STATE OF IDAHO
DIVISION OF
ENVIRONMENTAL QUALITY

RECEIVED MAY 10 1999

1410 North Hilton, Boise, ID 83706-1255, (208) 373-0502

Dirk Kempthorne, Governor

May 4, 1999

CERTIFIED MAIL # P 241 839 478
RETURN RECEIPT REQUESTED

Donald R. Rasch
Environmental Compliance Manager
Department of Energy
Idaho Operations Office
850 Energy Drive
Idaho Falls, Idaho 83401-1563

Re: Signed Consent Order to resolve the August 25, 1997 Notice of Violation

Dear Mr. Rasch:

Enclosed is a fully executed copy of the Consent Order regarding recent violations at the Idaho National Engineering and Environmental Laboratory facility. We appreciate your cooperation in this matter.

As you discovered, there was a typographical error in the wording on Page 8, Section 5.15.g.iii of the Consent Order. The sentence originally stated "... or by conducting a rank integrity testing...". The sentence should read "...or by conducting a tank integrity testing...". Both DOE and DEQ intend the word to be "tank," and pursuant to your discussion with Michael Gregory, we have made this correction to the final document. If you disagree with this change, please contact Michael as soon as possible at (208) 373-0502.

Sincerely,

David J. Pisarski
Chief
Compliance Assurance Bureau
Air and Hazardous Waste Division
Idaho Division of Environmental Quality

DJP/DMG:sd c:\...\teri\mikeg\coineel.ltr

Enclosure

cc: K. Kelly, Deputy Attorney General
C. Reno, Idaho Falls Regional Office
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COF

IDAHO DEPARTMENT OF HEALTH AND WELFARE

IN THE MATTER OF		CONSENT ORDER Idaho Code § 39-4413
United States Department of Energy Idaho National Engineering and Environmental Laboratory	)))))	

I. PARTIES

1.1 The Idaho Department of Health and Welfare, Division of Environmental Quality (Department) and the United States Department of Energy (DOE), the Parties, enter into this Consent Order regarding DOE's Idaho National Engineering and Environmental Laboratory (INEEL) located near Idaho Falls, Idaho in Butte, Jefferson, Clark, Bonneville and Bingham counties.

II. JURISDICTION

2.1 DOE and the Department enter into this Consent Order pursuant to the Idaho Hazardous Waste Management Act of 1983 (HWMA), as amended, Idaho Code §§ 39-4401 to 4432. The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) and the Federal Facility Compliance Act of 1992, require each department, agency and instrumentality of the federal government engaged in the disposal or management of hazardous waste to comply with all federal and state requirements respecting the control and abatement of hazardous waste. 42 U.S.C. § 6961. DOE, a department of the executive branch of the federal government, owns and operates the INEEL, a nuclear research and development facility located near Idaho Falls, Idaho.

2.2 The Department administers a hazardous waste management program pursuant to the HWMA and the Idaho Rules and Standards for Hazardous Waste, IDAPA 16.01.05.000 to 05.999 (Rules). The State of Idaho is authorized, pursuant to RCRA, to administer this hazardous waste management program in lieu of the federal program. 55 Fed. Reg. 11015 (March 26, 1990). DOE generates, transports, stores, and manages hazardous waste at the INEEL and is therefore subject to and must comply with all federal and state requirements respecting hazardous waste, including the HWMA and the Rules.

2.3 DOE agrees not to contest the jurisdictional elements of this Consent Order or seek administrative or judicial review of this Consent Order.

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OFFICE OF THE CHIEF COUNSEL

III. DEFINITIONS

3.1 Except as otherwise specifically defined herein, the terms used in this Consent Order, including all appendices, shall have the same meaning as used in the HWMA and the Rules.

IV. STATEMENT OF FACTS

4.1 On November 18 through 22, 1996, the Department conducted a routine inspection and record review of the INEEL to determine compliance with federal and state hazardous waste requirements. The inspection uncovered alleged violations of federal and state hazardous waste requirements including requirements relating to the generation, accumulation treatment, storage and disposal of hazardous wastes.

4.2 By Notice of Violation (NOV) dated August 25, 1997, the Department notified DOE of these alleged violations. DOE does not admit to the allegations or other contents of the NOV or the additional alleged violation described in Section 4.3 of this Consent Order. The NOV is expressly incorporated by reference into this Consent Order. Beginning on October 14, 1997 and as mutually agreed to and scheduled thereafter, the Department and DOE conducted a series of compliance conferences to discuss the NOV, DOE's response, and a format for resolving the NOV. DOE and the Department agree that the NOV shall be resolved by execution of this Consent Order between DOE and the Department pursuant to the HWMA, Idaho Code § 39-4413.

4.3 On April 9, 1998, the Department conducted a record review related to a mixed waste burn at the Waste Experimental Reduction Facility (WERF) incinerator. The burn was conducted by DOE on March 10, 1998. An alleged violation identified by the Department as a result of that records review is similar to Violation No. 132 in the NOV. Specifically, the department found that the WERF incinerator's hydrogen chloride continuous emissions monitor indicated chlorine levels exceeded steady state operating conditions, and that DOE failed to note during waste analysis the presence of significant quantities of polyvinyl chloride gloves in the mixed waste to be burned. The Department alleges that this failure is a violation of IDAPA 16.01.05.009 [40 CFR 265.341(b)]. Due to the similarity of this alleged violation and Violation No. 132 in the NOV, the Department and DOE have agreed to include the resolution of the additional alleged violation in this Consent Order in Section 5.23.

