

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

HANFORD CHALLENGE, UNITED
ASSOCIATION OF PLUMBERS
AND STEAMFITTERS LOCAL
UNION 598, and THE STATE OF
WASHINGTON,

Plaintiffs,

v.

ERNEST MONIZ, in his official
capacity as Secretary, UNITED
STATES DEPARTMENT OF
ENERGY, and WASHINGTON
RIVER PROTECTIONS
SOLUTIONS, LLC.,

Defendants.

NO: 4:15-CV-5086-TOR

ORDER DENYING MOTION FOR
JUDGMENT ON THE PLEADINGS

BEFORE THE COURT is the United States Department of Energy and
Secretary Ernest J. Moniz's Motion for Judgment on the Pleadings (ECF No. 110).
This matter was heard with oral argument on October 12, 2016.

1 Meredith A. Crafton, Richard Webster, Richard A. Smith, and Blythe H.
2 Chandler appeared on behalf of Plaintiffs Hanford Challenge and United
3 Association of Plumbers and Steamfitters Local Union 598. John A. Level, Kelly
4 T. Wood, and William R. Sherman appeared on behalf of Plaintiff State of
5 Washington. Elizabeth B. Dawson, Mark A. Nitczynski, and Sheila A. Baynes
6 appeared on behalf of Defendants United States Department of Energy and
7 Secretary Ernest J. Moniz. J. Chad Mitchell, Maureen L. Mitchell, and Stephen B.
8 Cherry appeared on behalf of Defendant Washington River Protection Solutions,
9 LLC. The Court has reviewed the briefing and the complete file, heard from
10 counsel, and is fully informed.

11 BACKGROUND

12 This is a consolidated action brought under the citizen suit provision of the
13 Solid Waste Disposal Act, § 7002(a)(1)(B), amended as the Resource Conservation
14 and Recovery Act of 1976 (“RCRA”), 42 U.S.C. § 6972(a)(1)(B).

15 Plaintiffs Hanford Challenge and United Association of Plumbers and
16 Steamfitters Local Union 598 (collectively, “Citizen Plaintiffs”) filed a Complaint
17 against Defendants United States Department of Energy and Secretary Ernest J.
18 Moniz (“DOE”) and Washington River Protection Solutions, LLC (“WRPS”)
19 (collectively, “Defendants”) on September 2, 2015, in *Hanford Challenge and*
20 *United Association of Plumbers and Steamfitters Local Union 598 v. Ernest Moniz*,

1 *et al.*, 4:15-CV-5086-TOR, *see* ECF No. 1. That same day, Plaintiff State of
2 Washington (“State”) filed a similar action against the same defendants in *State of*
3 *Washington v. Ernest Moniz, et al.*, 4:15-CV-5087-TOR, *see* ECF No. 1. The
4 parties to both actions filed a Joint Motion to Consolidate which the Court granted
5 and consolidated the actions as 4:15-CV-5086-TOR on January 22, 2016. *See* ECF
6 Nos. 33, 35 in Case No. 4:15-CV-5086-TOR.

7 Generally, Citizen Plaintiffs and the State (collectively, “Plaintiffs”) allege
8 that Defendants past and present storage, handling, and treatment of hazardous
9 waste at the Hanford Nuclear Site present an imminent and substantial
10 endangerment to human health or the environment. *See* ECF No. 1 in Case No.
11 4:15-CV-5086-TOR; ECF No. 1 in Case No. 4:15-CV-5087-TOR. Plaintiffs seek
12 declaratory and injunctive relief directing Defendants to modify their practices and
13 institute protective measures to avert peril to Hanford site workers.

