensure an effective and timely remediation of the contamination at this Site;

2. To define specific procedures for coordination and communication between the Tribe and Ecology related to MTCA remedial activities, including the remedial investigation and feasibility study ("RI/FS") process, and other issues concerning the Site;
3. To identify "single points of contact" for all communication between the Tribe and Ecology related to the Site;
4. To ensure close cooperation and communication between the Tribe and Ecology will be planned and carried out to obtain maximum effect and to avoid possible conflicts and duplication of effort;
5. To establish specific communication procedures to ensure the substantial and meaningful involvement of the Tribe in discussions related to natural resource issues as they arise in the course of Ecology's investigations of site-related contamination;
6. To establish specific goals, procedures, and reasonable time frames for the efficient exchange of technical information, reports, studies, or other pertinent materials and documents, including the timely identification of Applicable or Relevant and Appropriate Requirements ("ARARs");
7. To provide an effective means for the Tribe to consult with Ecology during the negotiation process with potentially liable persons ("PLPs") concerning this Site

III General Terms of Agreement

To fulfill the purposes of this Agreement, Ecology and the Tribe will cooperate to provide the Tribe a meaningful and substantial opportunity to be informed and involved with respect to (1) all major decision points, broad issues, and overall results regarding the MTCA process concerning the Site and (2) other matters regarding the MTCA process concerning the Site which the Parties may agree are of significance to the Tribe as discussed during their periodic meetings or other communications.

1. Ecology, as the lead agency for the Site, will ensure that the Tribe has an adequate opportunity to review and propose revisions to documents developed under MTCA. Ecology will solicit the Tribe's proposed revisions on documents

85 prepared by Ecology prior to release to the PLPs, public, or press. A preliminary list of
86 these documents, including documents developed as part of the public participation
87 plan, is set forth in Attachment A. The parties agree to develop supplemental lists of
88 documents, as appropriate, which shall be provided for Tribal review

89 2. Ecology will promptly notify the Tribe of changes to the Hansville
90 Landfill Work Plan Schedule through periodic updates. Ecology will notify the Tribe
91 of any requests for extension of schedules and will consult with the Tribe prior to
92 taking action on such requests.

93 3. The Parties will consult to establish reasonable time frames for
94 consideration of Tribal input. To avoid delay in applicable schedules, the Tribe will
95 provide its input within a reasonable time.

96 4. The Tribe will cooperate in providing Ecology with access to the Site for
97 MTCA remedial activities. In order to facilitate MTCA activities at the Site, the Tribe,
98 in recognition of federal law and not by way of permit, license, agreement, lease or
99 other form of authorization, and solely to the extent of the Tribe's trust beneficiary or
100 other interest in a portion of the Site, agrees to provide access to the Site to Ecology,
101 and to its authorized representatives and contractors, to perform MTCA remedial
102 activities authorized by Ecology. As provided by the terms of administrative orders or
103 consent decrees, the Tribe agrees to permit Site access to the signatories of such
104 agreements and their response contractors to perform required activities; provided,
105 however, the Tribe reserves the right to deny access if the Tribe objects to the remedial
106 action to be taken or if the Tribe fails to receive adequate assurances that it will
107 assume no liability by virtue of permitting such access. The Tribe will be given at
108 least three (3) business days notice of requests for Site access, and will be afforded the
109 opportunity to accompany all visits to the Site.

110 5. In the event of an emergency outside the boundaries of the Reservation,
111 Ecology shall notify the Tribe at the earliest possible time. In the event of an
112 emergency affecting lands inside the Reservation, Ecology shall immediately notify
113 the Tribe of the situation and its recommended action. Ecology may proceed with
114 action upon Tribal concurrence and granting of access.

115 6. Ecology shall ensure that the impact or potential impact of hazardous
116 substances from the Site on natural resources is studied and considered during the

RI/FS, as is required by WAC 173-340-350 Ecology and the Tribe shall consult on the timing, methodologies, and procedures for assessing and recovering natural resource damages that may have been caused by hazardous substances from the Site.