V. ACTIONS AND REQUIREMENTS

In order to resolve the alleged violations listed in the NOV and the additional alleged violation described in Section 4.3 of this Consent Order, DOE agrees to the provisions of this Consent Order and the following terms and actions. The requirements below correspond to the alleged violations as listed in the NOV.

5.1 The Department agrees to dismiss the following alleged violations listed in the NOV, based on information supplied by DOE: Violation Nos. 39-43, 45, 55, 57, 59, 60, 63, 64, 65, 70, 71, 73, 75, 80, 81, 83, 84, 130, 131, 133 and 135.

5.2 DOE does not dispute the following alleged violations listed in the NOV: Violation Nos 1-38, 44, 46 - 54, 56, 58, 61, 62, 74, 90 - 129, 132 and 134. The requirements for resolving these violations are described in section 5.4 through 5.23 of this Consent Order.

5.3 DOE disputes whether the remaining alleged Violation Nos. 66-69, 72, 76-79, 82, and 85-89 were either factually correct or actual violations of the HWMA and the Rules. However, in order to resolve the NOV with regard to these alleged violations without litigation, DOE agrees with section 5.24 of this Consent Order.

5.4. DOE has partially resolved Violation Nos. 1, 2, 61, 90, 93, 94, and 129 by ceasing use and removing all hazardous waste from the Test Reactor Area (TRA) tanks TRA-731B, C, D, and E.

DOE shall fully resolve Violation Nos. 1, 2, 61, 90, 93, 94, and 129 by:

a. Addressing closure of Test Reactor Area (TRA) tanks TRA-731 B, C, D and E under the terms and conditions of the Voluntary Consent Order (VCO) currently being developed by the Department and DOE. The TRA-731B, C, D and E tanks shall not be included in the calculation of the percentage of tanks to be addressed to meet the requirements of the VCO action plans; or

b. If the VCO is not agreed to and effective within one hundred eighty (180) days of the effective date of this Consent Order, within two hundred seventy (270) days of the effective date of this Consent Order, DOE shall submit to the Department for review and approval a date for submittal of a draft closure plan for the TRA-731 B, C, D, and E tanks. The closure plan shall comply with IDAPA 16.01.05.009 (40 CFR 265 subparts G & J). Within thirty (30) days after receipt of the closure plan, the Department shall review and notify DOE in writing whether the closure plan is approved and ready for release for public comment, or whether its revision is required. If revision is required by the Department, DOE shall submit the revised closure plan to the Department within thirty (30) days of receipt of the Department's written request. DOE shall continue to revise the closure plan and the above described process shall be repeated until the closure plan is approved or disapproved by the Department. If the Department is unable to approve a closure plan within one hundred eighty (180) days after it's initial submittal date, the plan shall be deemed disapproved.

5.5. DOE has resolved Violation Nos. 3-36, 95-128, and 134 by having performed a risk assessment and having submitted the risk assessment findings to the Department's Remediation Bureau. The risk assessment indicated that the concentration of

mercury released to the Test Reactor Area Chemical Leaching Pond (CLP) from the TRA-731 A Brine Pit did not increase the existing risk beyond that of the mercury already found in the CLP. No further corrective actions will be conducted under this Consent Order concerning contamination in the CLP.

5.6. DOE has partially resolved Violation No. 37 by taking tank TRA-708 C out of service, repairing the tank and returning the tank to service.

DOE shall fully resolve Violation No. 37 by:

a. Within one hundred eighty (180) days of the effective date of this Consent Order, collecting two representative samples of soil impacted by the release from the TRA-708 C tank. The soil samples shall be analyzed using an accepted method for determining the presence of total lead in the soil;

b. Within thirty (30) days of DOE's receipt of the results of the soil sampling, submitting the analytical report of the findings to the Department;

c. If the sampling results indicate that the amount of lead detected in the soil samples exceeds background levels for lead at the Test Reactor Area, DOE shall submit a new site identification form within sixty (60) days of DOE's receipt to the Department. Upon approval of the new site identification form by the Department and acceptance of the contamination into the Federal Facility Agreement and Consent Order (FFA/CO) dated December 9, 1991, this violation shall be resolved for purposes of this Consent Order. If the sampling results indicate that lead in the soil does not exceed background levels this violation shall be resolved for the purposes of this Consent Order;

d. Notwithstanding any other provision of this Section 5.6 to the contrary, in the event that there is a circumstance of emergency creating conditions of imminent and substantial danger to public health or the environment, DOE may, at its own risk, take any action required to abate the danger.

5.7. DOE has resolved Violation No. 44 by:

a. Emptying and removing the ARA-09 septic tank;

b. Solidifying seven (7) drums of hazardous waste originating from within the ARA-09 septic tank, and shipping the waste to CPP-1617 as mixed hazardous waste (D003 for reactive sulfide); and

c. Adding the mixed hazardous waste (Waste Stream Identification Number CFA-695) to the "Idaho National Engineering Laboratory Site Treatment Plan".

5.8. DOE has resolved Violation No. 46 by submitting to the Department revised written procedures for decontamination and decommissioning activities to better ensure that hazardous waste determinations and subsequent hazardous waste management practices are properly performed and formally documented.

