

Responsiveness Summary for Comments Received for the Interstate 82 Exit 33A Landfill
Agreed Order DE #15861

The Washington State Department of Ecology (Ecology) provided an opportunity for the public to comment on the Agreed Order (AO) for the Interstate 82 Exit 33A Yakima City Landfill located at 805 North 7th Street in Yakima. The AO directs Potentially Liable Persons (PLPs) to update environmental information and prepare cleanup options.

The Agreed Order was subject to public comment from July 9, 2018 through August 8, 2018.

Comments received are listed below, followed by Ecology's responses in **bold**.

Comment from John Guberski (via email dated July 9, 2018):

The following comments are provided:

1. For entire Order - replace the phrase "Ecology will endeavor to provide comments ... within XX days of receipt (or submittal (*sic*), etc.)..." with the phrase "Ecology will provide comments within within (*sic*) XX days of receipt (or submittal (*sic*), etc.)... , OR will provide a specific date by which comments will be provided."

Reason is that allowing Ecology open end (*sic*) time frames in which to provide comments has a financial impact on the City's ability to schedule resources or to contract for services.

Ecology Response: Comment noted. Ecology does not, as a matter of course, agree to jurisdictional timelines that limit its own regulatory authority in negotiated orders and decrees.

2. Page 10, Section VI.F - Specify method(s), as well as location and/or person to receive the notification within 24-hours.

Reason is to avoid interpretation of acceptable methods, location, and /or person under time pressure due an event that significantly delays work.

Ecology Response: Comment noted. As specified in Section VIII.B, communications are, to the maximum extent possible, to be directed between the Parties' respective project coordinators.

3. Page 10, Section VI.F - Specify if "significantly delays work" is a few days, a few weeks, is situational dependent, other time frame.

Reason is to avoid interpretation of what "significantly delays work" means when a delay occurs.

Ecology Response: Comment noted. Ecology does not believe that attempting to further define the phrase to fit hypothetical scenarios will materially enhance the agreed order.

4. Page 13, Section VIII.D - Add the method(s) the City can use to confirm that personnel presenting an Ecology identification badge are employed by Ecology. Similarly, how personnel can be confirmed as authorized representatives.

Reason is to provide a means to confirm that personnel are actually authorized by Ecology if there is a question rather than denial of access.

Ecology Response: Comment noted. The agreed order does not need to specify these methods.

5. Page 16, Section VIII.G - Add a paragraph stating: "During the pendency of this Order, and for the longer of: 10 years from the date of completion of work performed under this Order, or the period required under the Revised Code of Washington, Ecology shall maintain the administrative record for this Site."

Reason - Ecology stated in Section VIII.C that Ecology would maintain the administrative record. Thus it reasonable that the City know Ecology's retention period of the administrative record is specified.

Ecology Response to: Comment noted. Ecology's retention timeframe is dictated by the agency's internal document retention schedules, as well as the retention schedules and criteria of State Archives. Ecology will not separately define retention timelines in an agreed order.

Comments from CHI' QW~(JoDe GOUDY), CHAIRMAN, YAKAMA NATION TRIBAL COUNCIL (via letter dated August 8, 2018):

Ms. Davenport and Mr. Wend:

The Confederated Tribes and Bands of the Yakama Nation (Yakama Nation) hereby submits comments on the City of Yakima's State Environmental Policy Act (SEPA) Notice of Application and Environmental Review, which concerns the East-West Corridor project development at Bravo Company Boulevard and D and H Streets and intersects a historic Yakima City municipal solid waste dump on the former Boise Cascade Mill Site. The Yakama Nation is also submitting comments on the Washington Department of Ecology Draft MTCA Agreed Order # DE 15861 - Interstate 82 Exit 33A Landfill Facility, for MTCA cleanup of the municipal solid waste dump itself.

Comment 1:

We have significant concerns regarding potential impacts from the East-West Corridor project to cultural and environmental resources. Based on the following comments, the Bravo Company Blvd. extension will have a probable significant adverse impact to the environment, and the City must not issue a Determination of Non-Significance (DNS). Instead the City must prepare an Environmental Impact Statement (EIS) that addresses these issues in detail. This will allow the City to work with the Yakama Nation on identifying resources that will be impacted by both the immediate Bravo Company Blvd. extension and the larger East-West Corridor Project, and mitigation alternatives that will avoid adverse effects.

Ecology Response: This comment does not apply to issuing AO #DE 15861, although Ecology recognizes that any interim action conducted by the City will be subject to SEPA review.