14 On August 23, 2016, the DOE filed the instant motion for judgment on the
15 pleadings regarding all claims asserted in the State’s Complaint (ECF No. 1 in
16 Case No. 4:15-CV-5087-TOR), arguing that the State lacks standing as *parens*
17 *patriae* and has failed to demonstrate standing based on any alleged injuries to
18 itself, sufficient to satisfy Article III. ECF No. 110. The DOE asks this Court to
19 dismiss the State’s Complaint for lack of subject matter jurisdiction. *Id.*

20 Defendant WRPS joins in the DOE’s motion only as to the DOE’s arguments

1 regarding the States’ alleged failure to assert an injury to a sufficiently substantial
2 portion of its population and lack of Article III standing. ECF No. 111. The State
3 argues that it is not barred by prudential limits on *parens patriae* suits because
4 Congress explicitly authorizes the State to sue the United States under the RCRA
5 to vindicate its broad, public interest. *See* ECF No. 112 at 2-3. In the alternative,
6 the State argues that it has standing because Citizen Plaintiffs’ uncontested
7 standing satisfies the State’s Article III requirement. *Id.*

8 DISCUSSION

9 A. Standard of Review

10 Motions for judgment on the pleadings are governed by Federal Rule of
11 Civil Procedure 12(c). Rule 12(c) provides that a party may move for judgment on
12 the pleadings “[a]fter the pleadings are closed[,] but early enough not to delay
13 trial.” Fed. R. Civ. P. 12(c). This standard is “functionally identical” to the
14 standard applicable to a Rule 12(b) motion. *See, e.g., Cafasso, United States ex*
15 *rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 n.4 (9th Cir. 2011)
16 (equating the standard for deciding a Rule 12(c) motion as the same as a Rule
17 12(b)(6) motion); *Dworkin v. Hustler Magazine Inc.*, 867 F.2d 1188, 1192 (9th Cir.
18 1989) (noting that “the same standard of review applicable to a Rule 12(b) motion
19 applies to its Rule 12(c) analog”).
20

1 A party may object to subject matter jurisdiction under Fed. R. Civ. P.
2 12(b)(1) at any stage in the litigation. *See also* Fed. R. Civ. P. 12(h)(3). Rule
3 12(h)(3) instructs that if the court determines at any time that it lacks jurisdiction
4 of the subject matter, the court shall dismiss the action. To that end, a party may
5 object to subject matter jurisdiction either facially or factually. *Safe Air for*
6 *Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). “In a facial attack, the
7 challenger asserts that the allegations contained in a complaint are insufficient on
8 their face to invoke federal jurisdiction. By contrast, in a factual attack, the
9 challenger disputes the truth of the allegations that, by themselves, would
10 otherwise invoke federal jurisdiction.” *Id.*

11 Here, Defendants facially challenge the State’s complaint, alleging that the
12 State lacks standing under the *parens patriae* doctrine and Article III. Thus, the
13 Court must draw all reasonable inferences in favor of the State and accept the
14 States’ factual allegations as true. *See Wolfe v. Strankman*, 392 F.3d 358, 362 (9th
15 Cir. 2004).

16 **B. Whether the State is Authorized to Sue the United States**

17 It is well settled that standing “involves both constitutional limitations on
18 federal-court jurisdiction and prudential limitations on its exercise.” *Warth v.*
19 *Seldin*, 422 U.S. 490, 498 (1975). That is, in addition to Article III standing
20 requirements, federal jurisdiction may also be limited by certain prudential

1 limitations. *Bennett v. Spear*, 520 U.S. 154, 162 (1997). These limitations are
 2 characterized as “judicially self-imposed limits on the exercise of federal
 3 jurisdiction” which Congress may abrogate when it enacts a statute to authorize a
 4 private cause of action. *Id.* (quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984),
 5 abrogated on other grounds by *Lexmark Int’l, Inc. v. Static Control Components*,
 6 Inc., 134 S. Ct. 1377 (2014)).

