BEFORE THE HAZARDOUS MATERIALS AND WASTE MANAGEMENT DIVISION

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

STATE OF COLORADO

COMPLIANCE ORDER ON CONSENT **Number: 97-08-21-02**

IN THE MATTER OF ROCKY FLATS ENVIRONMENTAL TECHNOLOGY SITE

This Compliance Order on Consent ("Order on Consent") is issued and entered into by and among the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division (the "Department") pursuant to the Department's authority under § 25-15-308(2), C.R.S. of the Colorado Hazardous Waste Act (the "Act"), §§ 25-15-301 to 316, C.R.S., and the Colorado Hazardous Waste Regulations 6 CCR 1007-3 (the "Regulations"); the United States Department of Energy ("DOE"); and Kaiser-Hill Company, L.L.C. ("K-H"). The Department, DOE and K-H may be referred to collectively as the "parties." This Order on Consent arises out of activities conducted at the Rocky Flats Environmental Technology Site in Golden, Colorado (the "RFETS" or the "Facility").

STATEMENT OF PURPOSE

The mutual objectives of the parties in entering into this Order on Consent are:

1. to establish compliance requirements and schedules for the implementation of a "Waste Chemical Project Plan" (the "Waste Chemical Plan") at RFETS.

2. to resolve violations of the Act and the Regulations included herein identified during the Department's inspections through the effective date of this Order on Consent concerning waste chemical management at RFETS and identified through information provided by DOE and K-H.

BACKGROUND INFORMATION and FACILITY DESCRIPTION

3. The following constitute the factual and legal determinations that the Department considers the basis for this Order on Consent.

4. Pursuant to § 3006(b) of the Resource Conservation Recovery Act ("RCRA"), 42 U.S.C. § 6962(b), on November 2, 1984, the Administrator of the United States Environmental Protection Agency ("EPA") authorized the State of Colorado to administer and enforce the State hazardous waste program in lieu of the Federal program. The EPA authorized the State to administer and enforce certain portions of the Hazardous and Solid Waste Amendments Act on July 14, 1989.

5. The Facility is located in northern Jefferson County, Colorado, approximately sixteen (16) miles northwest of Denver, and it is owned by the United States.

6. The Facility is part of the DOE nuclear weapons complex. The United States Atomic Energy Commission, a predecessor agency to the DOE, established the Facility in 1951 and began operations in 1952. The Facility was used for the production of components for nuclear weapons until 1989 at which time DOE placed the Facility in a standby condition. In 1994, the DOE determined that this Facility is no longer needed and would be closed. The Facility is operated by DOE and its contractors.

7. On or about August 18, 1980, DOE and its then contractor, Rockwell International, submitted a Notice of Hazardous Waste Activity to the EPA pursuant to § 3010 of RCRA. DOE and Rockwell identified themselves as engaged in the generation, treatment, storage and/or disposal of hazardous waste at the Facility. On or about November 14, 1980, DOE and Rockwell submitted a RCRA Part A permit application to EPA in order to qualify for RCRA interim status. DOE and Rockwell International subsequently submitted a RCRA Part B application to the Department, and the Department issued a Part B permit to DOE and its then contractor, EG&G Rocky Flats, Inc. ("EG&G").

8. In January 1990, EG&G replaced Rockwell International as DOE's management and operating contractor for the Facility. On July 1, 1995, K-H assumed certain responsibilities at the Facility pursuant to their contract with DOE. K-H, as an integrating management contractor for DOE, subcontracts various functions to other contractors. K-H and some of their subcontractors have certain responsibilities for hazardous waste management at the Facility. DOE may also contract or enter into agreements with other entities to perform hazardous waste functions at the Facility.

