

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CONFEDERATED TRIBES AND  
BANDS OF THE YAKAMA  
NATION, a federally-recognized  
Indian tribal government and as  
*parens patriae* on behalf of the  
Enrolled Members of the  
Confederated Tribes and Bands of the  
Yakama Nation; FRIENDS OF THE  
COLUMBIA GORGE, an Oregon  
non-profit corporation;  
NORTHWEST ENVIRONMENTAL  
DEFENSE CENTER, an Oregon non-  
profit corporation; COLUMBIA  
RIVERKEEPER, a Washington non-  
profit corporation; DAWN STOVER,  
a Washington resident; DANIEL  
LICHTENWALD, a Washington  
resident,

Plaintiffs,

vs.

UNITED STATES DEPARTMENT  
OF AGRICULTURE; UNITED  
STATES DEPARTMENT OF  
AGRICULTURE ANIMAL AND  
PLANT HEALTH INSPECTION  
SERVICE; TOM VILSACK,  
Secretary of the United States  
Department of Agriculture; CINDY  
SMITH, Administrator of the United  
States Department of Agriculture  
Animal and Plant Health Inspection  
Service,

Defendants.

Case No. CV-10-3050-EFS

SUPPLEMENTAL DECLARATION  
OF REBECCA A. BECH IN  
SUPPORT OF DEFENDANTS'  
OPPOSITION TO PLAINTIFFS'  
MOTION FOR A PRELIMINARY  
INJUNCTION

I, Rebecca A. Bech, subject to the penalties of perjury, hereby declare that  
the following is true and correct to the best of my knowledge, information, and  
belief:

1 I, Rebecca A. Bech, am the Deputy Administrator of the United States  
2 Department of Agriculture's (USDA) Animal and Plant Health Inspection Service  
3 (APHIS), for Plant Protection and Quarantine (PPQ). I have served as Deputy  
4 Administrator of APHIS for PPQ since January 2008. I have worked for APHIS  
5 since 1986 and I worked in a variety of capacities prior to assuming my current  
6 position. APHIS-PPQ is charged with administering the Plant Protection Act (7  
7 U.S.C. § 7701 et seq.) (PPA) and works to prevent the entry, establishment, or  
8 spread of animal and plant pests and noxious weeds

9 2. I am familiar with APHIS' actions and decisions in connection with  
10 authorizing the movement of municipal solid waste (MSW) from Hawaii to the  
11 mainland United States. I am issuing this declaration to apprise this Court of  
12 certain developments that have occurred since Defendants filed their opposition to  
13 Plaintiffs' Motion for a Preliminary Injunction on August 13, 2010.

14 3. The movement of MSW from Hawaii to the mainland United States is  
15 prohibited unless it is moved in accordance with 7 C.F.R. §§ 330.402 - .403. On  
16 June 10, 2010, APHIS entered into compliance agreements, pursuant to 7 C.F.R. §  
17 330.403, with Hawaiian Waste Systems (HWS). These agreements authorized  
18 HWS to move MSW provided that the stipulated conditions and all applicable  
19 requirements were complied with.

20 4. As of July 8, 2010, the operations under the compliance agreements  
21 issued to HWS to move MSW off of Hawaii to the mainland were suspended by  
22 APHIS due to issues related to operational mitigation measures that needed to be  
23 addressed by the company. Unless and until such suspension was lifted, HWS was  
24 not authorized to move MSW to the mainland United States. To this date, APHIS  
25 has not lifted the suspension of operations. Attached as Exhibit A is a true and  
26 correct copy of the letter suspending the operations under the compliance  
27 agreements sent to HWS.

1           5. Under 7 C.F.R. § 330.402(b)(2), APHIS may enter into compliance  
2 agreements to move MSW from Hawaii to the mainland U.S. once it is satisfied  
3 that the agency has satisfied all its obligations under all applicable Federal and  
4 State statutes to fully assess the impacts associated with the movement of garbage  
5 under such agreements. APHIS has determined that it would be appropriate to  
6 conduct additional analysis regarding issuance of compliance agreements pursuant  
7 to the National Historic Preservation Act (NHPA), 16 U.S.C. § 470, *et seq.*. In  
8 order to allow APHIS the opportunity to incorporate any relevant information that  
9 may be learned from the additional NHPA analysis into its decision making, and in  
10 light of the terms of the Temporary Restraining Order issued by this Court on July  
11 29, 2010, APHIS terminated the compliance agreements with HWS on August 11,  
12 2010. Attached as Exhibits "B" and "C" are true and correct copies of the  
13 cancellation letters sent to HWS and Off-Island Transfer.

14           6. On August 20, 2010, APHIS received from HWS' counsel an e-mail in  
15 which HWS questioned the validity of the termination of the compliance  
16 agreements. Attached as Exhibit "D" is a true and correct copy of the e-mail  
17 received by HWS' attorney appealing the cancellation.

