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

Nevada Test Site Federal Facility Compliance Act Consent Order, March 27, 1996

THE STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES,
DIVISION OF ENVIRONMENTAL PROTECTION
AND
THE UNITED STATES DEPARTMENT OF ENERGY
IN THE MATTER OF:
FEDERAL FACILITY COMPLIANCE ACT
CONSENT ORDER

March 6, 1996

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Part I. Introduction

This Federal Facility Compliance Act Consent Order (Order) is issued by the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection (NDEP) to require compliance by the United States Department of Energy (DOE) with a Site Treatment Plan (STP) for the treatment of mixed waste at the Nevada Test Site (NTS) pursuant to the Nevada Hazardous Waste Act, Nevada Revised Statutes (NRS) §§ 459.400 to 459.600; and Section 3021(b) of the Resource Conservation and Recovery Act (RCRA) 42 U.S.C. §6939(c), as amended by the Federal Facility Compliance Act of 1992, Pub. L. 102-386, 106 Stat. 1505 (1992).

The NTS is a facility at which DOE generates and stores and is proposing to treat mixed waste. Mixed waste is defined by the Federal Facility Compliance Act (FFCAct) as waste containing both a hazardous waste subject to RCRA and a radioactive material subject to the Atomic Energy Act. As required by the FFCAct and RCRA, the mixed waste streams are subject to the Land Disposal Restriction (LDR) regulations and DOE' s treatment and storage of mixed waste at the NTS is subject to regulation by the State of Nevada through NDEP. Specific mixed waste streams are currently being stored at the NTS. These waste streams include: (1) PCB Soil; (2) Lead-Contaminated Soil; (3) Bulk Lead Wastes; (4) Solvent Sludge; (5) Shipping Cask; (6) TTF Solvent; (7) Cotter Concentrate (Population A); (8) Cotter Concentrate (Population B); and (9) Mixed Transuranic (MTRU) Waste. All of these referenced waste streams are hereinafter collectively referred to as "covered waste". This Order is intended to address the required treatment of these specific mixed waste streams. In addition, NDEP intends this Order to establish, in accordance with the States' principles established by the National Governors' Association FFCAct State task force, the process for any mixed waste to be transferred on or off the NTS in the future.

The mixed waste streams are subject to the LDR standards contained in RCRA. On March 31, 1995, DOE Nevada Operations Office issued its Proposed Site Treatment Plan (PSTP) for the NTS. The FFCAct directs states to accept the PSTPs; accept the PSTPs with modifications; or reject the PSTPs as submitted. NDEP found the March PSTP inadequate and insufficient to fulfill the requirements of 42 U.S.C. § 6939c(b)1(B)(i).

On August 31, 1995, DOE/NV submitted a revised PSTP to NDEP which substantially complies with the FFCAct. The PSTP contains sufficient detail concerning treatment alternatives, including regionalized treatment alternatives, for the mixed waste streams on the NTS to be evaluated. NDEP requested public input on the revised PSTP. After review and incorporation of comments, the PSTP has been modified and accepted as the Site Treatment Plan (STP). This Order contains schedules derived from the STP and identifies specific treatment facilities for treating the identified mixed waste streams on the NTS. Where treatment options are not available, plans and schedules for characterizing the waste streams, technology assessments and/or options for the development of treatment capacity are contained in this Order.

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Part II. Parties

II.1. The Parties to this Order are persons as defined in NRS 459.010 and include the NDEP and

DOE.

II.2. DOE shall provide notice of this Order (including all appendices and any amendments) to every successor in interest and to any successor agency prior to any transfer of ownership or operation of the real property subject to this Order. The provisions of this Order shall be binding on all successors in interest and to any successor agency.

II.3. DOE shall be responsible for ensuring that their respective contractors conduct their activities in conformance with the requirements of this Order. Contractors of each party are not considered parties to this Order.

> II.3.a. DOE shall provide copies of this Order to all their respective prime contractors presently retained to perform work related to any part of this Order within thirty (30) calendar days of execution of this Order.
>
> II.3.b. DOE shall provide copies of this Order to all additional prime contractors retained to perform work related to any part of this Order within ten (10) calendar days following their retention.
>
> II.3.c. Copies of this Order shall be made available to all other contractors and subcontractors retained to perform work under this Order.

II.4. This Order shall apply to and be binding upon the parties and their successors in interest and assigns.

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Part III. Statement of Purpose

III.1. The purposes of this Order are to:

> III.1.a. Fulfill the requirements of the Federal Facility Compliance Act and other applicable requirements of state and federal law relating to the treatment and storage of covered wastes currently being stored on the NTS.
>
> III.1.b. Establish an enforceable framework for compliance with the applicable LDR standards for covered waste identified in this Order or received at the NTS.
>
> III.1.c. Provide for the storage of the covered waste streams at the NTS, pending the refinement and implementation of identified treatment technologies or capacity and ultimate treatment or other disposition of such wastes according to applicable LDR standards in existence during the term of this Order.
>
> III.1.d. Incorporate, for reference purposes, the STP which is comprised of two volumes. The Background Volume (BV) contains general site information, identification of wastes and discussions of alternatives for management of those wastes. The Plan Volume (PV) contains DOE's proposed activities and their associated schedules for achieving compliance with the applicable LDR standards for the identified wastes.

III.2. Require DOE to achieve compliance with the requirements of the FFCAct through the STP which contains schedules and applicable strategies for achieving compliance with the applicable LDR standards. Deadlines, as defined in Part V.8, are established pursuant to this Order. The procedures for reviewing schedules, deleting waste streams, and administrative procedures are contained in this Order. If a need arises to establish an additional deadline(s) as a result of an amendment, revision or extension to this Order, such deadline (s) will be within the FY+2, planning window.

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Part IV. Legal Authority

IV.1. This Order is issued pursuant to the Nevada Hazardous Waste Law, NRS §§ 459.400 - 459 600, Nevada Administrative Code (NAC) §§ 444.842 - 444.960, the Solid Waste Disposal Act, as amended by RCRA, 42 U.S.C. §6901 *et. seq.*, the Federal Facility Compliance Act of 1992, Pub. L. No. 102-386, 106 Stat. 1505 (1992), and Executive Order 12088 which requires 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 and solid waste disposal and management.

IV.2. NDEP is an agency of the State of Nevada which has (1) authority under state law to prohibit land disposal of mixed waste until the hazardous component of the waste has been adequately treated, (2) authority under state law to regulate the hazardous components of mixed waste, and 3) authorization from the U. S. Environmental Protection Agency (EPA) under Section 3006 of RCRA to regulate the hazardous components of mixed waste, as such authorities are described in Section 3021 (b) of RCRA, as amended by the Federal Facility Compliance Act.

