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## Heart of America Northwest

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### Comments:

Heart of America Northwest  
and Legal Advocates for Washington

**EDMC**

### Proposed Plan for the Hanford 300-FF-2 Operable Unit (DPE/RI-99-53) September, 2000

The 300 Area lies alongside the Columbia River, contains or is adjacent to Native American grave and cultural sites, and has had a long history of contaminating the River. In the early 1990s, our organizations filed suit to enjoin USDOE and its contractors from continuing to illegally discharge untreated liquid wastes directly into the soils in and around the 300 Area. We demonstrated that there was harm to our memberships from the discharges, which USDOE's own documents conclusively proved transported contaminants into, and communicated directly with, the Columbia River. Even the discharge of pure water, it was shown, flushed Uranium and other pollutants into the River. Today, contaminants continue to enter the River - despite the cessation of direct disposal to the ground. Further, USDOE now simultaneously proposes to utilize highly contaminated facilities in the 300 Area (with a known history of releases to the environment, soil contamination surrounding them, contamination in sanitary sewer lines, and posing a known threat of catastrophic releases of hazardous substances, including 90 rem doses to public from fires) for new Hanford missions related to the FFTF reactor, and proposes to allow unlimited public access to the 300 Area following a very limited cleanup to an industrial soil cleanup standard.

The Proposed Plan for the 300-FF-2 Operable Unit should be utilized as a vehicle to generate discussion regarding the cleanup of the 300 Area in conjunction with major new proposals for the 300 Area. It is vital that the regulatory agencies and USDOE provide the public, Tribes and natural resource trustees with a comprehensive review opportunity for 300 Area remedial action decisions - rather than a piecemeal decision process (especially in light of a recent mass mailed proposal from USDOE, which seeks support for specific land use and remediation goals for the 300 Area). This has become vital for meeting the obligation to consider cumulative impacts, and impacts across artificial boundaries, given major new proposals for 300 Area cleanup, public use and facility operation. We must point out that the Reasonable Maximum Exposure Scenario must, as a matter of law, now be changed to unrestricted public access for all operable units of the 300 Area.

When the management of the property owner (Hanford Manager for USDOE-RL), and a major federal agency, formally propose unrestricted public access to the 300 Area in the foreseeable future, this becomes a reasonably foreseeable future use, which encompasses the maximum exposures for the most at risk members of the public. As such, the FF-2, FF-1, FF-5 and all related 300 Area decisions must reflect cleanup to the standards of MOTCA (chapter 70.105.D) Method B, unrestricted use cleanup and remediation levels.

No area of the FF-2 Unit (nor any of the 300 Area units) is legally eligible for use of MOTCA Method C industrial land use cleanup level (MOTCA's standards are applicable as an ARAR pursuant to CERCLA). The Proposed Plan (and adopted Interim Records of Decision, which should now be changed) rely on limited public access and maximum reasonable foreseeable exposure scenarios that are industrial in nature. Commentors on this Proposed Plan include co-authors of the provisions in MOTCA and proposed draft regulations (currently out for comment) related to defining the criteria for application of Method C, industrial land use cleanup levels and maximum reasonable exposure scenarios. During discussions of the Washington Ecology MOTCA Policy Advisory Committee, the 300 Area was explicitly discussed as an

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example for illustrating when the industrial standard would not be applicable. Below is a discussion of the application of MOTCA Method B versus Method C for specific applications and areas.

1. Areas outside the fence of the 300 Area have never been eligible to be cleaned up utilizing the MOTCA Method C industrial exposure standard.

Use of an area, outside the fenced industrial area, for illegal, unpermitted disposal of waste to soil can not convert an area into historical industrial use. The areas outside the 300 Area fence contain or adjoin significant Native American religious and cultural resources. Failure to clean to a level providing for unrestricted access to these resources, including Treaty reserved rights (including the right to live along and fish at usual and accustomed fishing places along the Columbia River) and rights under the Native American Graves and Religion Protection Act, violates federal trust responsibilities as well as statutory requirements.

It would violate public policy to reward illegal disposal by converting areas designated for open space, recreation and native American cultural and resource use in land use plans and in the federally sponsored Future Site Use Working Group report, into an industrial cleanup land use zone.

"Traditional industrial uses" defined in WAC 173-340-175 do NOT include illegal, unpermitted disposal of hazardous wastes as a legitimate land use allowing application of the industrial standard (Method C).