7 In other words, “Congress may grant an express right of action to persons
 8 who otherwise would be barred by prudential standing rules” as long as Article III
 9 standing requirements are satisfied. *Warth*, 422 U.S. at 501. Moreover, such
 10 persons “may have standing to seek relief on the basis of the legal rights and
 11 interests of others[.]” *Id.* Further yet, “Congress may, by legislation, expand
 12 standing to the full extent permitted by Art. III, thus permitting litigation by one
 13 who otherwise would be barred by prudential standing rules.” *Gladstone Realtors*
 14 *v. Vill. of Bellwood*, 441 U.S. 91, 100 (1979) (citation omitted).

15 **a. Resource Conservation and Recovery Act of 1976**

16 The citizen suit provision of the RCRA authorizes “any person [to]
 17 commence a civil action on his own behalf . . . against any person, including the
 18 United States . . . who has contributed or who is contributing to the past or present
 19 handling, storage, treatment, transportation, or disposal of any solid or hazardous
 20 waste which may present an imminent and substantial endangerment to health or

1 the environment” 42 U.S.C. § 6972(a)(1)(B); *see also* § 6903(15) (defining
 2 “person” to include a state). Moreover, when Congress uses the phrase “any
 3 person” and the intent is clear, Congress intends to expand standing broadly to the
 4 fullest extent permitted by Article III. *See Bennett*, 520 U.S. at 165 (citation
 5 omitted). Simply put, the RCRA explicitly grants states the authority to sue the
 6 United States. *See id.*; *United States Dep’t of Energy v. Ohio*, 503 U.S. 607, 614
 7 n.5 (1992) (“States may sue the United States under the citizen-suit section[.]”)
 8 (citations omitted).

9 Here, the DOE argues that the State is precluded from proceeding with its
 10 claim against the United States given the Supreme Court’s holding in
 11 *Massachusetts v. Mellon*, 262 U.S. 447, 485-86 (1923).¹ ECF Nos. 110 at 10; 156
 12 at 2.

13 While the state, under some circumstances, may sue in that capacity
 14 for the protection of its citizens [], it is no part of its duty or power to
 15 enforce their rights in respect of their relations with the federal
 government. In that field it is the United States, and not the state,

16 ¹ The DOE also relies on dicta in *Alfred L. Snapp & Son, Inc. v. Puerto Rico*,
 17 458 U.S. 592, 602 (1982) wherein the Supreme Court cites *Mellon* and stated that
 18 “[a] State does not have standing as *parens patriae* to bring an action against the
 19 Federal Government.” *Snapp*, 458 U.S. at 610 n.16.

1 which represents them as *parens patriae*, when such representation
2 becomes appropriate. . . .

3 *Mellon*, 262 U.S. at 485–86 (citation omitted). The DOE also argues that this bar
4 is not a prudential standing limit and, therefore, cannot be overridden by Congress.
5 ECF No. 156 at 2. Conversely, the State argues that a state is permitted to sue the
6 federal government to assert its rights under federal law, in contrast to prohibitory
7 challenges to the operation of federal law, under the doctrine of *parens patriae*.
8 ECF No. 112 at 10.

9 At the outset, neither party has set forth cases in which a state was permitted
10 or precluded from pursuing a RCRA claim against the United States, as *parens*
11 *patriae*, on behalf of its residents. However, in contrast to the cases cited by the
12 DOE rejecting *parens patriae* standing, *see* ECF No. 110 at 10-11, the Court notes
13 other instances where courts have recognized exceptions to the *Mellon* holding.
14 *See, e.g., American Rivers v. F.E.R.C.*, 201 F.3d 1186, 1205 (9th Cir. 1999);
15 *Sisseton–Wahpeton Sioux Tribe of Lake Traverse Indian Res., North Dakota and*
16 *South Dakota v. United States*, 90 F.3d 351, 353-54 (9th Cir. 1996); *Maryland*
17 *People’s Counsel v. F.E.R.C.*, 760 F.2d 318, 322 (D.C. Cir. 1985) (stating that
18 there is “no doubt that congressional elimination of the rule of *Massachusetts v.*
19 *Mellon* is effective”).