Comment 2:

Cultural Resources

In completing the SEPA checklist, the City of Yakima SEPA Responsible Official failed to adequately evaluate the environmental impacts of the Project on Yakama cultural resources, which are protected by the U.S. Treaty with the Yakama of 1855 (12 stat., 951), federal and state laws. As described below, the Project's SEPA Checklist contained insufficient and incorrect information about cultural resources on or near the property. There is a very high probability that the Project would adversely impact Yakama cultural resources.

Ecology Response: This comment does not apply to issuing AO #DE 15861, although Ecology recognizes that any interim action conducted by the City will be subject to SEPA review.

Comment 3:

The Yakama Nation requests that the City require a cultural resources survey of the proposed Area of Potential Effect (APE) by a professional archaeologist. The methodology for such a survey should include subsurface testing as ground surface survey alone is not sufficient. The professional archaeologist should submit a copy of a report of findings to the Yakama Nation and the Washington State Department of Archaeology and Historic Preservation (DAHP) for review and concurrence prior to approval of this proposed project.

Ecology Response: This comment does not apply to issuing AO #DE 15861, although Ecology recognizes that any interim action conducted by the City will be subject to SEPA review.

Comment 4:

Cultural resources are protected environmental resources under SEPA, and the SEPA Responsible Official must consider and address a proposal's potential impact on those resources. WAC 197-11- 444(2)(b)(vi); see also Klickitat County Citizens Against Imported Waste v. Klickitat County, 122 Wn.2d 619,642 (1993). Currently, the question pertaining to cultural resources is insufficient to evaluate a proposal's environmental impact. When project proponents answer Question 13 "Historic and Cultural Preservation" of the SEPA Environmental Checklist, question 13(b) asks them to identify Indian cultural resources, and evidence of Indian cultural resources located within the proposed project area. The Guidelines clarify that tribal consultation and archaeological surveys are required to obtain sufficient information to answer question 13(b):

[Question 13(b)] cannot be answered in ignorance. It must include a process that incorporates historic research, tribal consultation, data gathering, and archaeological survey. SEPA rules require that decisions made during environmental review be based on sufficient information.

Consultation with Tribes and archaeological surveys are also assumed by question 13(c), which asks project proponents to "describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and Department of Archaeology and Historic Preservation, archaeological surveys, historic maps, GIS data, etc.

Ecology Response: This comment does not apply to issuing AO #DE 15861, although Ecology recognizes that any interim action conducted by the City will be subject to SEPA review.

Comment 5:

In this case, the Project proponent's answer of "no" to question 13(b) fails to reference or even acknowledge that the Project is "high risk" for archaeological resources based upon the DAHP's Archaeological Predictive Model. The answer to Checklist question 13(c) does not list any methods that were used to assess the potential impacts to cultural and historic resources. The SEPA Responsible Official needs to consult with the Yakama Nation and needs to require an archaeological survey of the proposed project APE.

Ecology Response: This comment does not apply to issuing AO #DE 15861, although Ecology recognizes that any interim action conducted by the City will be subject to SEPA review.

Comment 6:

The Yakama Nation has serious concerns with proposed Project's probable significant impacts on cultural resources. The Project APE is within the Yakama Nation's ceded territory, and close, if not within, Yakama cultural sites. The entire project area is

identified as "high risk" for containing archaeological resources by the DAHP predictive model.

Ecology Response: This comment does not apply to issuing AO #DE 15861, although Ecology recognizes that any interim action conducted by the City will be subject to SEPA review.

Comment 7:

The Yakama Nation has consistently taken the position that cultural resources should be identified at the earliest stages of the planning process, so that both the responsible official and project proponents can be aware of protected cultural resources that the proposed projects could affect.

Ecology Response: This comment does not apply to issuing AO #DE 15861, although Ecology recognizes that any interim action conducted by the City will be subject to SEPA review.

Comment 8:

For all the above reasons, a professional archaeological survey, including subsurface testing, should be conducted prior to approval of the Project. Only then will there be sufficient information available for the Responsible Official to consider relevant environmental factors and the Project's likely significant impacts on historic and cultural resources, including (but not limited to) those described above.

Ecology Response: This comment does not apply to issuing AO #DE 15861, although Ecology recognizes that any interim action conducted by the City will be subject to SEPA review.