IV.3. DOE is a department of the executive branch of the federal government which generates, transports, and manages hazardous waste, including mixed waste, at the NTS and is therefore subject to and must comply with all applicable state and federal requirements applicable to these wastes.

IV.4. This Order fulfills the requirements contained in Section 3021(b)(5) of RCRA, as amended by the Federal Facility Compliance Act, and stands in lieu of any other orders, agreements or interpretations of the requirement for DOE to develop and submit plans for the development of treatment capacities and technologies to treat the covered waste at the NTS to the standards promulgated pursuant to Section 3004(m) of RCRA.

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Part V. Definitions

V.1. Except as stated herein, the terms used in this Order shall have the same meaning as used in NRS §§ 459.400 - 459.600; NAC § § 444.842 - 444.960; RCRA; EPA's Rules and Regulations, 40 C.F.R. Parts 124, 260-268, and 270; and the DOE/NV STP.

V.2. "Administrator" shall have the meaning given in NRS 445.134.

V.3. "Amendment" shall mean a minor change to the Site Treatment Plan and/or schedules in the Order including but not limited to some extensions in deadlines or clarification of existing language.

Amendments are not required to be subject to a public comment period.

V.4. "Background Volume" shall mean the portion of the Site Treatment Plan which contains historic information and other general information about the Nevada Test Site.

V.5. "Contractors" shall mean any person with whom the U.S. Department of Energy has entered into, a contract for services, to include but not limited to operations, maintenance, or remediation, at the Nevada Test Site. This definition includes both prime and subcontractors at the site.

V.6. "Covered waste" shall mean the collective term for the waste streams referenced in Part I of this Order.

V.7. "Day" shall mean a calendar day unless business days are specified. Any submittal that, under the terms of this Order, would be due on a Saturday, Sunday, state of Nevada, or federal holiday shall be due on the next business day.

V.8. "Deadline" shall mean the date by which a milestone established by this Order shall be met. Stipulated penalties may be assessed for failure to meet an established deadline.

V.9. "Department of Energy" shall mean the U.S. Department of Energy and/or any predecessor or successor agency (ies) and/or their authorized representatives.

V.10. "Facilities" shall mean buildings and structures, their functional systems and equipment including site development features such as landscaping, roads, walls, and parking areas; outside lighting and communications systems; central utility plants; utilities supply and distribution systems; and other physical plant features.

V.11. "Federal Facility Compliance Act" shall mean the amendment to the Resource Conservation and Recovery Act of 1976, 42.U.S.C. § 6901 *et seq.*, enacted by Public Law 102-386, which, in part, delayed for three years the waiver of sovereign immunity for enforcement of violations associated with the storage of Land Disposal Restriction prohibited mixed waste at federal facilities, under certain circumstances.

V.12. "Fiscal Year" shall mean the federal fiscal year unless otherwise specified.

V.13. "Hazardous waste" shall have the meaning given in 42 U.S.C. § 6903(5) and NRS 459.430.

V.14 "Interim Activity Dates" identify dates or time frames by which a certain activity necessary to treat each waste stream as set forth in the Plan Volume of the STP is scheduled to occur. Those dates for which deadlines in the Order are not established are not enforceable and stipulated penalties shall not apply.

V.15. "Land Disposal Restrictions" shall mean regulations established pursuant to the Hazardous and Solid Water Amendment of 1984 and found at 40 C.F.R. Part 268 which include requirements for the treatment of hazardous wastes to specified standards prior to land disposal in a landfill, surface impoundment, or injection well, or other land-based unit.

V.16. "Macroencapsulation" shall mean the immobilization technique using the application of surface coating materials to reduce surface exposure to potential leaching media.

V.17. "Milestone" shall mean an important or critical event, goal, task, and/or activity that must occur in order to achieve the objectives set forth in the STP.

V.18. "Mixed waste" shall have the meaning given in 42 U.S.C. §6903(41).

V.19. "Nevada Department of Conservation and Natural Resources, Division of Environmental Protection" (NDEP) shall have the meaning given in NRS 445.152 and NAC 444.576.

V.20. "Nevada Test Site" shall mean the U.S. Department of Energy Installation occupying approximately 1,350 square miles in southeastern Nye County, Nevada.

V.21. "Parties" shall mean the parties to this Order. The U.S. Department of Energy and the Nevada Division of Environmental Protection.

V.22. "Person" for the purposes of this agreement shall include the U.S. Department of Energy and the Nevada Division of Environmental Protection within the definition of "person" contained in the Nevada Hazardous Waste Law, NRS 459.000 *et seq.*

V.23. "Plan Volume" shall mean the portion of the Site Treatment Plan which provides overall schedules for achieving compliance with Land Disposal Restriction storage and treatment requirements for covered waste at the Nevada Test Site based on deadlines negotiated between the Nevada Division of Environmental Protection and the U.S. Department of Energy.

V.24. "RCRA" shall mean the Resource Conservation and Recovery Act of 1976, Public Law 94-580, 42 U.S.C. §6901 *et seq.*, as amended by the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, as amended by the Federal Facility Compliance Act of 1992, Public Law 102-386, and any other amendments thereto.

V.25. "Revisions" shall mean any substantial change to the Plan Volume of the Site Treatment Plan that is proposed by DOE/NV and accepted by NDEP, after public comment in accordance with Section 3021(b)(4) of RCRA, as amended by the Federal Facility Compliance Act.

V.26. "TSCA" shall mean the Toxic Substance Control Act, Public Law 94-469, Title I, §2, Oct. 11, 1976, 90 Statute 2003, redesignated Public Law 99-519, §(c) (1), Oct. 22, 1986, 100 Statute 2989.

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Part VI. Statement of Facts and Conclusions of Law

VI. 1. DOE is responsible for the operations at the NTS.

VI. 2. Pursuant to the provisions of NRS §§ 459.400 - 459.600 and NAC §§ 444.842 - 444.960, hazardous waste, including mixed waste, is subject to LDR provisions. The storage of such waste restricted from land disposal is prohibited unless such storage is solely for the purpose of accumulating sufficient quantities of hazardous waste required to facilitate proper recovery, treatment or disposal.

VI.3. DOE is currently constructing or planning to construct or obtain facilities that shall treat and/or

dispose of the mixed wastes described in the STP to comply with the applicable LDR standards.