5.9. DOE has resolved Violation No. 47 by determining that a lead brick observed by the Department inside a boiler room attached to the south side of the Waste Reactor Research Test Facilities (WRRTF) was radiologically clean for recycling purposes, and then moving it to TAN-603 pending off-site shipment.

5.10. DOE has resolved Violation No. 48 by:

a. Ceasing use of the Old Central Facility Area (CFA) Fire Department Training Facility; and

b. Moving the 10,000 gallon tank to the New CFA Fire Training Facility. No further action is required.

c. Based on information the Department received on November 13, 1998, DOE indicated that the contents of the vault, oil/water separator and contaminated soils removed from the old fire training site are no longer available. Although DOE submitted a hazardous waste determination, the Department was unable to conclude that it was complete. The contents of the vault, oil/water separator and contaminated soils were removed and sent to the Central Facilities Area Land Farm after the inspection and mixed with other soil. No further action is required.

5.11 DOE has partially resolved Violation Nos. 38 & 49 by:

a. Discontinuing the discharge of New Waste Calciner Facility (NWCF) Wet Scrubber wastewater from the decontamination systems to the Idaho Nuclear Technology Engineering Center (INTEC) Percolation Ponds.

DOE shall fully resolve Violation Nos. 38 & 49 by:

b. Within ninety (90) days of the effective date of this Consent Order, submitting to the Department documentation of a hazardous waste determination performed on the wastewater generated from the NWCF Wet Scrubber. The determination shall include any listed and characteristic EPA waste codes that will be applied to the waste from the Wet Scrubber; and

c. Within one hundred twenty (120) days of the effective date of this Consent Order, submitting to the Department documentation addressing the impact of the discharge from the NWCF Wet Scrubber to the INTEC Percolation Ponds.

5.12 DOE has resolved Violation No. 50 by:

a. Determining that the contents of two (2) one-liter bottles labeled "Potassium Hydroxide" were hazardous waste. The bottles were observed in a sink cabinet in the WRRTF Room 118; and

b. Manifesting the hazardous waste off-site to a permitted hazardous waste treatment, storage, or disposal facility (TSDF).

5.13 DOE has resolved Violation No. 51 by:

a. Determining that waste sulfuric acid discharged to the corrosive waste sump at the Power Burst Facility (PBF) was a hazardous waste;

b. Determining that the neutralized acidic-caustic mix from the PBF demineralizer was not a hazardous waste;

c. Repairing the valve that allowed the hazardous waste sulfuric acid to be discharged to the corrosive waste sump; and

d. Providing training to personnel working with the PBF demineralizer process equipment to ensure appropriate responses to releases of hazardous materials or waste.

5.14. DOE has resolved Violation No. 52 by:

a. Performing a hazardous waste determination on the contents of fourteen (14) containers of chemicals observed by the Department in a wheeled metal cabinet in TAN-602, Initial Engine Test (IET); and

b. Of the fourteen (14) containers, manifesting six (6) containers of hazardous waste to an off-site TSDF, identifying seven (7) of the containers as useable chemicals, and disposing of one (1) empty container as solid waste.

5.15. DOE has partially resolved Violation No. 53 by:

a. Performing a hazardous waste determination on at least one hundred sixty-three (163) samples from the Initial Engine Test (IET). The samples were determined to be non-hazardous waste;

b. Determining that the lead pigs are not radioactively contaminated, and then moving the lead pigs to TAN-603 for off-site shipment as scrap metal; and

c. Performing a hazardous waste determination on two (2) containers of unknown contents and determining the containers held non-hazardous sawdust and floor sweepings, and ammonium hydroxide, respectively. The

ammonium hydroxide was manifested to an off-site hazardous waste TSDF and the sawdust and floor sweepings were disposed of at the CFA landfill;

DOE shall fully resolve Violation No. 53 by:

d. Within forty-five (45) days of removal of lead sheeting from the IET, notifying the Department in writing of the results of the hazardous waste determination on the lead sheeting;

e. Pursuant to the "Field Sampling Plan for the Decontamination and Dismantlement for the TAN IET Facility TAN-620 and TAN-656, July 1998", sampling the contents of the following tanks, sumps or ancillary equipment located at IET, TAN-620 (hereafter referred to as tank systems) and within 60 days of the effective date of this consent order, submitting the hazardous waste determination and supporting analytical report of the sampling results to the Department:

   I. 98TAN00125 - sump with pump, SP-301
   ii. 98TAN00126 - sump, acid neutralizing, SP-302
   iii. 98TAN00127 - sump with pump, overflow and water collection, SP-303
   iv 98TAN00128 - sump with pump, overflow and water collection, SP-304
   v. 98TAN00129 - sump with pump, overflow and water collection, SP-305
   vi. 98TAN00130 - sump with pump, overflow and water collection, SP-306
   vii. 98TAN00131 - sump with pump, overflow and water collection, SP-307
   viii. 98TAN00132 - sump with pump, overflow and water collection, SP-308
   ix. 98TAN00133 - sump with pump, water collection, SP-311
   x. 98TAN00689 - sump #02
   xi. 98TAN00690 - sump #01
   xii. 98TAN00721 - sump #07
   xiii. 98TAN00722 - sump #12
   xiv. 98TAN00723 - sump #08;

f. If any of the tank systems listed in Section 5.15.e.i-5.15.e.xiv are determined to contain hazardous waste:

   i. DOE shall immediately cease the addition of waste or material to the tank system;

   ii. Within ninety (90) days of the determination that the tanks contain hazardous waste, DOE shall ensure that any mixed hazardous waste