9. Since July 1, 1995, DOE, K-H and certain of their subcontractors have operated the Facility.

10. DOE is a department of the United States government and is subject to state regulation of its hazardous waste management activities pursuant to § 6001 of RCRA, 42 U.S.C. § 6961. DOE is the "owner" of RFETS, a hazardous waste treatment, storage and disposal facility, as those terms are defined in 6 CCR 1007-3, § 260.10. The RFETS is a "facility" as that term is defined in 6 CCR 1007-3, § 260.10. DOE and K-H are each "operators" of RFETS, as that term is defined in 6 CCR 1007-3, § 260.10.

11. Prior to 1993, and as a result of the Department's inspections, DOE and EG&G prepared and adopted the Excess Chemical Management Program, which was implemented at the Facility by the Excess Chemical Management Procedure, document 1-G35-WMM-001, and its predecessor documents (the "Procedure"). In July 1995, K-H adopted the Procedure. During 1996, K-H and DOE notified the Department that wastes had been inappropriately characterized. K-H and DOE subsequently created, implemented and managed a Waste Chemical Project.

LEGAL DETERMINATIONS

12. DOE and K-H failed to make adequate hazardous waste determinations for some waste chemicals on site at the Facility, in violation of 6 CCR 1007-3, §262.11.

13. DOE and K-H stored some waste chemicals that are hazardous wastes on site at the Facility for longer than ninety (90) days in areas that do not have a permit or interim status for such storage, in violation of §25-15-308(1)(b), C.R.S. and 6 CCR 1007-3, §100.10.

14. On April 15, 1996, a employee of Safe Sites of Colorado, L.L.C., a subcontractor to K-H, treated a reactive chemical at the Facility without first obtaining an emergency permit, in violation of §25-15-308(1)(b), C.R.S. and 6 CCR 1007-3, §100.10.

15. On April 15, 1996, DOE and K-H, by failing to appropriately manage a reactive chemical, failed to operate the Facility in a manner designed to minimize the possibility of an explosion, which would have threatened human health, in violation of 6 CCR 1007-3, §§262.34(a)(4) and 265.31(a).

16. In February, 1997, DOE and K-H failed to conduct weekly inspections of trucks/trailers where containers of hazardous waste were stored at the facility in violation of 6 CCR 1007-3, §§262.34(a)(1) and 265.174.

17. In February, 1997, DOE and K-H failed to clearly mark or label containers accumulating hazardous waste with the words "Hazardous Waste" in violation of 6 CCR 1007-3, §262.34 (a)(3).

ORDER ON CONSENT

18. Based on the foregoing factual and legal determinations, and pursuant to its authority under §25-15-308(2), C.R.S., the Department orders and, in full accord and satisfaction of the violations of the Act and the Regulations specifically addressed herein, the DOE and K-H agree to comply with all provisions of this Order on Consent including the requirements set forth below.

19. Notwithstanding anything to the contrary herein, the DOE and K-H do not admit to any of the factual or legal determinations made by the Department herein, and any action undertaken by DOE and K-H pursuant to this Order on Consent shall not constitute an admission of liability by DOE and K-H with respect to the conditions of the Facility. DOE and K-H also reserve their rights to contest any factual or legal determination and to assert defenses regarding liability in any proceeding other than one brought to enforce or construe this Order on Consent.

Compliance Order Requirements

20. Upon the effective date of this Order on Consent, DOE and K-H shall implement the Waste Chemical Plan in accordance with its provisions.

21. The Waste Chemical Plan provides for the management, storage and disposal of waste chemicals located at the Facility. The activities in the Waste Chemical Plan shall be completed by no later than December 31, 1999, except as to Excluded Chemicals, which are defined in paragraph 22 below. The December 31, 1999 date shall be enforceable under this Order on Consent. The Waste Chemical Plan shall include, as Appendix 1, a schedule by which waste chemicals in the buildings and associated structures at the Facility ("Facility Group") shall be in compliance with the Act and the Regulations (the "Facility Schedules").

    1. The Facility Schedules are a planning tool. Except as is detailed in paragraph 21.2, neither the Facility Schedules or changes thereto are enforceable either directly through this Order on Consent or through the application of the Act or Regulations. Changes to the Facility Schedules shall be submitted to the Department for its information.