7. During the RI/FS, the Tribe will cooperate with Ecology to identify potential sources of contamination, in addition to the Hansville Landfill Site

IV. Communication

1. General Ecology and the Tribe agree that MTCA program communication regarding the Site will be accomplished in accordance with the following procedures:

a. Designated Key Contacts. The key Tribal contact for all Tribe/Ecology coordination, program communication and planning activities is:

Jay Watson
Planning Director
Port Gamble S'Klallam Tribe
P.O. Box 280
Kingston, WA 98346
(206) 464-7281
(206) 297-7098 FAX

The key Ecology contact for all Tribe/Ecology coordination, program communication, and planning activities is:

Brian Sato
Department of Ecology
Northwest Regional Office
3190 160th Avenue S.E.
Bellevue, WA 98008
(206) 649-7265
(206) 649-7098 FAX

The Tribe and Ecology will exchange current organizational charts to facilitate communication and coordination regarding the Site. Each Party will inform the other in the event that a different key contact is designated.

b. Key contact persons from the Tribe and Ecology will meet at least quarterly to keep each agency informed of ongoing and future activities, to discuss and plan for mutual goals, and to develop effective coordination between the

154 agencies. More frequent meetings may be held as needed at the request of either Party.
155 Key contact persons from the Tribe and Ecology will confer by telephone at least
156 monthly to determine the need for a meeting

157 c. Key contact persons from the Tribe and Ecology will participate in
158 telephone conference calls as needed. The purpose of such calls is to keep each party
159 informed and involved regarding ongoing and planned activities, to discuss and
160 resolve problems between the agencies, and to facilitate effective communications.

161 d. Ecology and the Tribe agree that communications concerning
162 major documents and major decisions should be in writing. Verbal communications
163 on important matters will be immediately brought to the attention of key contact
164 persons at Ecology and the Tribe and will be followed by prompt written notification.

165 e. Ecology will provide, upon the Tribe's request, copies of Ecology
166 regulations, policies, laws, and guidance directives that are relevant to MTCA
167 activities at the Site.

168 f. The Tribe is responsible for providing Ecology with copies of all
169 Tribal ordinances, regulations, policies, and guidance manuals that are relevant to
170 MTCA or Superfund activities at the Site in a timely manner.

171 2. Public Participation. Ecology is responsible for undertaking public
172 participation activities that relate to the MTCA process at the Site, in accordance with
173 MTCA, and Ecology's rules. Ecology will work closely with the Tribe in the
174 development of a Public Participation Plan and in conducting a public participation
175 which includes, but is not limited to, a recognition of Tribal customs and culture.
176 Ecology shall notify the Tribe prior to issuance of all press releases and fact sheets and
177 before meetings with the interested public and governments.

178 3. Ecology will provide, or will require PLPs to provide, copies of all work
179 plans, progress reports, sampling plans, data reports and other deliverables to the
180 Tribe upon receipt by Ecology. Ecology shall receive and consider timely Tribal
181 comments on such documents prior to issuing its approval thereof.

182 4. Confidentiality. To the extent permitted by applicable law, the Parties
183 agree to protect confidentiality of information and documents. Sharing and exchange
184 of information and documents between the Parties does not waive any privilege
185 claim, including attorney-client, attorney work product, deliberative process, or the

186 Tribe's sovereign immunity, and the Parties intend for those privileges to remain
187 attached to such information. The Party claiming confidentiality must clearly identify
188 the confidential information and the basis for the claim at the time the information is
189 shared.

191 V. Remedy Selection and Implementation

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193 1. The remedial actions at the Site must comply with the MTCA and rules
194 adopted thereunder. Ecology will select a remedy that attains promulgated federal,
195 state and tribal standards, requirements, criteria and limitations that are legally
196 applicable or relevant and appropriate to the circumstances at the Site ("ARARs").
197 Discussion and identification of ARARs will occur throughout the MTCA process,
198 and the Parties will endeavor to identify ARARs as early as possible. Ecology, as the
199 lead agency, will determine the ARARs for the Site. The Tribe will be responsible for
200 timely identification of Tribal ARARs and requirements that are promulgated within
201 areas of the Tribe's jurisdiction.