stream complies with all Land Disposal Restriction requirements as stated in 40 CFR part 268 (IDAPA 16.01.05.011), or shall request to the Department that the mixed hazardous waste stream be added to the "Idaho National Engineering Laboratory Site Treatment Plan";

iii. Within one hundred eighty (180) days of the determination that the tanks contain hazardous waste, submitting a closure plan to the Department for review. The closure plan shall comply with IDAPA 16.01.05.009 (40 CFR 265 subparts G & J); and

iv. Within thirty (30) days after receipt of the closure plan, the Department shall review and notify DOE in writing whether the closure plan is approved and ready for release for public comment, or whether its revision is required. If revision is required by the Department, DOE shall submit the revised closure plan to the Department within 30 days of receipt of the Department's written request. DOE shall continue to revise the closure plan and the above described process shall be repeated until the closure plan is approved or disapproved by the Department. If the Department is unable to approve a closure plan within one hundred eighty (180) days after it's initial submittal date, the plan shall be deemed disapproved.

g. If any of the IET tank systems are determined to contain hazardous waste constituents, but not hazardous waste, DOE shall within 365 days of the effective date of the Consent Order, conduct the following activities for each sump:

i. Remove the contents of the sump;

ii. Either provide surface cleaning (e.g., sponge jet cleaning or equivalent) or remove the sump;

iii. Except for the sump identified as 98TAN00130, check for release of hazardous constituents to soil by either sampling the soil for metals and organics or by conducting tank integrity testing to eliminate the possibility of previous releases;

iv. To the extent practicable, remove any soils contaminated with metals (above background) and/or organics (above the FFA/CO TRACK 2 risk assessment protocol at 10^{-4} and/or a hazard index of 1);

v. Appropriately dispose of the contents of the sumps, the surface cleaning residues, any sumps that are removed and any soils that are removed; and

vi. If hazardous waste constituents remain in the soil after removal of soils to the extent practicable, submit to the Department a New Site Identificaiton Form pursuant to the FFA/CO.

5.16 DOE shall resolve Violation No. 54 by:

a. Determining if any of the tanks or sump systems at the Loss of Fluid Test (LOFT) contain hazardous waste, by:

i. Performing a hazardous waste determination under the terms and conditions of the VCO currently being developed by the Department and DOE. The LOFT tanks or sump systems may not be included in the calculation of the percentage of tanks to be addressed to meet the requirements of the VCO; or

ii. If the VCO is not agreed to and effective within one hundred eighty (180) days of the effective date of this Consent Order, within two hundred seventy (270) days of the effective date of this Consent Order, DOE shall submit to the Department, for review and approval, a date for submitting a hazardous waste determination and supporting analytical report on the tank system.

b. If any of the LOFT tank systems are determined to contain hazardous waste, DOE shall:

i. Immediately cease the addition of waste or material to the tank system;

ii. Address closure of the tanks under the terms and conditions of the VCO currently being developed by the Department and DOE. The LOFT tanks may not be included in the calculation of the percentage of tanks to be addressed to meet the requirements of the VCO; or

iii. If the VCO is not agreed to and effective within one hundred eighty (180) days of the effective date of this Consent Order, within ninety (90) days of submittal of a determination that the waste is hazardous, DOE shall submit to the Department for review and approval a date for submittal of a draft closure plan for the LOFT tank systems. The closure plan shall comply with IDAPA 16.01.05.009 (40 CFR 265 subparts G & J). Within thirty (30) days after receipt of the closure plan, the Department shall review and notify DOE in writing whether the closure plan is approved and ready for release for public comment, or whether its revision is required. If revision is required by the Department, DOE shall submit the revised closure plan to the Department within thirty (30) days of receipt of the Department's written request. DOE shall continue to revise the closure plan and

the above described process shall be repeated until the closure plan is approved or disapproved by the Department. If the Department is unable to approve a closure plan within one hundred eighty (180) days after it's initial submittal date, the plan shall be deemed disapproved.

5.17 DOE has resolved Violation No. 56 by:

a. Performing a hazardous waste determination on eleven (11) drums containing incinerator ash from the Process Experimental Pilot Plant (PREPP); and

b. Manifesting two (2) of the drums which were determined to contain hazardous waste to an off-site permitted TSDF.

5.18 DOE has resolved Violation No. 58 by:

a. Removing residue from the bottom of a flammable materials cabinet in LOFT, TAN-650;

b. Performing a hazardous waste determination on the residue and determining the residue was a hazardous waste, U133, hydrazine; and

c. Manifesting the hazardous waste residue to an off-site permitted TSDF.

5.19. DOE has resolved Violation No. 62 by performing a hazardous waste determination on the contents of a tank observed by the Department in a radiation control zone at the Test Reactor Area (TRA). The tank, which was wrapped in yellow plastic, was moved to TAN. The tank contents were sampled in a hot cell and determined to be non-hazardous, radioactive only waste.

5.20. DOE has resolved Violation No. 74 by retraining the Central Facilities Area (CFA) Emergency Coordinator to ensure his awareness of his responsibilities and expected level of knowledge concerning the hazardous wastes stored at the CFA.

5.21. DOE has resolved Violation No. 91 by:

a. Excavating all visibly contaminated soil from the vicinity of the TRA-731A Brine Pit;

b. Discontinuing discharges to the TRA-731A Brine Pit;

c. Disposing of the contaminated soil at an off-site permitted TSDF as hazardous waste; and

d. Closing the TRA-731A Brine Pit as a less than 90 day accumulation tank, pursuant to the applicable requirements of IDAPA 16.01.05.009 [40 CFR 265 subpart G & J].