    2. Except for Excluded Chemicals, the first nine Facility Groups shall be in compliance with the Act and the Regulations no later than June 30, 1999. This date is enforceable through the application of the Regulations to the Facility Groups. DOE or K-H shall notify the Department in writing as each Facility Group is completed. The notification shall include a listing of Excluded Chemicals for that Facility Group.

22. The Waste Chemical Plan shall exclude from the Facility Schedules the below-described waste chemicals or areas in which waste chemicals may be present ("Excluded Chemicals"), which shall be dispositioned in accordance with the decommissioning of the respective buildings or associated structures.

1. Chemicals Located in B-Boxes or Gloveboxes: Removal of chemicals located in B-boxes and/or gloveboxes will be deferred to decommissioning in cases where, to access the chemicals, upgrades to the box are required (e.g., glove changes, magnahelic calibration, authorization basis changes, or airflow adjusts) to bring the box into operational status. However, DOE's or K-H's project manager shall promptly notify the Department's project manager if any of the following situations occur: (I) a box containing waste chemicals must be accessed for any reason prior to decommissioning, and the access allows for the removal of the waste chemical; (II) a potentially shock-sensitive, explosive or reactive chemical is found in a box; (III) an imminent safety issue warrants upgrade of a box; or (IV) other relevant, significant factors warrant the removal of a waste chemical. The project managers shall discuss whether the waste chemical in these situations should be removed from the box, and if so, the timing of its removal.

2. Chemicals Located in High Radiation Areas, Very High Radiation Areas, High Contamination Areas or Airborne Radioactivity Areas: Removal of chemicals located in these areas, as defined by applicable DOE orders, will be deferred to decommissioning in order to reduce radiation exposure. These areas may include vaults, plenums and rooms requiring supplied air for access. In the event any of these areas must be accessed, DOE's or K-H's project manager shall notify the Department's project manager and discuss whether the chemical can and should be removed from the area.

3. Chemicals Remaining in Tank Systems: As much of a waste chemical as possible will be removed from tank systems using the existing ancillary equipment, without disassembly or other specialized method for draining (i.e., the system will be operationally empty). The removal of any residue of waste chemicals remaining in tank systems will be deferred to decommissioning.

4. Workers' Safety: In situations where the workers' safety may be at risk, DOE's or K-H's project manager may also propose to the Department's project manager that a specific chemical be identified as an Excluded Chemical and its removal deferred to decommissioning. Examples of safety concerns include risk of beryllium contamination or an excessive radiation exposure. The project managers shall discuss the proposal.

23. Excluded Chemicals shall be identified in an Appendix to the Waste Chemical Plan. DOE or K-H shall prepare the Appendix as the Waste Chemical Project is completed in each

Facility Group described in Appendix 1. The Appendix shall include ongoing inspection requirements for the Excluded Chemicals, which shall be approved by the Department's project manager. The inspection requirements defined in the regulations shall be included in the Appendix unless an alternative inspection protocol is proposed by DOE or K-H and approved by the Department. The Waste Chemical Plan shall require safety-related documents to include appropriate provisions for accessing areas that may contain Excluded Chemicals.

24. The parties' project managers are expected to discuss issues, proposals, or problems in a timely manner after issues arise. The parties' project managers shall meet, discuss and resolve, if possible, the issue presented. If the project managers are unable to reach agreement among themselves within five (5) business days, the Department's project manager shall make a written determination on the issue no later than ten (10) business days of being notified of the issue. If DOE or K-H disagrees with the determination, either DOE or K-H may refer the issue, in whole or part, to dispute resolution in accordance with the dispute resolution provisions of this Order on Consent.

25. DOE and K-H shall annually submit to the Department, for information only, a written status report on the progress of the Waste Chemical Plan's implementation, with the first report due on July 1, 1998. On a quarterly basis, beginning on October 1, 1997, DOE and K-H shall provide the Department with oral status reports on the Waste Chemical Plan's implementation.