VI.4. NDEP has given DOE authorization to temporarily store the identified mixed waste on the NTS until such time as off-site or on-site facilities capable of treating such wastes have been permitted, constructed and these wastes treated or otherwise managed to meet the applicable LDR standards in accordance with the schedules contained in this Order.

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Part VII. Site Treatment Plan

VII.1. The STP contains two volumes and is intended to bring the NTS into compliance with LDR storage prohibitions contained in the Nevada Hazardous Waste Law and RCRA. DOE intends to carry out all activities in accordance with the schedules and requirements contained in the PV of the STP as amended periodically.

VII.1.a. The PV of the STP provides overall schedules for achieving compliance with the applicable LDR standards for covered waste at the NTS based on deadlines established by NDEP. The PV includes a schedule for completion of characterization efforts, the conduct of treatability studies, the submittal of applications for permits, construction of treatment facilities, technology development, off-site transportation for treatment, and the treatment of covered wastes in full compliance with the Nevada Hazardous Waste Law and RCRA including 40 CFR Parts 260 through 270.

VII.1.b. The BV of the STP contains historic information and other general information about the NTS. The BV also contains some of the possible contingency alternatives that DOE/NV will evaluate in the event that the preferred treatment option for which schedules have been established in Part VIII. cannot be implemented due to but not limited to the following:

VII.l.b. (1) The waste characterization analysis shows that the waste does not meet the proposed off-site facility's WAC;

VII.1.b.(2) The proposed DOE sites and the affected States cannot agree upon issues of concern related to waste movement; or

VII.1.b. (3) On-site treatability studies show the proposed treatment will not result in compliance with LDR requirements.

VII. 1.c. Implementation of a contingency alternative is subject to Part XII., Revisions.

VII.2. The PV of the STP contains DOE's proposed milestones and interim activities which identify dates or time frames by which a certain activity or submittal is scheduled to occur. For the purposes of this Order, NDEP has assigned deadlines to certain of these milestones. Only those milestones associated with these deadlines are enforceable.

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Part VIII. Treatment Schedules for Treatment of Covered Mixed Waste Inventories

VIII.1. The Deadlines contained in this Part have been derived from the milestones identified in the STP. The treatment schedules are based on characterization analyses which verify that the proposed treatment alternatives are appropriate. For mixed waste streams identified for shipment to DOE/OR, it is acknowledged that DOE/OR is not presently capable of nor permitted to receive wastes in the physical form of the NTS mixed waste streams. Based on existing preliminary discussions between the Parties, it is presumed that the NTS mixed wastes will be acceptable upon completion of discussions between the affected States and following permit and facility modification which is anticipated to be by the end of fiscal year 1998.

VIII.2. PCB Soil. The current treatment technology being considered is incineration. The incinerator of choice is the DOE incinerator at Oak Ridge, Tennessee. Treatment of PCB soil is subject to the following schedule:

VIII.2.a. Complete All Additional Waste Characterization Required by Receiving Site -- Deadline: December 31, 1996

VIII.2.b. Receive Written Approval of Acceptance from Receiving Site -- Deadline: June 30, 1997

VIII.2.c. If Waste Rejected, Initiate Revision Process -- Deadline July 31, 1997

VIII.2.d. Initiate Waste Shipment. -- Deadline shall be in accordance with receiving site approved schedule

VIII.3. Lead-Contaminated Soil. This waste stream consists of radioactively contaminated Area 12, FOD, and T2 Lead-Contaminated Soils. The treatment currently under investigation is on-site screening of the soil to remove the lead shot. Separated lead shot will be evaluated in conjunction with the Bulk Lead Wastes addressed in Paragraph VIII.4. After screening the waste, a TCLP analysis will be performed to determine if the soil still exhibits the characteristic of toxicity due to the presence of lead. If the soil does not exhibit the lead toxicity characteristic, then it will be disposed of as low-level radioactive (solid) waste. If the soil does exceed the TCLP limit for lead, then it will be solidified (i.e., cementation) at an off-site treatment facility. Treatment of Lead-Contaminated Soil is subject to the following schedule:

VIII.3.a. Complete Soil Screening and Initiate Sampling of Screened Soil -- Deadline: September 30, 1996

VIII.3.b. Submit Schedule for Processing Backlogged Waste or Initiate Revision Process -- Deadline: July 31, 1997

VIII.3.c. Complete Shipment of Waste to Receiving Site -- Deadline: September 30, 1997

VIII.4. Bulk Lead Wastes. This waste stream consists of Spent Batteries (fragmented), DNA Lead Cylinders, the bulk lead portion of T2 Lead, and any lead waste segregated from lead-contaminated soil described in Paragraph VIII.3. These waste streams have been combined because they contain similar physical and hazardous properties. Treatment of the Bulk Lead Wastes is subject to the following schedule:

VIII.4.a. Complete All Additional Waste Characterization Required by Receiving Facility -- Deadline: June 30, 1996

VIII.4.b. Initiate Preparation of Waste Shipment or Initiate Revision Process -- Deadline: September 30, 1996

VIII.4.c. Submit Schedule for Processing Backlogged Waste Based Upon Completion of Demonstration Project -- Deadline: December 31, 1996

VIII.5. Solvent Sludge (Area 12). The proposed treatment for the Solvent Sludge is incineration at an off-site facility. The existing permitted DOE/OR TSCA Incinerator is the preferred treatment facility for the Area 12 Solvent Sludge. Discussions with DOE/OR personnel have been initiated but official acceptance of the waste will require complete characterization. The RCRA Part B Permit for the TSCA Incinerator must be modified to accept solids. Treatment of the Area 12 Solvent Sludge is subject to the following schedule:

VIII.5.a. Complete All Additional Waste Characterization Required by Receiving Site -- Deadline: December 31, 1996

VIII.5.b. Receive Written Approval of Acceptance from Receiving Site -- Deadline: June 30, 1997

VIII.5.c. If Waste Rejected, Initiate Revision Process -- Deadline: July 31, 1997

VIII.5.d. Initiate Waste Shipment -- Deadline shall be in accordance with receiving site approved schedule

VIII.6. Shipping Cask. Treatment of the Shipping Cask is subject to the following schedule:

VIII. 6.a. Provide Treatment Options and Recommendation to state of Nevada - -Deadline: February 16, 1996 COMPLETED

VIII.6.b. State Of Nevada Concurs/Denies Recommendation -- Deadline: February 29, 1996 COMPLETED,

VIII.6.c. Provide Treatment Schedule to state of Nevada -- Deadline: April 29, 1996