5.22. DOE has resolved Violation No. 92 by:

a. Providing to the Department a description of the type and quantity of material released on January 30, 1997 from valve box B-10 to the soil located in the INTEC Tank Farm; and

b. Agreeing to address the remediation of the release during closure of the INTEC Tank Farm conducted pursuant to the April 3, 1992 Consent Order between the Department and DOE, approved by the U.S. Environmental Protection Agency, as modified.

5.23. DOE has partially resolved Violation No. 132 and the additional alleged violation described in Section 4.3 of this Consent Order by:

a. Training personnel at the Waste Experimental Reduction Facility (WERF) on the procedures for repackaging waste if waste composition does not match the repackage plans, including the requirement for consultation with the repackaging engineer;

DOE shall fully resolve Violation No. 132 and the additional alleged violation described in Section 4.3 of this Consent Order by:

b. Within one hundred twenty (120) days of the effective date of this Consent Order, revising the interim status WERF incinerator waste acceptance and waste analysis plan, to ensure the requirements of 40 CFR §§ 265.13 and 265.341 (IDAPA 16.01.05.009) are met; and

c. Within one hundred twenty (120) days of the effective date of this Consent Order, training personnel on any changes to the waste acceptance and analysis plan procedures.

5.24. Violations No. 66-69, 72, 76-79, 82, and 85-89 relate to DOE's operation of a mercury retort treatment unit near CFA-674. The operation was conducted to treat mercury contaminated materials from TAN and the CFA-674 pond. Although there are disputed factual and jurisdictional issues relating to these alleged violations, DOE and the Department have agreed to the resolution set forth in this section. In the event of any judicial or administrative action, nothing in this section nor the parties' execution of this Consent Order containing this section constitutes or may be interpreted as an admission or stipulation (nor evidence thereof) of a waiver of any jurisdictional or other claim or defense, including any jurisdictional or other claim or defense regarding the applicability of Idaho law to Violation Nos. 66, 67, 68, 69, 72, 76, 77, 78, 79, 82, 85, 86, 87, 88, and 89.

DOE has resolved Violation Nos. 66-69, 72, 76-79, 82, and 85-89 by:

a. Including the results of the sampling and analysis, and also including a risk assessment for the soil in the area of the mercury retort operation, in the Comprehensive Remedial Investigation/Feasibility Study Assessment for the Central Facilities Area Operable Unit 4-13 prepared pursuant to the Federal Facility Agreement and Consent Order.

VI. PENALTY

6.1 DOE shall, within sixty (60) days of the effective date of this Consent Order, pay to the Department Three Hundred Eighty Five Thousand Ninety Four Dollars ($385,094), as a civil penalty for the violations included in the NOV.

6.2 Payment shall be made electronically or by check payable to the Idaho Department of Health and Welfare. This payment shall be deposited by the Department or its representative into the Hazardous Waste Emergency Account created by Idaho Code § 39-4417. If payment is made by check, the penalty payment shall be sent to the following address:

Accounts Receivable
Planning & Support Services Division
Idaho Division of Environmental Quality
Idaho Department of Health and Welfare
1410 N. Hilton
Boise, Idaho 83706-1255

6.3 Further, in settlement of the matters included in the NOV, DOE agrees to implement a Supplemental Environmental Project (SEP) pursuant to Idaho Code § 39-4414(1). The SEP is a project which DOE is not otherwise required to perform and will contribute to public awareness of environmental matters. The SEP shall consist of DOE contributing start up money to the Pacific Northwest Pollution Prevention Resource Center (PPRC) for the Idaho GEM*Stars* Program. This undertaking is described in more detail in Exhibit A attached hereto and incorporated by reference into this Consent Order. The SEP will be implemented by DOE in accordance with the following terms and conditions:

a. Within ninety (90) days of the effective date of this Consent Order, DOE shall contribute One Hundred Fourteen Thousand Nine Hundred and Six Dollars ($114,906) to the PPRC, a non-profit organization, to be used as start up money for the Idaho GEM*Stars* Program. All costs of the SEP shall be the responsibility of DOE. The total expenditure for the SEP shall not be less than One Hundred Fourteen Thousand Nine Hundred and Six Dollars ($114,906).

b. Payment shall be sent to the following address:

Madeline Sten, Executive Director
Pacific NW Pollution Prevention Resource Center
1326 5th Avenue, Suite 650
Seattle, WA 98101

c. Within fifteen (15) days of the date of DOE's transmittal of the contribution to the PPRC, DOE shall submit a receipt to the Department documenting the PPRC's receipt of the contribution.

d. DOE certifies that DOE is not otherwise required, by virtue of any local, state, or federal statute, regulation, order, decree, permit, or other law or agreement, to develop or implement the SEP described herein. DOE further certifies that DOE has not received, will not receive, and is not presently negotiating to receive, a credit for the SEP as part of any other enforcement action or any grant from the state, EPA or any other entity.

e. In the event DOE fails to timely and completely implement the SEP as provided herein, the Department will provide written notice to DOE of the nature of the deficiency and DOE will have ten (10) days from receipt of the notice to correct the deficiency. In the event the deficiency is not timely corrected, DOE shall be in violation of the Consent Order and shall be required to pay to the Department an amount equal to One Hundred Fourteen Thousand Nine Hundred and Six Dollars ($114,906). Payment under the terms of this paragraph shall satisfy DOE's obligation to complete the SEP.

f. DOE agrees that any public statement, oral or written, making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Idaho Department of Health and Welfare, Division of Environmental Quality for alleged violations of the requirements of the Idaho Hazardous Waste Management Act."