IMPLEMENTATION AND FUNDING PROVISIONS

26. In order to assure effective performance of the requirements of this Order on Consent, the parties have agreed to recognize the following division of responsibilities between DOE and K-H for purposes of complying with the terms of this Order on Consent.

    1. The DOE acknowledges its responsibility for hazardous waste management activities at the Facility, including sole responsibility for funding, policy, capital expenditures and programmatic decisions.

    2. K-H acknowledges its responsibility for hazardous waste management activities as being governed by its contract with DOE.

27. In the event K-H is unable to comply with the requirements of this Order on Consent due to the lack of timely and adequate funding by DOE for the particular requirement at issue, K-H shall not be required to provide funding itself or obtain funding from other sources in order to complete performance. K-H shall bear the burden of proving that the lack of funding is due to factors beyond K-H's control.

28. DOE may contract or enter into other types of agreements with entities other than K-H to conduct some of the work necessary to fulfill the requirements of this Order on Consent. K-H shall have no responsibility or liability under this Order on Consent for any work performed or to be performed by any such entity.

29. On July 19, 1996, DOE, the Environmental Protection Agency, and the Department entered into the Rocky Flats Cleanup Agreement ("RFCA"). In RFCA, DOE and the Department recognized that many activities at RFETS are interrelated, and that efficient use of tax dollars demands integrated management and regulation of all RFETS activities. To further that goal, the RFCA parties agreed to procedures for meaningful regulator involvement in RFETS' budget planning and prioritization, even for activities not regulated under RFCA. To implement these procedures effectively, the Department agreed to coordinate its decisions under permits, orders and agreements not regulated under RFCA with the budget planning procedures set forth in RFCA (see RFCA paragraph 63). Consistent with RFCA paragraph 63, the Department will coordinate its regulatory decisions under this Order on Consent through the RFCA budget planning process. Nothing in this paragraph limits or impairs the Department's authority to impose requirements that it believes necessary to protect human health or the environment, or otherwise ensure compliance with regulatory requirements.

30. If appropriated funds allocated for any fiscal year for waste management activities at the Facility are not available to fulfill DOE's and K-H's obligations under this Order on Consent, DOE's or K-H's project manager shall promptly notify the Department's project manager.

31. The Parties agree that in any administrative or judicial proceeding seeking to enforce the requirements of this Order on Consent, DOE may raise as a defense that any failure or delay was caused by the unavailability of appropriated funds. In particular, nothing herein shall be construed as precluding DOE from arguing either that the unavailability of appropriated funds constitutes a force majeure, or that no provisions of this Order on Consent shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1301 or 1341, or the Atomic Energy Act, 42 U.S.C. §2201. While the Department disagrees that an Anti-Deficiency Act defense, or any other defense based on lack of funding exists, the Department and the DOE agree the issue is not ripe for adjudication.

IMPLEMENTATION OF AND CHANGES TO WORK TO BE PERFORMED

32. Each party shall designate in writing, within twenty-one (21) business days of the effective date of this Order on Consent, a project manager. Any party may change its project manager by notice to the other parties.

33. No plan submitted to the Department under this Order on Consent for its review and approval may be implemented by DOE or K-H unless and until the Department's project manager responsible for implementation of this Order on Consent approves the plan. The Department's project manager may orally approve a plan, but must acknowledge this approval by written confirmation within two (2) business days.

34. The parties expressly acknowledge their intent to minimize disputes by participating in a consultative process for all requirements under this Order on Consent, including documents, modifications to documents, and changes to schedules requiring the Department's approval. The parties acknowledge the difficulty of planning and implementing work at the Facility because of the presence of radioactive constituents. The parties agree to try to resolve problems as early and as quickly as possible, using the following process.

