



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10  
1200 Sixth Avenue  
Seattle, WA 98101

MAY 18 2000

RECEIVED

Reply To  
Attn Of: OW-130

MAY 22 2000

Allen J. Fiksdal  
Washington Energy Facility Site Evaluation Council  
P.O. Box 43172  
Olympia, WA 98504-3172

ENERGY FACILITY SITE  
EVALUATION COUNCIL

RE: Federal Delegation of the Pretreatment Program

Dear Mr. Fiksdal:

On April 20, 2000, Sharon Wilson and I met with you and Irina Makarow to discuss the state of the delegation of the pretreatment program to the State of Washington. We have recently learned that public hearings on the Chehalis Generation Facility will occur during the week of May 22 and that the position of the U.S. Environmental Protection Agency (EPA) would help inform those proceedings. Therefore, we are formalizing our position in this letter.

During the April 20 meeting, you pointed out that the NPDES permit program for energy related facilities was delegated to the Energy Facility Site Evaluation Council (EFSEC) on August 15, 1979. In neither the application for delegation nor in the Memorandum of Agreement between EFSEC and EPA was there any attempt to satisfy the requirements of 40 CFR § 403.10, which sets forth the required process and submittals for the application for pretreatment delegation. Since there was no reference to pretreatment, we conclude that the NPDES delegation to EFSEC did not include the pretreatment program.

We also discussed the delegation of the pretreatment program to the Washington State Department of Ecology (Ecology) on September 30, 1986. At that time, the Ecology complied with the requirements of 40 CFR § 403.10 in its application for delegation, which was silent on the issue of energy facilities. It was only Ecology's staffing, resources, and expertise that were evaluated in the process that led to the approval of delegation of the pretreatment program to Ecology. Therefore, we believe that delegation was made solely to Ecology, not to EFSEC.

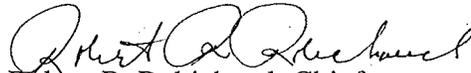
40 CFR § 403.10 requires that any state agency wanting to receive delegation of the pretreatment program needs to demonstrate that it has the legal authority to incorporate pretreatment conditions into permits, to require compliance with the permit conditions, to ensure continuing compliance through review of self-monitoring reports, to independently determine compliance by carrying out inspection, surveillance, and monitoring procedures, and to seek civil and criminal penalties. It would need to submit a request that includes a State Attorney's statement that the state's laws provide authority to implement the pretreatment regulations along with a copy of the statutes cited, a description of the funding levels and personnel available to

implement the program, and a Memorandum of Agreement between the agency and EPA for implementing the pretreatment program.

Since the approval process is fairly resource intensive and it appears likely that EFSEC will have few cases where the pretreatment program is applicable, EFSEC may want to explore alternatives to seeking a separate pretreatment delegation for energy facilities.

If you would like to discuss the state's pretreatment authority further, please give me a call at (206) 553-1448 or Sharon Wilson at (206) 553-0325.

Sincerely,



Robert R. Robichaud, Chief  
NPDES Permits Unit

cc: Megan White, Ecology  
David Knight, Ecology