1 Moreover, the Court cannot ignore the Supreme Court’s 2007 decision in
2 *Massachusetts v. E.P.A.*, wherein the majority acknowledged a state’s ability to sue
3 the federal government under a federal statute in seeking to protect its quasi-
4 sovereign interests concerning greenhouse gas emissions. 549 U.S. 497, 519-20
5 (2007) (given the state’s statutory procedural right to challenge the federal
6 agency’s action and the state’s interest in protecting its quasi-sovereign interests,
7 the state is “entitled to special solicitude in our standing analysis.”)

8 The Court finds *Mellon* inapplicable because here, Congress has overridden
9 any *parens patriae* prudential standing limitation. To be clear, the Court does not
10 suggest that the RCRA confers standing to the State, or that the State has the right
11 to bring this action in *parens patriae* because it is not challenging the operation of
12 federal law. Rather, the Court disagrees with the DOE’s assertion that the *Mellon*
13 holding is not a prudential standing limit. *Parens patriae* standing limitations are
14 exactly that—a “judicially self-imposed limit[] on the exercise of federal
15 jurisdiction.” *Allen*, 468 U.S. at 751. *See, e.g., Massachusetts v. E.P.A.*, 549 U.S.
16 at 540 n.1 (Roberts, C.J., dissenting) (describing the “requirements for *parens*
17 *patriae* standing” as “prudential”); *Serv. Emps. Int’l Union Health & Welfare Fund*
18 *v. Philip Morris Inc.*, 249 F.3d 1068, 1073 (D.C. Cir. 2001) (“[T]he doctrine of
19 *parens patriae* is merely a species of prudential standing.”); *Maryland People’s*

1 *Counsel*, 760 F.2d at 321 (*parens patriae* standing limitations are “prudential . . .
2 element[s] that the courts must dispense with if Congress so provides”).

3 Next, the DOE argues that even if the Court determines that the State is not
4 barred from bringing a *parens patriae* suit under the RCRA, the action should be
5 dismissed because Congress tasked the DOE with regulating worker health and
6 safety. ECF No. 203 at 8. The Court finds little merit to the DOE’s argument that
7 the State is barred from asserting its RCRA claim because the State seeks to
8 interfere with federal powers. ECF No. 156 at 3-4. Rather, the Court finds that the
9 explicit language of the RCRA inexorably authorizes the State to do just that. *See*
10 42 U.S.C. § 6972(a)(1)(B).

11 Accordingly, the State’s action is permitted to proceed, as long as it satisfies
12 Article III standing requirements, because Congress has authorized the State to
13 bring this RCRA action in *parens patriae*.

14 **C. Whether the State has Sufficient Standing**

15 The State argues that the Court need not toil with determining whether the
16 State has sufficient standing because Citizen Plaintiffs’ standing is uncontested.
17 ECF No. 112 at 3-5. The State urges the Court to heed the “standing for one is
18 standing for all” doctrine. *Id.* The Court finds it inappropriate to do so.

19 The “standing for one is standing for all” approach does not prohibit a
20 district court from analyzing a plaintiff’s standing even if it finds that another

1 plaintiff has sufficient standing. Indeed, it may be inappropriate to apply the
2 doctrine where a fee shifting statute applies or where multiple parties without
3 standing would complicate the just, speedy, and inexpensive determination of the
4 proceeding. None of the State’s cited cases forbid the Court from assessing the
5 State’s standing or require the “standing for one is standing for all” approach. *Id.*

6 It is also conceivable that the “standing for one is standing for all” approach
7 may be limited to appellate review. *See, e.g., Nat’l Ass’n of Optometrists &*
8 *Opticians LensCrafters v. Brown*, 567 F.3d 521, 523 (9th Cir. 2009) (“As a general
9 rule, in an injunctive case *this court* need not address standing of each plaintiff if it
10 concludes that one plaintiff has standing.” (emphasis added and citation omitted));
11 *Planned Parenthood of Idaho, Inc. v. Wasden*, 376 F.3d 908, 919 (9th Cir. 2004)
12 (“Where the legal issues *on appeal* are fairly raised by one plaintiff [who] had
13 standing to bring the suit, the court need not consider the standing of the other
14 plaintiffs.” (internal quotation and citation omitted, emphasis added)). For all of
15 these reasons, the Court analyzes the State’s Article III standing in its *parens*
16 *patriae* capacity.