1. Within ten (10) business days of DOE's or K-H's learning an extension of time may be required for the June 30, 1999 or December 31, 1999 dates, or for a document due hereunder, DOE or K-H's project manager shall notify the Department's project manager of the delay, the reason therefor, plans for or results of actions taken to mitigate the delay, and shall request an extension of time. The Department's project manager shall respond to the request as soon as is reasonably practicable but no later than ten (10) business days after the request is made. If the Department's project manager agrees the delay is either reasonable or constitutes a force majeure, the scheduled date or document due date shall be changed, and the Department shall confirm the approval in writing within seven (7) business days. A reasonable delay shall include extensions required due to events or circumstances, not constituting a force majeure, that cause the failure of one or more of the reasonable assumptions specified in the approved Waste Chemical Plan, except for availability of allotted funding, that underlie the planned means or schedule for accomplishing the work. A force majeure is defined as any event arising from causes that are unexpected or not reasonably foreseeable, are beyond the control of DOE or K-H, cannot be avoided or overcome by due diligence, and which causes a delay in or prevents the performance of an obligation. Force majeure shall include DOE's or K-H's failure to obtain, after timely application and exercise of due diligence, a necessary permit or other authorization due to the action or inaction of a governmental authority other than DOE. If the Department's project manager rejects the request for an extension of time or disagrees with proposed plans for mitigation actions, the Department shall provide DOE and K-H with a written explanation of its determination, specifically setting forth its reasons. DOE or K-H may refer the issue, in whole or part, to dispute resolution in accordance with the provisions below.

2. DOE or K-H's project manager may request modifications to the Waste Chemical Plan by providing a draft of the document to the Department's project manager for his/her review. The project managers shall meet, discuss and resolve, to the extent

possible, the Department's comments, if any. If all comments are resolved, the document shall be submitted to the Department with a letter stating the document has been pre-approved by the Department's project manager. If all comments are not resolved, the document shall be submitted to the Department in accordance with the following paragraph.

3. For any new document requiring the Department's approval, DOE or K-H shall submit the document to the Department. Within twenty-one (21) business days of the document's delivery to the Department, the Department shall do one of the following: (a) approve the document, (b) approve the document with modifications, or (c) disapprove the document. In approving with modifications or disapproving the document, the Department shall provide sufficiently specific written comments to DOE and K-H so that DOE and K-H can make the appropriate changes. The Department's comments shall also specify a reasonable time, in light of the nature of the comments, by which DOE and K-H must submit the revised document. The time may be extended by mutual agreement of the parties. Within twenty-one (21) business days of delivery of the revised document to the Department, it shall review the document and either approve, modify or disapprove it in accordance with (a), (b) or (c) above. In the event DOE or K-H disagrees with the Department's determination modifying a revised document, the issue may be referred to the dispute resolution provisions below. Disapproval of a revised document is not subject to dispute resolution.

FACILITY ACCESS AND SAMPLING

35. The Department shall be permitted to oversee any and all work being performed under this Order on Consent. The Department shall be permitted access to the Facility at any time work is being conducted pursuant to this Order on Consent, and during reasonable business hours when work is not being conducted, for the purposes of determining DOE's and K-H's compliance with this Order on Consent. The Department shall be permitted to inspect work sites, operating and field logs, contracts, manifests, shipping records, and relevant records and documents relating to this Order on Consent or any requirement under this Order on Consent. To facilitate access to any particular building at the Facility, the Department shall provide DOE's and K-H's project manager with reasonable prior notice.

36. The Department may conduct any tests necessary to ensure compliance with this Order on Consent and to verify the data submitted by DOE and K-H. DOE or K-H shall provide the Department with at least seventy-two (72) hours notice of the first scheduled entry into a Facility Group for purposes of conducting work required by the Waste Chemical Plan. The Department's project manager shall promptly advise DOE's or K-H's project manager if the Department desires any split samples. In such case, DOE's or K-H's project manager shall coordinate the necessary activities to allow the Department to obtain a split sample.