VIII.6.d. Initiate Processing of Shipping Cask -- Deadline shall be in accordance with approved schedule

VIII.7. TTF Solvent. The proposed treatment for TTF solvent is incineration of the waste to destroy the organic constituents. The DOE/OR TSCA Incinerator is currently the preferred treatment facility for the TTF Solvent, but additional characterization must be performed to verify that the DOE/OR WAC is met. Treatment of the TTF Solvent is subject to the following schedule:

VIII.7.a. Complete All Additional Waste Characterization Required by Receiving Site -- Deadline: December 31, 1996

VIII.7.b. Receive Written Approval of Acceptance from Receiving Site -- Deadline: June 30, 1997

VIII.7.c. If Waste Rejected, Initiate Revision Process -- Deadline: July 31, 1997

VIII.7.d. Initiate Waste Shipment -- Deadline shall be in accordance with receiving site approved schedule

VIII.8. Cotter Concentrate (Population A). Treatment of the Cotter Concentrate (Population A) is subject to the following schedule:

VIII.8.a. Provide Results of Treatability Study to state of Nevada -- Deadline: April 30, 1996

VIII.8.b. Provide Treatment Results from Pilot Scale Study to state of Nevada -- Deadline: February 28, 1997

VIII. 8.c. Submit RCRA Part B Permit Modification or initiate Revision Process -- Deadline: April 30, 1997

VIII.8.d. State Approves Permit Modification (Assumption)

VIII.8.e. Award RFP, Assemble Treatment System, and Initiate Treatment System Testing -- Deadline: Within 12 months of permit issuance

VIII.8.f. Complete System Testing and Submit Backlogged Waste Schedule -- Deadline shall be established within 6 months of completion of Part VIII. 8.e.

VIII.9. Cotter Concentrate (Population B). The proposed treatment for Cotter Concentrate (Population B) is incineration at the DOE/OR TSCA Incinerator. Official acceptance of the waste will require Cotter Concentrate (Population B) meeting the DOE/OR Waste Acceptance Criteria. The RCRA Permit for the TSCA Incinerator must be modified to accept solids. Approval of off-site shipment is dependent on Tennessee's approval of permit modifications and this waste meeting that facility's WAC. The treatment schedule for Cotter Concentrate (Population B) is as follows:

VIII.9.a. Complete All Additional Waste Characterization Required by Receiving Site -- Deadline: December 31, 1996

VIII.9.b. Receive Written Approval of Acceptance from Receiving Site -- Deadline: June 30, 1997

VIII.9.c. If Waste Rejected, Initiate Revision Process -- Deadline: July 31, 1997

VIII.9.d. Initiate Waste Shipment -- Deadline shall be in accordance with receiving site approved schedule

VIII.10. Mixed Transuranic (MTRU) Waste Streams. DOE plans to achieve compliance with the requirements of the FFCAct and the LDRs for MTRU destined for WIPP by using the no-migration variance petition approach outlined in Title 40 C.F.R. 268.6. MTRU Waste is subject to the following

schedule:

VIII.10.a. Submit Work Plan to state of Nevada for TRU Waste Characterization Project -- Deadline: February 29, 1996 COMPLETED

VIII.10.b. Complete Construction of Facility and Submit Processing Schedule -- Deadline: June 30, 1997

VIII.10. c. Complete Pre-Characterization Activities Required by WIPP with all Required Information Having Been Submitted for Incorporation into the WIPP Waste Information System (WWIS) or Initiate Discussions with state of Nevada if WIPP Does Not Open -- Deadline: June 1, 1998

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Part IX. Progress Reporting

IX.l. Following the effective date of this Order, DOE shall, on or before the 30th calendar day following the end of each fiscal quarter, submit a written or electronic progress report to NDEP that synopsizes the actions taken during the fiscal quarter just ended. This information will serve as a partial basis for the discussions at the quarterly meetings.

IX.2. Each quarterly report shall include:

IX.2.a. Sufficient detail to clearly and accurately convey to NDEP the manner and extent to which the requirements and schedules set forth in this Order are being met;

IX.2.b. Any schedule variances along with the cause of the variances and any actions which may be implemented to correct the variances;

IX.2.c. Actions and issues of concern, such as anticipated need for REVISIONS.

IX.3. Quarterly meetings will be held to discuss any issues raised in or by the quarterly progress reports. The parties will attempt to resolve issues during the quarterly meetings.

IX.4. Milestones and deadlines will be evaluated by the parties during the quarterly meetings. The following schedule applies to the quarterly meetings:

IX.4.a. During the quarterly meeting held during the fiscal year first quarter, the parties shall review and if necessary may reconsider established priorities, milestones, and deadlines for the current federal fiscal year in accordance with Part XX.8.

IX.4.b. During the quarterly meeting held during the fiscal year second quarter, the parties may review established priorities, milestones, and associated deadlines in relationship to the development of the FY+2 program and budget in accordance with Part XX.3.

IX.4.c. During the quarterly meeting held during the fiscal year third quarter, NDEP shall review and where appropriate reconsider established priorities, milestones, and associated deadlines for FY+2 in accordance with Part XX.3 through XX.5.

IX.4.d. During the quarterly meeting held during the fiscal year fourth quarter, the parties shall review and where appropriate reconsider established, priorities, milestones, and deadlines for FY+l in accordance with Part XX.7.

IX.5. Unless the parties mutually agree that no amendment to this Order is warranted, the parties shall begin a good faith dialogue in January 1999 to determine the extent to which the deadlines and funding structure of the Order and the technical plans and schedules should be amended, considering the parties' experience in implementing the Order to date, the most recent information on current and projected funding availability, and the status of major technical issues that are expected to affect the management of mixed waste across DOE sites. If the parties agree that amendment of the Order and associated PV schedules and activities is warranted, the goal of the parties is to finish such amendments no later than September 30, 1999. Changes shall only be made upon consent of both parties.

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Part X. Annual Site Treatment Plan Updates

X.1. By January 15 of each fiscal year, DOE shall submit a draft annual update of the STP to the NDEP for review and comment. DOE will then finalize the draft update by April 30 of each year. Each Annual Update shall bring the STP current to the end of the previous federal fiscal year. The Annual Update shall provide a summary of the current status of DOE's progress in implementing the STP as required by this Order, including proposed revisions, technology development, funding and other concerns that may affect the implementation of the PV of the STP as required by this Order.

X.2. The annual update to the Background Volume shall quantify the amount of each covered waste remaining in storage at the NTS and the volume treated, shipped off-site or otherwise reduced the quantity of covered waste in the inventory during the previous fiscal year. In addition it shall include any potential alternative commercial treatment and off-site DOE treatment capacity or technology development being considered for potential plan revision.