Comment 9:

Environmental Resources

The larger proposed East-West Corridor project is located within the Yakima River watershed which is listed as critical habitat for several threatened and endangered species. The segment of river affected by this project is a wider, depositional, meandering section of river. Any proposals for infrastructure developments will have the potential to affect hydrogeologic and/or aquatic resources of the Yakima River and must be carefully planned and reviewed in coordination with the Yakama Nation.

Ecology Response: This comment does not apply to issuing AO #DE 15861, although Ecology recognizes that any interim action conducted by the City will be subject to SEPA review.

Comment 10:

In addition, the road corridor construction project bisects a former unlined Yakima City dump with contaminated soil and groundwater (the Interstate 82 Exit 33A site, or former Yakima City Dump). Site groundwater is likely in communication with surface water. Based on a rushed review of available on-line documentation, it does not appear that adequate groundwater data is available to evaluate groundwater-surface water interactions. Adequate investigations pursuant to the Model Toxics Control Act must be completed to evaluate the impacts of site groundwater contamination to surface water.

Ecology Response: The agreed order has a specific task for an initial evaluation of the groundwater-surface water interactions. If needed, additional evaluation may occur prior to feasibility study preparation, with Ecology reserving its authority to require such additional evaluation.

Comment 11:

Lastly, the proposal for partial cleanup (a.k.a. Interim Action) of the site must be evaluated for recontamination potential from contaminated site groundwater.

Ecology Response: Ecology intends that the interim action engineering design will address prevention of recontamination from contaminated site groundwater.

Comment 12:

We recommend that, until the MTCA investigation is completed and a remedial action is selected by the Department of Ecology, the Bravo Company Blvd. project should not go forward.

Ecology Response: Ecology may consider an interim action to remove some source material and further characterize the source material prior to preparation of a feasibility study and selection of a cleanup action alternative.

Comment 13:

Phased Review

This appears to be the initial step in a "phased" review of the City's larger East-West Corridor project. However, proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action must be evaluated in the same environmental document. WAC 197-11-060(3)(b). The Bravo Company Blvd. extension project is unquestionably an "interdependent part of a larger proposal" and depends on the larger proposal as its justification for implementation. WAC 197-11-060(3)(b)(ii). A phased review is not appropriate when it "would merely divide a larger system into exempted fragments or avoid discussion of cumulative impacts; or it would segment and avoid present consideration of proposals and their impacts that are required to be evaluated in a single environmental document." WAC 197-11-

060(5)(d). In other words, the City is not permitted to "piecemeal the process by limiting review to current segments of public works projects and postponing environmental review of later segments until construction begins." **Concerned Taxpayers Opposed to Modified Mid-South Sequim Bypass v. WDOT**, 90 Wn.App. 225, 231 n.2 (1998). This SEP A review clearly "avoids discussion or distorts the impact of the project's cumulative effects." **Indian Trail Prop. Owners' Ass 'n v. City of Spokane**, 76 Wn.App. 430, 443 (1994).

Ecology Response: This comment does not apply to AO #DE 15861, although Ecology recognizes that any interim action conducted by the City will be subject to SEPA review. Ecology will evaluate the sufficiency of SEPA analysis in conjunction with any proposed interim action.

Comment 14:

Other Permits

SEPA question 10 answers "N/A" (not applicable) to the question of whether government approvals or permits are not applicable to this project. However, the project triggers multiple government approval or permitting issues including, but not limited to: grading, air quality, stormwater control at a construction site, site cleanup plans of the Interim Action (cleaning up a portion of a landfill with contaminated soil and groundwater), disposal of landfill materials and contaminated soil and groundwater. Any proposed permit exemptions for this project must still go through thorough review and meet the requirements of their associated regulations.

Ecology Response: Comment noted.

Comment 15:

MTCA Agreed Order Deficiencies

Tribal coordination with the Yakama Nation should be included in the Agreed Order.

Ecology Response: Ecology appreciates the request of the Yakama Nation and will take steps to ensure meaningful engagement.

Comment 16:

Due to the location of this site, the contamination that has been released, and likely impacts to the cultural and environmental resources, the Yakama Nation will need to be meaningfully engaged throughout the planning, cleanup, and development process at this site. This would necessarily include direct meetings to discuss the concerns addressed in these comments. For further questions, please have your staff contact JD Shellenberger at (509)865-2255 regarding cultural issues or Laura Shira at (509)985-3561 for environmental issues.

Ecology Response: As Ecology notes above, we respect and appreciate the involvement of the Yakama Nation, and will soon take steps to begin meaningful engagement.