37. The Department's access and activities contemplated hereunder shall be subject to the applicable requirements of the Atomic Energy Act, 42 U.S.C. § 2011, *et seq.*, and Executive Orders concerning the handling of unclassified controlled nuclear information, restricted data and national security information, including "need to know" requirements.

38. Nothing in this Order on Consent shall limit the existing legal authority of the Department to inspect the Facility, seek information, gather data or take samples. The Department reserves its rights to seek access to any information or facilities in accordance with applicable law.

39. Nothing in this Order on Consent shall be construed to waive or limit any attorney-client or accountant-client privilege which any party may be entitled to assert.

DISPUTE RESOLUTION

40. The consultative process, outlined in paragraph 34 above, must be followed before dispute resolution is initiated. DOE or K-H may initiate dispute resolution for the following matters:

1. modifications to the Order on Consent;
2. disapproval, or approval with modifications, of the Waste Chemical Plan;
3. disapproval of a request to modify a document required under this Order on Consent;
4. approval with modifications of a revised document required under this Order on Consent; and
5. a complete or partial denial of a request for an extension of time, mitigation plan, the identification of a chemical or an area as an Excluded Chemical, or the Department's requirement to remove an Excluded Chemical prior to decommissioning.

However, dispute resolution is not available for disapproval of a revised document, as that term is defined in paragraph 34.3.

41. DOE or K-H must invoke dispute resolution within five (5) business days of receipt of the Department's written determination. The disputing party shall initiate dispute resolution by sending a written notice of dispute to the other parties specifically stating the issue being disputed. The parties' project managers shall meet within seven (7) business days of receipt of the notice to discuss the disputed matter. If the disputed matter is not resolved, each party desiring to take a position in the dispute shall, within five (5) business days of the meeting, deliver to the other parties a written statement specifically describing the dispute and setting forth that party's position and supporting rationale. Each party shall then have five (5) business days to respond to the other parties' positions. Documents necessary to support a party's position may be attached to the notice of dispute, position statement, or response. A copy of all documents shall be delivered to each member of the Senior Executive

Committee (SEC). A party's failure to deliver a timely written notice of dispute shall constitute a waiver of the party's right to dispute an issue.

42. The SEC shall attempt to resolve disputes in accordance with the provisions of this section. The SEC shall be comprised of the following three members: the Department's Assistant Director, Office of Policy and Public/Private Initiatives (OPPPI), DOE's Manager for the Rocky Flats Field Office, and K-H's President. The parties intend for the SEC members to implement their responsibilities personally.

43. Within seven (7) business days after receipt of the written statements of dispute, the SEC shall meet, exert its best efforts to resolve the dispute, and issue a written decision. If a unanimous resolution of the dispute is not reached within five (5) business days, the Department's SEC member shall issue a written decision, which shall constitute final agency action and be subject to review by a court of competent jurisdiction.

44. If DOE or K-H initiates dispute resolution, the Department agrees to participate fully in the process and to forego taking any administrative or judicial enforcement action with respect to the disputed matter until the dispute resolution process is complete or upon mutual agreement of the parties in settlement of the dispute. Initiation of dispute resolution shall not toll or impair any enforcement action already filed by the Department against DOE or K-H nor shall it toll or impair the Department's ability to file enforcement actions against DOE or K-H for activities not covered by this Order on Consent.

DOE's AND K-H's AGREEMENT TO ORDER ON CONSENT

45. DOE and K-H agree to the terms and conditions of this Order on Consent, that it constitutes an order issued pursuant to § 25-15-308, C.R.S., and it is an enforceable requirement of Part 3 of the Act. DOE and K-H also agree not to challenge:

    1. the issuance of this Order on Consent;
    2. the factual and legal determinations made by the Department herein in any action enforcing or construing the terms and conditions herein; or
    3. the Department's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Order on Consent under the Act.