X.3. The annual update to the Plan Volume shall include a progress report from the end of the previous year describing treatment progress and treatment technology development for each treatment facility and activity scheduled in the PV of the STP.

X.4. The annual update to the Plan Volume shall also contain a description of waste deleted in accordance with the requirements in Part XI., Deletion of Waste; additional or new milestones or interim activity dates and any other changes to the overall schedules in the STP that have been approved by the NDEP and incorporated.

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Part XI. Deletion of Waste

XI.1. Mixed waste will cease to be a covered waste subject to this Order when:

XI.1.a. Documentation is provided that the waste has been received at an off-site facility for treatment, disposal, or storage pending treatment or disposal;

XI.1.b. It is determined by NDEP to no longer be subject to LDR provisions under applicable provisions of RCRA or the Nevada Hazardous Waste Law;

XI.l.c. Documentation is provided that the waste has been treated at an on-site facility.

XI.2. DOE shall provide to NDEP, in the Plan Volume at the time of the next regularly scheduled Site Treatment Plan Update, a description of the waste code and applicable waste form, volumes, and other relevant information regarding deleted waste, including schedules for the shipment of hazardous waste, subject to LDR standards, which was previously identified as mixed waste covered by this Order.

XI.3. DOE anticipates that as it characterizes, sorts and surveys mixed wastes currently in storage at the NTS, it will determine that certain waste previously identified as mixed waste is actually hazardous waste without a radioactive component or radioactive waste without a hazardous component. In those cases where the waste is determined to be a hazardous waste without a radioactive component which is subject to LDR standards, within thirty (30) days these wastes shall be transferred to a hazardous waste storage unit, managed in a 90 day area in accordance with 40 C.F.R. §262, or shipped off-site to a permitted facility.

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Part XII. Revisions to the STP

XII.1. A revision is a substantial change to the PV of the STP that is proposed by DOE/NV. After public comment and in accordance with Section 3021(b) (4) of RCRA as amended by the FFCAct, NDEP shall approve, approve with modifications, or disapprove all revisions in accordance with this Part. All revisions which are approved with or without modifications shall have the appropriate activities and associated schedules incorporated into this Order by NDEP.

XII.2. A revision is:

XII.2.a. The addition of a treatment facility at the NTS;

XII.2.b. The development of treatment technology not previously identified in the PV of the STP and this Order.

XII.2.c. Modification of the PV of the STP proposed alternatives formalized in this Order where waste is shipped for treatment to a location other than the location identified in the PV if such action requires the initiation of regional discussions with affected states and/or would substantially extend a deadline.

XII.2.d. Any other amendment to the PV of the STP which NDEP determines should receive public comment.

XII.3. Revisions shall be made as follows:

XII.3. When DOE proposes a revision, DOE shall provide NDEP with a written proposal which includes:

XII.3.a. A detailed description of the proposed revision;

XII.3.b. The rationale for the proposed revision;

XII.3.c. The expected length of delay in performance that may result from the proposed revision, including all deadlines that would be affected; and,

XII.3.d. Where a proposed revision may result in a delay in performance, DOE shall propose a plan for implementing all reasonable measures to avoid and/or minimize the delay and a schedule for implementing such plan.

XII.4. NDEP will provide DOE with advance written notice of its determination to approve with modifications or disapprove a proposed revision. Such notice will include the rationale for the modification or disapproval. Within thirty (30) days after receipt of the notice, DOE may respond in writing to the notice and shall have the opportunity to discuss the determination with NDEP. This time period may be extended or shortened by mutual agreement of the Parties. All disputes arising from the revision process will be subject to Part XVI Informal Dispute Resolution/Appeal Procedure.

XII.5. In making its determination on a proposed revision, NDEP will make every reasonable effort to issue its decision in a timely manner and in all cases will issue its decision within six months from the date of DOE's proposal for a revision.

XII.6. NDEP shall consult with any other state(s) or Regional office(s) of the U.S. Environmental Protection Agency (EPA) which may be affected by revisions to this Order.

XII.7. When considering proposed revisions to the STP, NDEP shall consider the following factors:

XII.7.a. The need for regional treatment facilities;

XII.7.b. Funding availability;

XII.7.c. New or emerging technologies;

XII.7.d. New technical information that may affect waste treatment options;

XII.7.e. Site priorities identified through consultation among DOE, regulatory agencies and other stakeholders; and

XII.7.f. Any other factors which are relevant.

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Part XIII. Amendments to the Order and STP

XIII.1. Any amendment to the Order and the STP shall be in writing and signed by both Parties. Amendments to the STP, which shall result from an amendment to this Order, shall be considered minor modifications not covered under Part XII and generally not subject to public review and comment.

XIII.2. Amendments to this Order may be proposed by either of the parties.

XIII.3. Amendments to this Order may be proposed for the following reasons, among others:

XIII.3.a. To assure that this Order remains consistent with applicable laws and regulations;

XIII.3.b. To assure that this Order is consistent with changed circumstances.

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Part XIV. Enforceability/Reservation of Rights

XIV.1. Compliance with the terms and conditions of this Order shall stand in lieu of any administrative or judicial remedies that may be taken for matters covered by this Order.

XIV.2. Except as described in paragraph XV.2, NDEP reserves the right to bring any enforcement action against DOE for noncompliance with the terms and conditions of this Order, including actions to compel completion of a deficient activity.

XIV.3. For all matters outside the scope of this Order, NDEP, within the scope of its authority, reserves the right to bring enforcement actions against any person.

XIV.4. DOE intends to be legally bound by this Order and agrees that the terms and conditions of this Order are enforceable as provided herein.

XIV.5. Nothing in this Order shall be construed to affect any criminal investigations or criminal liability of any person(s) for activities at the NTS.

XIV.6. Nothing in this Order shall constitute, or be construed as a release from any claim, cause of action, or demand in law or equity against any individual, firm, partnership, or corporation not directly identified in this Order for any liability it may have arising out of, or relating in any way, to the generation, storage, treatment, handling, transportation, release, or disposal of mixed waste located at the NTS for matters not covered by this Order.

XIV.7. Nothing in this Order shall constitute or be construed as a waiver by DOE of any claim of jurisdiction over matters related to the covered wastes which may be reserved to DOE by law under the Atomic Energy Act, 42 U.S.C. § 2011 *et seq.*

XIV.8. The Parties reserve their appeal rights as set forth in, Part XVI., Informal Dispute Resolution and Appeal Procedure.