VII. TIME FRAMES FOR ACHIEVING COMPLIANCE

7.1 If any event occurs that causes, or may cause, delay in the achievement of any compliance deadline or other requirement of this Consent Order or any plan approved pursuant to this Consent Order, DOE shall notify the Department in writing within ten (10) days of the date DOE knew, or reasonably should have known, of the event. Any notice under this paragraph should describe in detail the anticipated length of the delay, the precise cause or causes of the delay, all the anticipated consequences of the delay, measures taken by DOE to prevent or minimize the delay, and a timetable by which those measures will be implemented. DOE shall utilize

all reasonable measures to avoid or minimize any such delay. If the Department determines that the delay, or anticipated delay, in achieving any of the requirements of this Consent Order has been, or will be, caused by circumstances beyond the reasonable control of DOE, the Department will grant an extension for a period equal to the length of the delay caused by such circumstances. The Department shall notify DOE of its determination within twenty (20) days of the date of receipt of DOE's notification. The burden of proving that any delay is caused by circumstances beyond the reasonable control of DOE shall rest wholly with DOE.

7.2 DOE may request, for good cause, an extension of the compliance deadlines established pursuant to this Consent Order.

VIII. COMMUNICATIONS

Except as later modified by written agreement of the Parties:

8.1 All communications required of DOE by this Consent Order shall be addressed to:

D. Michael Gregory, Environmental Enforcement Manager
Compliance Assurance Bureau, Hazardous Waste Section
Air and Hazardous Waste Division
Idaho Division of Environmental Quality
1410 N. Hilton St., 3rd floor
Boise, Idaho 83706-1255

8.2 All communications required of the Department by this Consent Order shall be addressed to:

Donald N. Rasch, Environmental Compliance Manager
Environmental Programs
United States Department of Energy Idaho Operations Office
850 Energy Drive
Idaho Falls, Idaho 83401-1561

IX. ENFORCEABILITY

9.1 DOE expressly recognizes that failure to comply with the terms of this Consent Order may result in an enforcement action for any relief available under the HWMA. In any such civil or administrative proceeding by the Department to enforce this Consent Order, DOE agrees not to contest the validity of the provisions of this Consent Order nor the Department's authority to enforce this Consent Order.

9.2 DOE acknowledges that this Consent Order is enforceable pursuant to the citizen suit provisions of RCRA, 42 U.S.C. § 6972, including actions or suits by the State

and its agencies. DOE agrees that the State and its agencies are a "person" within the meaning of Section 7002(a) of RCRA, 42 U.S.C. § 6972(a).

9.3 DOE agrees that this Consent Order shall be admissible as evidence in any proceeding to enforce this Consent Order.

X. AMENDMENT, MODIFICATION AND TERMINATION

10.1 This Consent Order may only be amended or modified by mutual agreement of the Department and DOE. Any amendment or modification of this Consent Order shall be in writing, shall have as the effective date the date of signature by the Administrator of the Idaho Division of Environmental Quality and shall be incorporated into this Consent Order and be enforceable in the same manner as any other requirement of this Consent Order.

10.2 In the event there is a change in applicable state or federal law or regulation, this Consent Order may be amended or modified to incorporate such change. During the pendency of any such amendment or modification, this Consent Order shall remain in effect unless an exemption is provided in writing by the Department.

10.3 This Consent Order shall bind DOE, its employees, officers, directors, officials, trustees, contractors, subcontractors, consultants, tenants, agents, successors and assigns until such time as the terms of the Consent Order are met and the Consent Order is terminated in writing by the Department. Such written termination shall not be unreasonably withheld.

10.4 Except as specifically set forth in this Consent Order, this Consent Order shall not relieve DOE from its obligation to comply with any of the applicable provisions of the HWMA, or the Rules, including any permit, closure, post-closure, public notice and comment, or other hazardous waste requirement. This Consent Order shall not relieve DOE from its obligation to comply with any other applicable federal, state, or local law, or any interagency or other agreements between the Department and DOE.

XI. FUNDING

11.1 DOE shall take all necessary steps to obtain sufficient funding to comply with the provisions of this Consent Order and, once obtained, shall obligate those funds for the purpose of compliance with this Consent Order.

11.2 DOE maintains that any requirement for the payment or obligation of funds under this Consent Order is subject to the provisions of the Anti-Deficiency Act, 31 U.S.C. § 1341. DOE also maintains that any requirement for the payment or obligation of funds under this Consent Order is subject to the availability of appropriated funds and that the unavailability of such funds may constitute a valid defense to any administrative or judicial action that may be brought to enforce the terms of this

Consent Order. The Department recognizes the provisions of the Anti-Deficiency Act but does not agree that failure to obtain adequate funds or appropriations to comply with this Consent Order shall constitute a circumstance beyond the reasonable control of DOE or shall constitute a release from or defense to any administrative or judicial action which may be brought to enforce this Consent Order. DOE and the Department agree that it is premature to raise the validity of such a defense at this time. If, at any time, adequate funds or appropriations are not available to comply with this Consent Order, DOE shall notify the Department in writing and the Department shall determine whether or not it is appropriate to adjust the deadlines set forth in this Consent Order. DOE reserves the right to raise the Anti-Deficiency Act as a defense to any action brought to enforce this Consent Order.