MOTCA clearly requires use of Method B (unrestricted land use cleanup levels), as illustrated in the draft proposed regulations from Ecology, for an area whose foreseeable future use includes public access, and the liable party can not "demonstrate that the area under consideration is an industrial property and meets the criteria for establishing industrial soil cleanup levels under WAC 173-340-175." WAC 173-340-706(b).

In sum, areas outside the fence of the 300 Area fail to meet the criteria of WAC 173-340-745, requiring primary potential exposure to adult employees of businesses located on the property. WAC 173-340-745 (1) (C), (D), and (E). In point of fact, there are no businesses outside the fence, and have been no legitimate businesses conducted (illegal disposal can not be considered an allowed land use).

2. Recent formal proposals of the USDOE preclude use of MOTCA Method C, industrial cleanup levels for soil, for all of 300-FF-2 and all 300 Area operable units. These proposals have clarified what has been a public concern for some time - namely, that the Reasonable Maximum Exposure Scenarios and primary potential exposure to the most sensitive population expected on this property will be to children invited to access this Area, rather than just being limited to adult workers as invitees. Pursuant to WAC 173-340-745 the 300 Area is clearly not eligible for industrial soil cleanup standard. USDOE has formally proposed removal of fences, unrestricted public access and even trails. WAC 173-340-745 (1) (B) limits industrial cleanup standards use to where "Access to industrial property by the general public is generally not allowed. If access is allowed, it is highly limited and controlled..." (i.e., not unrestricted, and utilizes fences and other controls).

Even if USDOE modifies this proposal or does not act on it at this time due to funding constraints, EPA and Ecology are legally obliged to consider unrestricted public access as a reasonably foreseeable public use, and to base the Reasonable Maximum Exposure Scenario on unrestricted public access rather than solely limiting the analysis to adult industrial workers. *Thus, reliance on the industrial cleanup standard is impermissible.* WAC 173-340-708.

Nor is the use of a child trespasser exposure scenario appropriate for selection of a remediation level. USDOE has made it clear that the highest exposure reasonably expected to occur under potential future site use [ WAC 173-340-708(3)(b) ] is unrestricted public access, and no longer restricted or controlled access.

3. WAC 173-340-745 (iii) precludes use of the industrial soil cleanup standard where hazardous substances remaining pose any threat to human health or the environment "in adjacent nonindustrial

areas"; where there is "potential for transport of residual hazardous substances to off property areas" ( iii ) ( C ); and, potential exists for significant (proposed addition) adverse effects on (vegetation) or wildlife..." ( D ).

USDOE has failed to meet the burden of demonstrating no offsite impact, especially to the Columbia River ecosystems and endangered species. Uranium is being transported offsite. There has been no ecological risk assessment, and no ecological exposure effects assessment on federally listed salmonid species and migratory birds.

During MOTCA Policy Advisory Committee (MOTCA-PAC) discussion regarding this regulation and criteria, the 300 Area and areas outside the 3000 Area fence were explicitly used to illustrate areas that would NOT qualify for application of Method C industrial soil cleanup levels. The history of this regulation and the statute clearly indicate that the 300 Area Operable Units do not meet the criteria of WAC 173-340-745 for industrial cleanup standards. Ecology was a party to this discussion, and committed to follow recommendations of the MOTCA PAC, to the degree legally permissible, until the new rules were adopted. The new rules reinforce this outcome: offsite transport of hazardous substances (airborne as well as via ground and surface water for the 300 Area, and including the potential for major releases due to foreseeable natural events and accidents) from the 300 Area preclude use of the industrial standard.

4. USDOE has failed to provide for notice and public comment specific to the resources and land areas that would be restricted from public use under the use of an alternate reasonable maximum exposure scenario or from the use of site specific risk assessment. WAC 173-340-600(4)(g) and (9)(g), proposed WSR 00-16-135. Although these are proposed rules, we must note that it is currently impermissible to use a site specific risk assessment, as used by USDOE in the Proposed Plan, under the current MOTCA rules. Thus, because MOTCA is an ARAR pursuant to CERCLA, the MOTCA risk assessment assumptions and defaults can not be varied. If regulators choose to prospectively allow the liable party to utilize the flexibility expected to be granted under the proposed rules, they must also apply the protective provisions for public notice and comment. Unless these provisions were explicitly followed, under no circumstances can the restricted land use proposed by USDOE be the basis for establishment of the cleanup levels.

Submitted on behalf of Heart of America Northwest and Legal Advocates for Washington  
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