XIV.9. In the event of administrative or judicial action, all parties reserve all rights, claims, and defenses available under the law.

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Part XV. Stipulated Penalties

XV.1. Stipulated penalties shall be incurred by DOE in the event that DOE fails to meet a deadline established by NDEP in this Order.

XV.2. In the event DOE fails to meet an established deadline contained herein, NDEP may assess a stipulated penalty in the amount of $5,000.00 per week for the first week or part thereof of such failure, $10,000.00 per week for the following week or part thereof of such failure, and $15,000.00 per week for the third and each succeeding week for which the failure to meet an established deadline occurs.

XV.3. NDEP shall notify DOE in writing of any alleged failure to meet an established deadline.

> XV.3.a. If NDEP's written notice of a missed deadline cites that the specified deadline was not met, evidence supporting this alleged defense must be submitted to NDEP within thirty (30) calendar days from the date of receipt of NDEP's written notice unless otherwise agreed. No penalty shall be assessed if NDEP accepts DOE's defense. If NDEP rejects the defense, DOE shall be assessed the stipulated penalty from the date of the missed deadline, and DOE may initiate the appeal procedure in accordance with Part XVI.2.
>
> XV.3.b. If a milestone for which a deadline has been established is construed by NDEP to be substantially deficient, and therefore not complete, NDEP shall issue a written Notice of Deficiency to DOE that cites the alleged deficiencies. If DOE accepts NDEP's position, DOE shall, within twenty-one (21) calendar days of receipt of the Notice of Deficiency or such longer time period as specified by NDEP, correct the deficiencies and resubmit or otherwise complete the milestone for which the deadline was established. Any stipulated penalty(ies) connected to failure to meet the established deadline shall begin upon DOE's receipt of the Notice of Deficiency. The penalty(ies) shall accrue during such twenty-one (21) calendar days, or otherwise specified period, and may, at NDEP's discretion, be waived unless the resubmitted deliverable or completed milestone is determined by NDEP to remain substantially deficient. If DOE is aggrieved by either NDEP's original or subsequent determination of substantial deficiency, DOE may initiate the appeal procedure in accordance with paragraph XVI.2.

XV.4. Stipulated penalties will continue to accrue and may be assessed at NDEP's discretion during pursuit of remedies contained in Part XVI., Informal Resolution and Appeal Procedure, except accrual of such penalties shall be suspended during any period of time in excess of fourteen (14) calendar days required by NDEP to render its decision under paragraph XV.3 or XVI.2.a. DOE is responsible for stipulated penalties only for the time ultimately determined to be deficient, and stipulated penalties are to be paid within 30 days of a final determination of deficiency unless the parties agree to a different schedule.

XV.5. The provisions of this Part shall not affect DOE's ability to petition NDEP for an extension of a deadline as appropriate as set forth in Part XVII., Extensions.

XV.6. Stipulated penalties for failure to meet established deadlines contained herein are in lieu of statutory penalties otherwise available under the law. For statutory or regulatory violations for actions or outside the scope of this Order, all remedies available to NDEP may be invoked.

XV.7. Payment of any stipulated penalty does not relieve DOE of any other requirements imposed by this Order.

XV.8. Any failure of DOE to remit a stipulated penalty within thirty (30) calendar days after the stipulated penalty is due and payable, unless the Parties agree to a different payment schedule, shall, to the extent allowed by law, cause the addition of interest on the unpaid balance compounded daily at a rate equal to the rate of interest fixed for 1-year United States treasury bills on the date of the commencement of the action, as reported in the "Federal Reserve Bulletin" published by the Board of Governors of the Federal Reserve System or other commonly used business or financial publication. In the event payment of interest is not allowed by law, DOE shall, to the satisfaction of NDEP, establish the basis of this position.

XV.9. Stipulated penalties that are due and payable shall be paid to the State of Nevada, Division of Environmental Protection.

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Part XVI. Informal Dispute Resolution and Appeal Procedure

XVI.1. Both parties to this Order shall make reasonable efforts to informally resolve outstanding issues and/or disputes. During the informal dispute resolution process, the parties shall meet as many times as necessary to discuss and attempt resolution of the dispute. If resolution at the Project Manager level cannot be reached, efforts may be elevated to immediate supervisors or, if necessary, to the agency executive level. If resolution cannot be achieved informally, the appeal procedures of this Part may be implemented.

XVI.2. In the event DOE is aggrieved by a written determination by NDEP, DOE may appeal the matter as follows:

> XVI.2.a. Within fifteen (15) calendar days following DOE's receipt of NDEP's determination being appealed, DOE shall request an informal administrative hearing. Seven calendar days prior to the informal administrative hearing, DOE shall provide NDEP with a witness list, list of exhibits, and summary of evidence intended to be presented. The informal administrative hearing shall be held in the NDEP offices within thirty (30) calendar days of the request, unless otherwise agreed. Following the informal administrative hearing, the NDEP administrator shall issue the final decision.
>
> XVI.2.b. If the informal administrative hearing fails to resolve the issue, DOE may, within twenty (20) calendar days following receipt of the NDEP administrator's final written decision, appeal the administrator's decision to the Nevada State Environmental Commission (SEC). The appeal is made by filing SEC Form #3 with the Secretary of the SEC. SEC Form #3 will be enclosed with the decision document referenced in paragraph XVI.2.a.
>
> XVI.2.c. A hearing before the SEC shall be conducted within twenty (20) calendar days pursuant to the Nevada Administrative Procedure Act, NRS 233B.010 *et seq.* and the Rules of Practice and Procedure of the SEC, NAC 445.980 through 445.995.

XVI.3. Either of the parties may appeal the final decision of the SEC as provided for in paragraph XVI.2.c by filing a petition for judicial review pursuant to NRS 233B.010 *et seq.*

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Part XVII. Extensions

XVII.1. NDEP shall grant a reasonable extension of a deadline upon receipt of a timely written request from DOE and when NDEP determines that good cause exists for the requested extension. Extensions, although they can be, are not automatically to be considered Revisions under this Order. Any request for extension shall specify:

XVII.l.a. The deadline that is sought to be extended;

XVII.l.b. The length of the extension sought;

XVII.1.c. The good cause(s) for the extension; and

XVII.1.d. Any and all related schedule(s) or deadline(s) that would be affected if the extension were granted.

XVII.2. Good cause for an extension may exist for:

XVII.2.a. An event included in Part XXIV., Force Majeure;

XVII.2.b. A delay caused by, or likely to be caused by, the granting of an extension in regard to another deadline;

XVII.2.c. Any event or series of events mutually agreed to by DOE and NDEP as constituting good cause.