XII. COVENANTS AND RESERVATIONS

12.1 This Consent Order shall stand in lieu of any administrative, legal and equitable remedies which are available to the Department against DOE and all parties bound by this Consent Order with respect to the matters addressed by this Consent Order, so long as DOE and all parties bound by this Consent Order are in compliance with the Consent Order as determined by the Department or a court of competent jurisdiction.

12.2 The Department expressly reserves all of its statutory and regulatory powers, authorities, rights, remedies, and defenses, both legal and equitable, which relate to the failure of DOE to comply with any of the requirements of this Consent Order. The Department reserves the right to disapprove of work performed by DOE and to ensure compliance with this Consent Order. Except as set forth in Section 12.1, this Consent Order shall not be construed as a covenant not to sue, a release, a waiver or a limitation of any rights, remedies, powers or authorities, civil or criminal, which the Department has under the HWMA or any other statutory, regulatory, or common law.

12.3 Except as specifically set forth herein, DOE reserves and does not waive any rights, authority, claims or defenses, including sovereign immunity, that it may have or wish to pursue in any administrative, judicial or other proceeding with respect to any person; nor does DOE waive any claim of jurisdiction over matters which may be reserved to DOE by law, including the Atomic Energy Act. Nothing in this Consent Order shall constitute an admission on the part of DOE, in whole or in part, in any proceeding except in a proceeding to enforce this Consent Order. DOE specifically reserves all rights it may have by law to seek and obtain administrative or judicial review or appeal according to law of any determination made by the Department during DOE's performance of its obligations under this Consent Order. During the pendency of any such administrative review or appeal, DOE shall continue to comply with the requirements of this Consent Order. DOE also specifically reserves

all rights it may have by law to seek and obtain administrative or judicial review or appeal of permit requirements.

12.4 Except as specifically set forth herein, this Consent Order in no way restricts the State of Idaho or the Department from taking action available under law to address past, present or future violations of the HWMA, the Rules, or other applicable law.

XIII. STATE LIABILITY

13.1 Nothing in this Consent Order shall be deemed to extend to the Department or the State of Idaho any liability under any federal, state, or local law.

XIV. ACCESS

14.1 Nothing in this Consent Order limits or otherwise affects the Department's right of access and entry pursuant to applicable federal, state, or local law.

XV. EFFECTIVE DATE

15.1 The effective date of this Consent Order shall be the date of signature by the Administrator of the Idaho Division of Environmental Quality. Each of the undersigned representatives of the Parties warrants that he or she is fully authorized to and does hereby enter into and legally bind his or her agency to this Consent Order.

SO AGREED:

DATE 4-23-99 SIGNED: Lisa Green for

WARREN E. BERGHOLZ
ACTING MANAGER
U.S. DEPARTMENT OF ENERGY
IDAHO OPERATIONS OFFICE

DATE May 6, 1999 SIGNED:

C. STEPHEN ALLRED
ADMINISTRATOR
DIVISION OF ENVIRONMENTAL QUALITY
IDAHO DEPT. OF HEALTH & WELFARE
STATE OF IDAHO

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EXHIBIT A

Idaho GEM*Stars*

Now for something *positive* about *Idaho's environment.*

There are workers at an automotive facility in Lewiston that have chosen to go above and beyond regulatory compliance in order to increase their profit margin and minimize their impact upon the environment. Automotive fluids are recycled and service bays are kept clean without the use of toxic cleaners. There's an electronics manufacturer in Boise which replaced etching solvents in an effort to improve its profit margin, forgo regulatory permits, and exert more control over its manufacturing process. In Mountain Home, members of the Air Force's 366 Tactical Group have organized a use and return service for hazardous products, available to all base personnel and families. "Use what you need and return the rest." The result is fewer purchases, less waste generation and improved efficiency base-wide.

There are similar stories in Riggins and in Rigby, Pocatello and Salmon, Meridian and Grangeville. All around our fair state business people, residents and even community groups are thinking about what they are doing before they generate waste and pass a problem along to someone else. It's called ***Pollution Prevention***, but it's really just common sense thinking. True efforts of community concern and business acumen such as these should have wider public recognition - and on a more regular, if not daily, basis.

That's why **Idaho GEM*Stars was created.*** An energetic group (list attached) met the challenge put forth by Governor Batt and, during the summer of 1998, developed a program to provide ***recognition*** to Idahoans who are going above-and-beyond the call of duty to reduce environmental effects while serving as an ***incentive*** to the rest of us. And what makes Idaho GEM*Stars* (homegrown in the Gem state) different than any other program in the country? In Idaho, farmers, ranchers, CEOs, small businesses, neighborhood organizations, school districts, non-profit organizations, and even government agencies can strive to participate, be duly recognized for their level of effort (on one to three tiers), provide an incentive, and ***serve as a mentor*** to others. Idaho GEM*Stars* is a community-focused, public/private partnership endeavor promoting mentoring and education among all Idahoans. ***It's unique, widely endorsed, and ready to go.***

Recognition

- ★ ***An Idaho GEMStars logo*** for inclusion on company letterhead, in advertisements, in marketing products, and as a window decal.
- ★ ***Media releases*** announcing new members and their accomplishments will ***promote public awareness***.
- ★ Education about ***tangible competitive advantages***, including cost savings, increased operating efficiency, reduced worker risk, lower insurance rates and increased employee morale will be provided.
- ★ Access to a ***Clearinghouse*** of information and ***on-site technical assistance***.

