EM U.S. Department of Energy
Office Of Environmental Management

Idaho National Engineering Laboratory Consent Order, November 1, 1995

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

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I. Parties

1.1 The Idaho Department of Health and Welfare (Department) and the United States Department of Energy, including the Idaho Operations Office, Argonne Area Office, and the Idaho Branch Office - Naval Reactors, (DOE), "the Parties," enter into this Consent Order regarding DOE's Idaho National Engineering Laboratory located near Idaho Falls, Idaho.

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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, and the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C §§ 6901 *et seq.*, and the Federal Facility Compliance Act of 1992 (FFCA), Pub. L. No. 102-386, 106 Stat. 1505 (1992), which 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 control and abatement of hazardous waste disposal and management. 42 U.S.C. § 6961; Executive Order 12088. DOE, a department of the executive branch

of the federal government, owns and operates the INEL, 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 *Rules and Standards for Hazardous Waste*, IDAPA 16.01.05.000 to 05.999. The State of Idaho is authorized, pursuant to RCRA, to administer this hazardous waste management program. 55 Fed. Reg., 11015 (March 26, 1990); 57 Fed. Reg. 24572 (June 11, 1992). DOE generates, transports, and manages hazardous waste at the INEL and is therefore subject to and must comply with all federal and state requirements respecting hazardous waste, including the HWMA and the *Rules and Standards for Hazardous Waste*, IDAPA 16.01.05.000 to 05.999.

2.3 DOE agrees not to contest the jurisdictional elements of this Consent Order nor seek administrative or judicial review of this Consent Order.

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III. Hazardous Waste Land Disposal Restriction Requirements

3.1 The *Rules and Standards for Hazardous Waste*, IDAPA 16.01.05.011 (40 C.F.R. § 268) prohibit the disposal of hazardous wastes (commonly referred to as land disposal restricted (LDR) wastes) that do not meet specified treatment standards or requirements and prohibit the storage of such LDR wastes unless storage is solely for the purpose of accumulation of quantities necessary to facilitate proper recovery, treatment or disposal (LDR waste requirements).

3.2 DOE generates and stores radioactive mixed waste at the INEL which is subject to the LDR waste requirements.

3.3 Pursuant to Section 3021(b) of RCRA as amended by Section 105(b) of the FFCA, DOE submitted to the Department a "Proposed Site Treatment Plan for INEL" regarding LDR waste requirements. The Department reviewed and modified that proposal and a copy of the approved "INEL Site Treatment Plan" is attached hereto.

3.4 In order to resolve LDR storage violations and pursuant to Section 3021(b) of RCRA, DOE agrees to the terms and conditions of the INEL Site Treatment Plan which is hereby approved by the Department. The INEL Site Treatment Plan and all of its terms and conditions are incorporated herein as requirements of this Consent Order.

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IV. Enforceability

4.1 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. This agreement may be specifically enforced except in the instance of a dispute arising from lack of sufficient funding.

4.2 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).

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

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V. Covenants and Reservations

5.1 This Consent Order shall stand in lieu of any administrative, legal and equitable remedies which are available to the Department against DOE, its contractors and subcontractors at any tier and all persons 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.

5.2 Except as specifically set forth in this Consent Order, 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. Except as set forth in Section 5.1, 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.

5.3 Notwithstanding the provisions of Section 5.1 (regarding this Consent Order standing in lieu of other administrative and legal remedies), if the Department determines there is an imminent threat to human health or the environment due to a violation of the Consent Order, it may seek judicial or other relief provided by law without going through applicable procedures in this Consent Order.

5.4 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 immunity from payment of fines or penalties; 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.

5.5 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 and Standards for Hazardous Waste*, or other applicable law.

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VI. State Liability

6.1 Nothing in this Consent Order shall be deemed to extend to the Department, the State of Idaho, or

its authorized representatives any liability under any federal, state or local law.

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VII. Severability

7.1 If any provision or authority of this Consent Order or the application of this Consent Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Consent Order shall remain in force and shall not be affected thereby.

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VIII. Effective Date

8.1 The effective date of this Consent Order shall be the date of signature by the Director of the Idaho Department of Health and Welfare. 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: November 1, 1995

WALLACE N. CORY, P. E.
ADMINISTRATOR
DIVISION OF ENVIRONMENTAL QUALITY
IDAHO DEPARTMENT OF HEALTH AND WELFARE

Date: October 31, 1995

JOHN M. WILCYNSKI
MANAGER
IDAHO OPERATIONS OFFICE
U.S. DEPARTMENT OF ENERGY

Date: October 31, 1995

THERON M. BRADLEY
MANAGER
NAVAL REACTORS
IDAHO BRANCH OFFICE
U.S. DEPARTMENT OF ENERGY

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