17 **a. *Standing as Parens Patriae Under Article III***

18 In order to satisfy the Article III “case” or “controversy” requirement, which
19 is the “irreducible constitutional minimum” of standing, a plaintiff must ordinarily

20 //

1 demonstrate the following:

2 First, the plaintiff must have suffered an “injury in-fact”—an invasion
 3 of a legally protected interest which is (a) concrete and particularized,
 . . . and (b) “actual or imminent, not ‘conjectural’ or ‘hypothetical,’” . .
 . . Second, there must be a causal connection between the injury and
 4 the conduct complained of—the injury has to be “fairly . . . trace[able]
 to the challenged action of the defendant, and not . . . th[e] result [of]
 5 the independent action of some third party not before the court.” . . .
 Third, it must be “likely,” as opposed to merely “speculative,” that the
 6 injury will be “redressed by a favorable decision.”

7 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992) (citations omitted).

8 The party asserting federal jurisdiction must satisfy all three elements. *Id.* at 561.
 9 (citation omitted). “[W]hen the plaintiff [such as the State, here] is not himself the
 10 object of the governmental action or inaction he challenges, standing is not
 11 precluded, but it is ordinarily substantially more difficult to establish.” *Id.* at 562
 12 (alteration to original) (quotation and citations omitted).

13 The DOE argues, and the Court agrees, that *parens patriae* supplies a state
 14 with an alternative basis for jurisdiction for purposes of Article III standing by
 15 providing a means of establishing an injury where one would not otherwise exist.²

16 ² The Court also agrees with the DOE that a statute granting a right to sue
 17 does not automatically confer the injury-in-fact standing requirement. *See* ECF
 18 No. 203 at 9-10; *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016) (“Article III
 19 standing requires a concrete injury even in the context of a statutory violation.”).
 20

1 ECF No. 156 at 2 (citing *Connecticut v. Physicians Health Servs. of Conn.*, 287
2 F.3d 110, 119-20 (2d Cir. 2002)); *see also State of Georgia v. Pennsylvania R. Co.*,
3 324 U.S. 439, 450 (1945) (internal quotation and citation omitted) (stating that in a
4 *parens patriae* capacity, “[courts] treat the injury to the State as proprietor merely
5 as a makeweight”). When Congress has granted a right of action, a party “may
6 have standing to seek relief on the basis of the legal rights and interests of others,
7 and, indeed, may invoke the general public interest in support of their claim.” *See*
8 *Warth*, 422 U.S. at 501 (citations omitted).

9 As discussed *supra*, Congress authorized the State to bring this action under
10 the RCRA. The Supreme Court has characterized Congress’ authorization as “of
11 critical importance to the standing inquiry: ‘Congress has the power to define
12 injuries and articulate chains of causation that will give rise to a case or
13 controversy where none existed before.’” *Massachusetts v. E.P.A.*, 549 U.S. at
14 516–17 (citing *Lujan*, 504 U.S. at 580 (Kennedy, J., concurring in part and
15 concurring in judgment)). “In exercising this power, however, Congress must at
16 the very least identify the injury it seeks to vindicate and relate the injury to the
17 class of persons entitled to bring suit.” *Id.*

18 In enacting the RCRA, Congress has identified the injury it seeks to
19 vindicate as an “endangerment to health or the environment” and included states
20 within the class of persons entitled to bring suit. 42 U.S.C. § 6972(a)(1)(B); *see*

