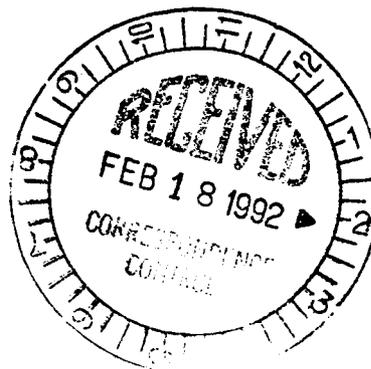


December 30, 1991

TO: Toby Michelena

FROM: Paul Stasch *Paul Stasch*

SUBJECT: Corrective Action - Definition of Facility

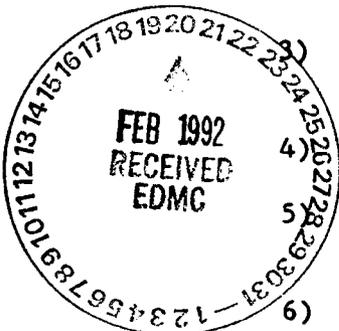


Region 10 of the USEPA believes, based on a March 5, 1986 Federal Register - Notice of Intent to Propose Rules for Federal Facilities, that the Bonneville Power Administration is a "major subdivision" of the USDOE that merits definitional exclusion from the corrective action portion of the Hanford permit. Thus, the USEPA would exempt BPA's Midway substation from the statutory and regulatory requirements of RCRA past practice remedial actions.

I believe the USEPA's interpretation is likely legally indefensible, procedurally flawed and violates the congressional intent of HSWA corrective action. My belief is based on the following facts:

- 1) The Midway substation was an important integral part of the plutonium production effort
- 2) It is located within the security zone of Hanford facility
- 3) The substation was placed under Military security, and removed from all topographical map of the area until approximately 1977
- 4) The Midway community provided government housing for Hanford workers
- 5) Solid and hazardous wastes from the Hanford facility are suspected of having been disposed of in the maintenance landfills
- 6) The Midway community operated their municipal waste landfill on Hanford Site adjacent to Midway
- 7) Since automation, the Midway substation has been operated and maintained out of the Ashe substation on the Hanford facility

The Notice articulated concern about subjecting large tracts of federal lands to RCRA corrective action. It states that if the USEPA does not define facility in terms of major subdivisions, "logistical problems" will hamper federal corrective actions. Does the USEPA really believe that the inclusion of 66 acres out of a total of approximately 560 square mile of some of the world's most contaminated land can realistically hamper the Hanford cleanup. This violates congressional intent to protect human health and the environment and is clearly not in the best interest of the state.



The USEPA's position is procedurally flawed. The Notice announces the USEPA's intent to address this issue through rulemaking. The Federal Register states, "This notice is not a proposal and EPA is not yet requesting comments on these issues" and "EPA will propose a rule to clarify position and explain more fully the rationale for recognizing specific subdivisions. In the interim, EPA intends to recognize principal subdivisions as a matter of statutory interpretation on a case by case basis in individual permit proceedings." Therefore, the USEPA's interpretation amounts to rulemaking through policy development thus avoid much needed public comment on this important issue while never fulfilling their intent to propose rule.

Subpart S was proposed in 1990 and was the appropriate time and place to propose their definitional modification/interpretation. However, it was not proposed at that time. In fact, an example in the proposed rule for private facilities is directly contrary to the USEPA's position in regard to federal facilities.

Since the Midway substation has documented releases of dioxins/furans, PCBs, chlorinated organics, and metals, Region 10's case by case determination is not protective of human health and the environment. I question how the USEPA would intend to remediate verified releases of hazardous constituents, some above action levels, attributed to their sister agency, the USDOE, if they would not subject them to RCRA corrective action while aware the site did not rank high enough for inclusion on the NPL. Region 10's interpretation appears to do little other than relieve the federal government from their legal obligations to provide corrective action for releases from SWMUs, delays cleanup, and provides no net benefit to the environment.

Additionally, if the USEPA's determination were legally and procedurally correct, I would still contend the Midway substation would be subject to the statutory provisions of 3004(v) for the suspected disposal of hazardous constituents from the Hanford facility proper. Therefore, I recommend we include the Midway substation in the corrective action module of the permit using our newly required corrective action authority of WAC 173-303-645(12).

cc: Dan Duncan, USEPA


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Subject: CORRECTIVE ACTION - DEFINITION OF FACILITY

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