XVII.2.d. Any factor identified in Part XII.7.

XVII.3. NDEP shall, in writing, grant or deny a written request for an extension within thirty (30) calendar days from the date of receipt of the written request.

XVII.4. NDEP may grant the extension for less time than originally requested if it determines that the shorter extension is reasonable in light of the good cause.

XVII.5. If NDEP denies the requested extension, or approves an extension but modifies the length of time requested for the extension, it will include in its written statement of denial or modification an explanation of the basis for its position.

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Part XVIII. Access

XVIII.l. Subject to DOE security requirements, applicable health and safety plans, and health and safety officers' instructions, NDEP personnel, with appropriate safety and security clearances, shall have authority to enter work sites and DOE/NV facilities during normal business hours with or without advance notification. Following notification of DOE, NDEP shall to the extent authorized by law have authority to enter contractor facilities to review applicable records and information. Access may be sought for the following purposes among others:

XVIII.1.a. Inspection of records, operating logs, contracts, and other documents related to implementation of this Order;

XVIII.1.b. Reviewing the progress of DOE in implementing the terms and conditions of this Order;

XVIII.1.c. Verification of data related to implementation of this Order; and

XVIII.1.d. Observation of Order-related work in progress.

XVIII.2. Escorts of NDEP personnel to restricted areas where work related to this ORDER is being undertaken shall not be required where facility/locality-specific security, health, and safety requirements are understood and adhered to by the unescorted NDEP personnel. Unescorted NDEP personnel shall sign a release of liability before undertaking any unescorted visit of a restricted site.

XVIII.3. No reasonable access shall be denied NDEP personnel with appropriate certifications and clearances on Order-related business. If access is denied, the stated reasons for any denial of access to NDEP personnel to any of the facilities or to any of the localities shall be provided to NDEP within one (1) business day.

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Part XIX. Classified and Confidential Information

XIX.1. Personnel designated by NDEP as requiring DOE "Q" clearances who have subsequently been issued such "Q" clearances by the DOE shall be eligible for access to classified information on a "need to know" basis. Only responsible DOE officials, with the authority to do so, may make the determination of the "need to know." Recipients of the information are responsible for protecting all classified information to which they have access or custody. DOE shall provide within ten (10) business days of such refusal a written determination to NDEP requests for information related to the Order for which they have determined that a "need to know" is not justified. The time frame for this determination is hereby established as a mandatory requirement. The response shall be complete and specific as to the information that is nondisclosable.

XIX.2. Those data, documents, records, or files that are nondisclosable pursuant to applicable privileges and laws including the Freedom of Information Act, 5 U.S.C. §552, and the Privacy Act of 1972, 5 U.S.C. §552(a), unless expressly authorized for release by the originating party, shall be handled in accordance with those provisions of law and any implementing regulations. Upon submission of reports, letters, or other Order-related writings to NDEP, DOE shall identify any materials determined by DOE to be exempt from public disclosure pursuant to the Freedom of Information Act and to the extent required by state law, such materials shall be handled as exempt from public disclosure by NDEP. NDEP will notify the appropriate party within 30 days of its intent to release the information should a determination to release the information be made.

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Part XX. Obligations of DOE

XX.l. DOE shall take all necessary steps as set forth in paragraphs XX.3-XX.5 to obtain timely funding to meet its obligations under this Order through consultation with NDEP and the submission of timely budget requests.

XX.2. In accordance with the DOE rules and policies applicable to the release of budgetary/contracting information (in effect at the time of the signing of this Order), DOE shall make the scope of work and the Programmatic budgets to be used in implementing the terms of this Order available to NDEP. Upon request by NDEP, DOE shall also provide to NDEP the identity, scope of work, and Order-related budgets of any entity or agency performing work related to this Order.

XX.3. Prior to the annual submission of DOE Nevada Operations Office budget request for FY+2 to DOE Headquarters, NDEP shall be given the following:

> XX.3.a. Briefings on the proposed budget requests for waste management for the NTS facilities, any supporting documents, and target funding levels for waste management for the NTS facilities, including an assessment of any impacts on this Order.
>
> XX.3.b. The opportunity to review, comment, and make recommendations on the priorities and budget request.

XX.4. DOE shall, to the extent it deems appropriate, revise its FY+2 budget requests and supporting documents to address or resolve NDEP's comments and recommendations prior to transmittal to its Headquarters. DOE shall forward to DOE Headquarters with its budget requests any comments not fully resolved to the satisfaction of either party related to activities for which deadlines have been established in this Order along with the projected budget requirements for such activities.

XX.5. DOE Headquarters shall forward to the Office of Management and Budget for consideration, its FY+2 budget request along with any unresolved comments and additional activities with related budget requirements identified by NDEP pursuant to paragraph XX.4.

XX.6. NDEP agrees not to release confidential budget information to anyone prior to submission by the President of his Budget Request to Congress, unless authorized by DOE or required to do so by court order. DOE may seek to intervene in any proceeding brought to compel or enjoin release of this information. If allowed to intervene, DOE shall assert its interest in and the legal basis for, maintaining the confidentiality of this information.

XX.7. After submission to Congress DOE will provide to NDEP sections of the President's Budget Request to Congress pertaining to mixed waste activities on the NTS in a timely manner. DOE shall notify NDEP of any differences between the proposed budget requests submitted in accordance with paragraph XX.4 and the actual requests included in the President's Budget Request to Congress.

XX.8. If funding has been requested as described in paragraphs XX.2 through XX.5 and in the event that the U.S. Congress has failed to appropriate the funds requested for Order-related milestones, and deadlines, the Parties shall review the level of presently available appropriated funds and the estimated cost of meeting all obligations and requirements under this Order. DOE shall transmit to NDEP for its review a proposed alternate schedule and level of activities to satisfy the terms and conditions of this Order. If agreement cannot be reached on an alternate schedule and if NDEP does not approve a modified alternate schedule and level of activity, the appeal procedure contained in

paragraph XVI.2 will be followed.

XX.9. The extent to which all of NDEP's costs for inspections of the facilities to determine compliance with this ORDER, which are recoverable in accordance 42 U.S.C. §6961(a), and the costs associated with the permitting of new facilities continues to be compensated for by DOE through other processes, those costs will not be reassessed for matters related to this Order.

XX.10. If DOE fails to comply with the terms of this Order NDEP may pursue all available remedies to ensure performance and compliance.