1 also § 6903(15). In order to maintain a *parens patriae* action, “the [s]tate must
2 articulate an interest apart from the interests of particular private parties, *i.e.*, the
3 [s]tate must be more than a nominal party.” *Snapp*, 458 U.S. at 602. Moreover,
4 while the Supreme Court has not defined the number of residents who “must be
5 adversely affected by the challenged behavior[,]” the “indirect effects of the injury
6 must be considered as well in determining whether the [s]tate has alleged injury to
7 a sufficiently substantial segment of its population.” *Id.* The state must also
8 implicate a quasi-sovereign interest in bringing the action. *Id.* In this analysis,
9 “special solicitude” is afforded to the state, but it is not exempt from the burden of
10 establishing each of these fundamental elements. *See Massachusetts v. E.P.A.*, 549
11 U.S. at 520.

12 The state can claim a quasi-sovereign interest in two ways: “in the health
13 and well-being—both physical and economic of its residents in general” and “in
14 not being discriminatorily denied its rightful status within the federal system.”
15 *Snapp*, 458 U.S. at 607. As to the former, “if the health and comfort of the
16 inhabitants of a [s]tate are threatened, the [s]tate is the proper party to represent
17 and defend them.” *Missouri v. Illinois*, 180 U.S. 208, 241 (1901). In this capacity,
18 “the state has an interest independent of and behind the titles of its citizens, in all
19 the earth and air within its domain. It has the last word as to whether its mountains
20

1 shall be stripped of their forests and its inhabitants shall breathe pure air.” *State of*
2 *Ga. v. Tennessee Copper Co.*, 206 U.S. 230, 237 (1907).

3 Here, the State initiated this action under the RCRA for declaratory and
4 injunctive relief to prevent endangerment to Washington workers. The State
5 asserts that both quasi-sovereign interests are implicated. *See* ECF No. 112 at 11-
6 17. First, the State underscores the importance of the health and well-being of its
7 residents and its need to protect its citizens from ill effects of hazardous waste tank
8 vapors. *See* ECF No. 112 at 6. The State argues that Hanford workers are entitled
9 to a safe and secure workplace and, therefore, the State has an inherent and
10 fundamental sovereign interest in ensuring that all Washington workers are safe.
11 *Id.* at 15. Second, the State asserts a quasi-sovereign interest in foreclosing
12 discriminatory denial of its rightful status within the federal system.³ In that vein,
13 the State seeks to secure its status within the federal system to protect its citizens
14 working at federal facilities to ensure that federal workers are not discriminated
15 against within that system.

16
17
18 ³ The Court recognizes that the State asserted this additional interest for the
19 first time during oral argument, *see* ECF No. 203 at 17-18. The Court declines to
20 address it here.

1 While the DOE admits that the State has a quasi-sovereign interest,⁴ it
2 contends that the State's claimed interest is not sufficiently distinct from that of its
3 citizens' interest. *See* ECF No. 110 at 13. Relying on the State's acknowledgment
4 that its claims are functionally identical to the Citizen Plaintiffs', the DOE argues
5 that the similarity illustrates that the State has not articulated an interest apart from
6 Citizen Plaintiffs'. ECF No. 156 at 5-6.

7 Additionally, the DOE argues that the State has not alleged injury to a
8 sufficiently substantial segment of its population as it is required to do. *Id.*
9 According to the DOE, the State is merely seeking to intervene on behalf of
10 "approximately 2,000 workers, at most, [who] are allegedly affected out of a State
11 population of over several million" and any alleged indirect effect on the broader
12 population of Washington is unavailing.

13 In its Complaint, the State argues that "[t]he health and safety of state
14 citizens and residents working at the Hanford site are threatened by Defendants'
15 storage, handling, and treatment of hazardous wastes in violation of RCRA"
16 ECF No. 1 at ¶ 9(b) in Case No. 4:15-CV-05087-TOR. The State also argues that

17
18 ⁴ In its motion, the DOE argued that the State's interests do not constitute
19 quasi-sovereign interests, *see* ECF Nos. 110 at 13; 156 at 1, however, the Court
20 notes that the DOE seemingly conceded the same, *see* ECF No. 203 at 11.