202 2. The Tribe will have the opportunity to review and comment on
203 sampling density, pollutants to be analyzed, detection limits, and monitoring network
204 through review of the Remedial Investigation ("RI") work plan and sampling plan.

205 3. Ecology will meet regularly with the Tribe during the development of
206 the RI/FS and prior to selection of the remedy to discuss key documents and
207 decisions, and to review comments and concerns of the Tribe. In particular, Ecology
208 and the Tribe will meet to discuss remediation alternatives, including Ecology's
209 preferred alternative, and the draft Cleanup Action Plan (CAP).

210 4. Ecology and the Tribe will strive to identify remedial alternatives that
211 provide a protective and permanent solution to environmental problems at the Site.
212 The Tribe will work with Ecology to develop practical and legally enforceable
213 mechanisms, including institutional controls and access limits, to ensure that the Site
214 use and conditions are protective of human health and welfare and the environment.

215 5. Ecology shall notify the Tribe and provide an opportunity for Tribal
216 concurrence with remedial actions selected in the CAP. Prior to finalizing the CAP,
217 Ecology will meet with the Tribe to explain its reasoning for the selected remedial

alternative and cleanup level(s) Agreements reached by Ecology and the Tribe will be reflected in the final decision documents. If the final CAP is not acceptable, the Tribe reserves its rights to seek additional remedies under CERCLA or other applicable law.

6 The Tribe and Ecology shall cooperate to establish a document repository to be located at the Reservation.

7. Implementation of the Selected Remedial Action. During implementation of the selected remedy, and to the degree provided for by any consent decree that governs cleanup actions at the Site, Ecology will ensure that the Tribe has an opportunity to review and comment on documents and decisions relating to implementation of the remedial action, including: Engineering Design Reports; Progress Reports; Remedial Action Work Plans; Bidding Documents; Construction Plans and Specifications; Detailed Cost Estimates; Operation and Maintenance Plans; Construction Documentation; Compliance Monitoring Reports; Certifications of Completion; Periodic Review Reports; and Ecology's proposed Delisting Decision.

VI. Effect and Duration of Agreement

1 This MOA shall take effect upon execution by Ecology and the Port Gamble S'Klallam Tribe. The MOA is executed upon the signature of both Parties.

2. This MOA will remain in effect for the duration of the MTCA remedial activities at the Site or until terminated by mutual agreement of the Parties; provided, however, that either Party to this MOA may terminate it by providing thirty (30) days written notice to the other Party.

3. Ecology and the Tribe will formally review this Agreement once a year (at the end of each calendar year), and the Agreement may be modified in writing upon the request of either Party. All modifications must be mutually agreeable, in writing, and signed by the signatories or their duly appointed representatives. Each Party will endeavor to keep the other informed of proposed and enacted modifications of relevant Federal, State, or Tribal statutory or regulatory authority and may agree to modify this MOA.

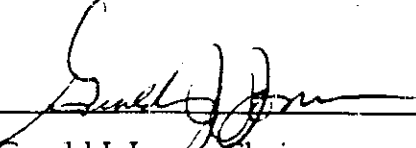
250 THE UNDERSIGNED PARTIES enter into this Memorandum of Agreement
251 between the Port Gamble S'Klallam Tribe and the State of Washington Department of
252 Ecology regarding implementation of the MTCA program

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255 PORT GAMBLE S'KLALLAM TRIBE

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257 By  11-9-93
258 Gerald J. Jones, Chairman Date

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260 STATE OF WASHINGTON

261 DEPARTMENT OF ECOLOGY

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263 By  11/29/93
264 Mary Riveland, Director Date

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