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Part XXI. Notification and Agency Coordination

XXI.1. Documents shall be sent to NDEP in a manner designed to be received by the date due in either the Carson City or Las Vegas office. Formal requests by any party shall be in writing.

XXI.2. Unless otherwise specified by written notice to the project managers, any report, document, or submittal provided to NDEP, pursuant or developed under the provisions of this Order, shall be sent to:

Chief
Bureau of Federal Facilities
Division of Environmental Protection
333 West Nye Lane
Carson City, Nevada 89710

with an additional copy provided concurrently to:

Bureau of Federal Facilities
Division of Environmental Protection
555 E. Washington, Suite 4300
Las Vegas, Nevada 89101

XXI.3. Unless otherwise specified by written notice from DOE to NDEP's project manager, documents sent to DOE relating to this Order shall be sent to:

Director, Waste Management
U.S. Department of Energy
Nevada Operations Office
P. 0. Box 98518
Las Vegas, Nevada 89193-8518

with an additional copy provided concurrently to:

Director, Environmental Protection Division
U. S. Department of Energy
Nevada Operations Office
P. 0. Box 98518

Las Vegas, Nevada 89193-8518

XXI.4. Within thirty (30) calendar days of the effective date of this Order, the parties shall notify each other in writing of the names and addresses of their respective project managers who shall be the usual day-to-day points of contact for the parties.

XX.I.5. Each project manager shall be responsible for overseeing the day-to-day implementation of the provisions of this Order for his/her respective party.

XXI.6. Each project manager oversees the party's activities relating to the management of mixed waste in accordance with this Order and shall be responsible for assuring that all communications from the other party are appropriately disseminated and processed within his/her own organization.

XXI.7. Changes in either of the parties' project managers and their designees shall be followed by written notification to the other party within ten (10) calendar days following the change(s).

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Part XXII. Retention of Records

XXII.1. DOE shall establish and maintain a compilation of all work plans, data reports, other data, inspections reports, and other writings generated pursuant to this Order in accordance with DOE records retention procedures.

XXII.2. Such information shall be available to NDEP upon request and shall form the basis for information to be included in the NDEP's Administrative Record. NDEP shall maintain the Administrative Record in accordance with the requirements of NRS Chapter 239.

XXII.3. DOE shall notify NDEP at least one hundred eighty (180) calendar days prior to the proposed destruction or disposal of any such documents or records related to this ORDER.

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Part XXIII. Severability

XXIII.1. If any provision of this Order or is ruled invalid, unenforceable, unlawful, or unconstitutional by a court of competent jurisdiction, the remainder of this Order shall not be affected by such ruling.

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Part XXIV. Force Majeure

XXIV.1. A Force Majeure shall mean an event arising from unforeseeable factor (s) that is (are) beyond the control of DOE and/or its contractors, subcontractors, and/or operators, which causes delay, or prevents the performance of any task specified under this Order. Force Majeure may include:

XXIV.1.a. Adverse weather conditions, natural disasters, or events that affect the site or non-site locations, preventing or delaying the transportation or delivery of materials or the availability of labor, that could not reasonably be anticipated;

XXIV.l.b. Unanticipated breakage or accident to machinery, equipment, or lines of pipe despite reasonably diligent maintenance;

XXIV.1.c. Restraint by court order or order of public authority;

XXIV.1.d. Inability to obtain, consistent with statutory requirements and after exercise of reasonable diligence, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority other than the DOE;

XXIV.1.e. Delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and

XXIV.1.f. Any strike or other labor dispute not within the control of the parties thereby affected.

XXIV.2. DOE asserts that its ability to meet obligations under this Order is subject to the Anti-Deficiency Act, 31 U.S.C. §1341, such that unavailability of funding provides a defense pursuant to this Part. Nothing in this Order shall be construed to require a DOE official to violate the Anti-Deficiency Act. NDEP does not recognize that the Anti-Deficiency Act constitutes a Force Majeure or in any way constitutes a defense or an excuse for failure to comply with the terms and conditions of this Order and applicable state and federal laws and requirements. Nothing in this Order shall be construed to authorize a DOE official to violate environmental laws or regulations.

XXIV.3. DOE shall bear the burden of establishing that a delay was caused by an unforeseen or unexpected event or occurrence; that the event was beyond the control of DOE; that the event could not have been avoided or overcome by due diligence; and that the event delayed or prevented performance by a date or in the manner required by this Order.

XXIV.4. To assert a claim of Force Majeure, DOE shall provide verbal notification to the program manager after DOE becomes aware, of the effect of the event on DOE's ability to perform the obligations of the Order creating the claim of Force Majeure, followed by written confirmation. Failure to assert a claim of Force Majeure shall constitute a waiver of DOE's right to dispute any denial of an extension request or assessment of stipulated penalties on the basis of the event giving rise to the Force Majeure.

XXIV.5. NDEP shall accept, accept in part, or reject DOE's claim of Force Majeure within fourteen (14) calendar days of receipt of the written notice of claim. If DOE disagrees with NDEP's rejection on such claim, the dispute resolution and appeal process contained in Part XVI, Informal Dispute Resolution and Appeal Procedure may be initiated. For disputes on Force Majeure issues, if the dispute is not resolved during the dispute resolution process set forth in paragraph XVI.2., the parties agree that the DOE may seek judicial review of the decision of the SEC in Federal District Court for Nevada.

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Part XXV. Effective Date of Order

XXV. 1. The effective date of this Order shall be the date on which the last party to do so becomes a signatory to this Order.

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Part XXVI. Duration/Termination

XXVI.l. Upon satisfactory completion, as determined by NDEP, of a given portion of the milestones and deadlines contained herein, NDEP shall issue a Notice of Completion to DOE for completion of deadlines.

XXVI.2. When all the terms and conditions of this Order shall be considered, by NDEP, to have been satisfied by DOE, written notice of the same will be forwarded from NDEP to DOE and such written notice will terminate this Order.

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Part XXVII. Mutuality to Draft Consent Order

XXVII.1. All terms of this Consent Order have been negotiated and mutually drafted by the parties hereto, including consultation and review by counsel.

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Part XXVIII. Signatories

XXVIII.l. The undersigned representatives certify that they are fully authorized to sign this Order and to execute and legally bind their respective parties hereto.

FOR THE STATE OF NEVADA:

BY: L.H. Dodgion, Administrator Date: 3/11/96
Nevada Division of Environmental Protection

FOR THE DEPARTMENT OF ENERGY:

BY: Terry A. Vaeth, Manager Date: 3/27/96
Nevada Operations Office

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