Participation

Initial Tier: Recognizing basic pollution prevention initiatives, practices and/or activities beyond regulatory compliance.

Middle Tier: Recognizing implementation of industry-specific Best Management Practices developed in conjunction with trade associations.

Highest Tier: Recognizing leadership and innovation in developing and implementing pollution prevention and efforts to educate and train others in the state. Applicants nominated by industry-sector peers and publicly recognized by the governor.

Meeting Summaries

The Governor's Pollution Prevention Advisory Committee developed the structure and direction of Idaho GEMStars. The Advisory Committee met on three separate occasions at the DEQ offices. Each meeting was facilitated by an independent contractor paid from an EPA grant. The following is a brief summary of each meeting:

June 30 *Reviewed existing incentive/recognition/award programs across the U.S.*

Idaho Incentive/Recognition program should:

- ★ be a multi-stakeholder program
- ★ provide for differing levels of success by using tiers of recognition
- ★ be flexible to allow tailoring for different regions, industries or sectors
- ★ encourage business-to-business education and mentoring
- ★ seek comment from interested groups statewide
- ★ coordinate with and support existing award programs

July 23 *Established program framework:*

- ★ created three tier system with increased incentives and recognition
- ★ program should be operated outside DEQ and located at a neutral, respected site
- ★ DEQ to be a member of the Coordinating Committee along with representatives from a wide spectrum of potential program participants
- ★ a paid Coordinator should oversee the program, with direction from a Coordinating Committee
- ★ criteria were proposed for each tier

Focus Groups

Between the first and third Advisory Committee meetings, focus groups were held around the state to seek input on program development prior to finalization. Focus groups included:

- ★ Chambers of Commerce members in Boise, Idaho Falls, Pocatello, Twin Falls and Wallace
- ★ Staff from Local, State and Federal Agricultural and Transportation Agencies
- ★ University of Idaho

- ★ Mining Companies in Northern Idaho
- ★ Food Producers of Idaho
- ★ Northwest Environmental Business Council
- ★ Environmental Organizations
- ★ Members of Green Star Program in Lewiston
- ★ Pacific Northwest Regional Pollution Prevention Roundtable

Strong, enthusiastic support for the Idaho GEM*Stars* concept was expressed at all focus group meetings. Comments were used to improve the program framework and implementation strategy. Participants liked the idea of public recognition, felt it would benefit Idaho and Idahoans, and thought their employees and customers would show support and appreciation.

<u>October 8</u> ***Finalized program and determined implementation tasks.***

- ★ criteria and program structure were finalized
- ★ Advisory Committee delegated future oversight to a Coordinating Committee consisting of existing Advisory Committee members.
- ★ four subcommittees were formed to continue program development:
  1. Location
  2. Funding
  3. Marketing
  4. Hiring Coordinator

Status

Idaho GEM*Stars is ready for implementation.* A number of entities throughout the state are already meeting the criteria to participate in Idaho GEM*Stars*, such as the recent recipients of pollution prevention awards from EPA Region 10 and the City of Boise, and Green Star members in Lewiston. Initial Tier participation could take place before year's end. The subcommittees are moving forward to secure funding, find a location, develop marketing materials, and hire a coordinator.

A lot of positives are already occurring in Idaho's environment. The Idaho GEM*Stars* Program will help get the word out, promote a steady increase of such occurrences, and portray Idaho as a promoter of business vitality, environmental protection and individual action.

Governor's Pollution Prevention Advisory Committee

*Brent Olmstead, Director of Natural Resources
Idaho Association of Commerce and Industry

Cynthia Forsch, Environmental Affairs Manager
Albertson's

Jim Hogge, State Director
Idaho Small Business Development Center

Greg Nelson, Director of Public Affairs
Idaho Farm Bureau Federation

Ken Harward, Executive Director
Association of Idaho Cities

Paul Beddoe
Idaho Association of Counties

Ray Stark, Government Affairs Manager
Boise Area Chamber of Commerce

Karl Tueller, Deputy Director
Idaho Department of Commerce

*Jill White, Chapter Coordinator
Northwest Environmental Business Council

Greg Miner
Residuals Management

Ray Arguello
Ogden Environmental

Colonel Butler, U.S. Air Force
Mountain Home Air Force Base

Merlin Miller, U.S. Air Force
Mountain Home Air Force Base

* represented by association member

Madeline Sten, Executive Director
Pacific NW Pollution Prevention Resource Center

Tom LaMar, Executive Director
Palouse-Clearwater Env. Institute

Lee Brown
Environmental Resource Center

Beverly Gholson
Golden Eagle Audubon Society

Jim Luper, Jr.
Carburetor and Electric

Representative Larry Watson
Idaho Legislature

Senator Hal Bunderson
Idaho Legislature

Winston Goering
Nampa, ID 83651

Larry Koomler, Executive Vice-President
Sedgwick of Idaho, Inc.

Lionel Boyer, Ft. Hall Business Council
Shoshone-Bannock

John Freemuth, Ph.D., Professor
Department of Political Science, BSU

Charles Rountree, Administrator
Transportation Planning Division
Idaho Transportation Department