1 it has a “direct and tangible interest in the health, safety, and welfare of its
2 residents, which are threatened by Defendants’ actions.” *Id.* The State asserts that
3 it does not seek to vindicate private interests of a small segment of its population;
4 rather, the State asserts that it has a broader, public interest in ensuring that all who
5 work within its borders—including current and future Hanford workers—enjoy a
6 safe workplace. *See id.* at ¶¶ 4, 17; ECF No. 112 at 2-3. The State also argues that
7 the RCRA is meant to protect public interests and is void of any limiting language
8 as to the extent of the population that need be affected. ECF No. 112 at 12-13.
9 Moreover, the State argues that several thousand workers are certified to enter the
10 tank farms, which does not account for additional workers who have been exposed
11 to tank vapors outside of the tank farms. *Id.* at 15. The indirect harm, the State
12 alleges, thrusts well into the future, given that the Hanford tank waste retrieval is
13 expected to take more than four decades to complete. *Id.* at 16-17.

14 At this stage, the Court must accept all of the State’s allegations in its
15 Complaint as true and construe the State’s allegations in a light most favorable to
16 the State. *See Wolfe*, 392 F.3d at 362. Accepting the State’s factual allegations as
17 true, the Court first finds that the State has adequately asserted at least one quasi-
18 sovereign interest—protection of the health and well-being of Washington
19 residents.

1 The Court also disagrees with the DOE that the State's lawsuit is focused too
2 narrowly to support standing under *parens patriae*. Instead, the Court finds that
3 the State has demonstrated injury to a sufficient segment of its population to dispel
4 any notion that it is merely a nominal party, in part, because there is not "any
5 definitive limits on the proportion of the population of the State that must be
6 adversely affected." *See Snapp* 458 U.S. at 607. Conservatively, even if only a
7 couple thousand Hanford workers are potentially exposed to toxic waste vapors
8 each year, *see* ECF No. 113-1 at 17, those workers are not the only persons who
9 will be affected by the DOE's actions. Future workers in months and years to
10 come, as well as the members of the community, will inevitably be adversely
11 affected. Based on this reasoning and because there is no required quantification
12 as to the number of persons who must be affected, the Court cannot agree with the
13 DOE's assertion that the alleged injury affects an insufficient (insignificant)
14 segment of the population.

15 Likewise, the Court finds that the State is more than a nominal party because
16 the State has a far broader interest (than that of its citizens) in ensuring worker
17 safety throughout Washington and the protection of future Hanford workers. *Id.* at
18 607 (proper to consider the "indirect effects of the injury"); *see also* ECF No. 1 at
19 4, 17 in Case No. 4:15-CV-05087-TOR. A private action by Citizens Plaintiffs
20 may not produce complete relief for all of the persons endangered—both current

1 and future—but for which the State’s inherent and fundamental sovereign interests
2 would represent.

3 In sum, this court finds that the State’s RCRA claim should not be dismissed
4 for lack of standing because the State has *parens patriae* standing under Article III.
5 Therefore, the DOE’s motion for judgment on the pleadings, and WRPS’ joinder
6 thereto, are **DENIED**.

7 Accordingly, **IT IS HEREBY ORDERED:**

- 8 1. United States’ Motion for Judgment on the Pleadings (ECF No. 110) is
9 **DENIED**; and
10 2. Defendant Washington River Protection Solutions, LLC’s Joinder in
11 United States Defendants’ Motion for Judgment on the Pleadings (ECF
12 No. 111) is also **DENIED**.

13 The District Court Executive is hereby directed to enter this Order and
14 furnish copies to counsel.

15 **DATED** November 3, 2016.




THOMAS O. RICE
Chief United States District Judge