18 HWS specifically stated, inter alia, that:

19           the express terms of the compliance agreements only provide for  
20 cancellation by a PPQ Officer "if such official determines that the holder  
21 thereof has not complied with any of the conditions stated in [the]  
22 compliance agreement." As you know, the basis for the TRO is not because  
23 of any failure by HWS to comply with any conditions of the compliance  
24 agreements but rather as a result of perceived deficiencies with how  
25 USCA[sic]-APHIS-PPQ handled the process leading up to issuance of the  
26 compliance agreements.

27           Accordingly, HWS does not believe your letter canceling the compliance  
28 agreements is valid. In any event, in an abundance of caution, HWS is  
hereby appealing such purported cancellation based on the facts and reasons  
stated herein.



1        7. Pursuant to 7 C.F.R. 330.403(d), "any person whose compliance  
2 agreement has been canceled may appeal the decision, in writing, within 10 days  
3 after receiving written notification of the cancellation."

4        8. As of August 27, 2010, the Administrator of APHIS, Cindy Smith,  
5 reviewed HWS' appeal and the agency's decision and officially denied the appeal,  
6 upholding APHIS' cancellation of the compliance agreements with HWS. A  
7 written decision will issue to HWS shortly.

8        9. As of August 24, 2010, after further review, APHIS has determined  
9 that it would be appropriate to conduct additional National Environmental Policy  
10 Act (NEPA), 42 U.S.C. § 4321 et seq., analysis regarding HWS' petition to move  
11 MSW from Hawaii to the mainland, U.S. to further assess the impacts associated  
12 with the movement under a compliance agreement. Such analysis will be made  
13 available for public review and comment prior to issuing any NEPA final decision  
14 document.

15        10. Unless and until APHIS is satisfied that it has completed all of its  
16 obligations under the NHPA and under NEPA as per 7 C.F.R. § 330.402(b)(2),  
17 regarding HWS' petition to move MSW from Hawaii to the mainland, U.S., no  
18 new compliance agreement will be issued by APHIS.

19        11. As of August 27, 2010, there are no current or pending petitioners to  
20 move MSW from Hawaii to the mainland U.S. for APHIS to consider. If a petition  
21 is submitted to the agency for consideration, no compliance agreement will be  
22 issued until all obligations under NEPA, and all applicable Federal and State  
23 statutes are satisfied to fully assess the impacts associated with the movement of  
24 garbage under a compliance agreement. *See*, 7 C.F.R. 330.402(b)(2). For each  
25 new petitioner or amended petition that is submitted to APHIS for consideration,  
26 "[a] specific environmental analysis will be prepared for each new request for  
27 movement of MSW from Hawaii.... The environmental analysis made for a new  
28

1 request for moving MSW will be made available for a 30-day public comment  
2 period followed by an environmental and a pest risk decision regarding the new  
3 MSW proposal." *See* Regional Movement of Plastic-baled Municipal Solid Waste  
4 from Hawaii to Washington, Oregon, and Idaho, Environmental Assessment, April  
5 2008, pp. 1-2. 34 Fed. Reg. 13525 (March 2008).

6 12. The agency intends to provide notice to Plaintiffs' counsel, and to the  
7 Court, if so directed, of incremental steps completed in the NHPA and NEPA  
8 analyses as they are concluded, including a) when the NHPA analysis is complete,  
9 b) when the initial draft NEPA analysis is complete and ready for notice and  
10 public comment, c) when the public comments have been reviewed and analyzed,  
11 and d) when the agency is ready to make a final determination regarding its NEPA  
12 analysis and finalized its NEPA documentation.

13  
14 I declare under penalty of perjury that, to the best of my knowledge, the  
15 foregoing is true and correct.

16  
17 Signed this 27 day of August, 2010.

18  
19  
20 

21 Rebecca A. Bech  
22 Deputy Administrator  
23 Plant Protection and Quarantine  
24 Animal and Plant Health Inspection Service  
25 United States Department of Agriculture  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on August 27, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Gabriel S. Galanda:	gabe@galandabroadman.com
Michael J. Chappell:	mchappell@lawschool.gonzaga.edu
Anthony S. Broadman:	anthony@galandabroadman.com
Julio Carranza:	julio.carranza@gmail.com
Tom Buchele	tbuchele@lclark.edu
Ty Bair:	tyler.bair@usdoj.gov

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: N/A

s/ Pamela J. DeRusha  
PAMELA J. DeRUSHA  
Assistant U. S. Attorney  
Post Office Box 1494  
Spokane, WA 99210-1494  
Telephone: (509) 353-2767  
Fax: (509) 353-2766  
USAWAE.PDerushaECF@usdoj.gov