46. DOE does not, by entering into this Order on Consent, waive any claim of sovereign immunity it may have that is not expressly waived by statute; nor does it waive any claim of jurisdiction over matters reserved to it under the Atomic Energy Act.

SCOPE AND EFFECT OF ORDER ON CONSENT

47. This Order on Consent only applies to, and requires compliance for, waste chemicals, as that term is defined in the Waste Chemical Plan, including mixed waste, but it does not apply to radioactive materials managed by the DOE pursuant to the Atomic Energy Act, 42 U.S.C. § 2011, *et seq.*

48. This Order on Consent shall be effective upon the date signed by the last party. In the event a party does not sign this Order on Consent within twenty-one (21) business days of another party's signature, this Order on Consent becomes null and void.

49. DOE's and K-H's obligations under this Order on Consent are limited to the matters expressly stated herein or in approved documents required hereunder. The following requirements of this Order on Consent are enforceable: submittal dates for plans and status reports; the Management Requirements in § 5.1 of the Waste Chemical Plan; and the Waste Chemical Plan's completion date, December 31, 1999.

50. Upon the effective date of this Order on Consent and during its term, the Department agrees this Order on Consent shall operate in lieu of any administrative or civil action by the Department against DOE or K-H or their respective directors, officers, employees, agents, or contractors with respect to the Legal Determinations addressed herein.

51. The Department's approval of any document, standard or action under this Order on Consent shall not constitute a defense to, nor an excuse for, any prior violation of any requirement of the Act or the Regulations not specifically addressed herein, or any subsequent violation of any requirement of this Order on Consent, the Act or the Regulations.

52. Upon the effective date of this Order on Consent, DOE and K-H release and covenant not to sue the State of Colorado as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act or the Regulations specifically addressed herein.

53. DOE and K-H shall comply with all applicable federal, state and/or local laws in conducting the activities required by this Order on Consent. The Department makes no representation with respect to approvals and permits required by federal and local laws, or state laws other than those required under the Act or the Regulations.

LIMITATION OF LIABILITY

54. The Department shall not be liable for any injuries or damages to persons or property resulting from acts or omissions of DOE and/or K-H, or those acting for or on behalf of DOE and/or K-H including their officers, employees, agents, successors, representatives,

contractors or consultants in carrying out activities pursuant to this Order on Consent. The Department shall not be held out as a party to any contract entered into by DOE and/or K-H in carrying out activities pursuant to this Order on Consent. Nothing in this Order on Consent shall constitute an express or implied waiver of sovereign immunity otherwise applicable to the Department, its employees, agents or representatives.

NOTICES

55. Unless otherwise specified, any report, notice or other communication required under this Order on Consent shall be delivered to the following:

For the Department:

Unit Leader
Permits and Compliance Unit
Federal Facilities Program
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, B-2
Denver, CO 80246-1530

For DOE:

Environmental Compliance
Rocky Flats Field Office
United States Department of Energy
P.O. Box 928
Golden, CO 80402-0928

With a copy to:

Chief Counsel
Rocky Flats Field Office
United States Department of Energy
P.O. Box 928
Golden, CO 80402-0928

For K-H:

Division Manager
Environmental Compliance
Kaiser-Hill Company, L.L.C.

P.O. Box 464
Golden, CO 80402-0464

With a copy to:

Environmental Counsel
Office of General Counsel
Kaiser-Hill Company, L.L.C.
P.O. Box 464
Golden, CO 80402-0464

MODIFICATIONS AND TERMINATION DATE

56. The parties may, by mutual consent, modify this Order on Consent by written amendment duly signed and authorized by all parties. The parties agree to exercise good faith in considering modifications to this Order on Consent that will significantly assist DOE and K-H in (a) selecting or implementing storage, treatment or disposal of waste; (b) protecting human health and the environment; or (c) developing a better, faster or more economical means to bring the Facility into compliance with the Act and the Regulations. In the event the parties do not agree upon the need for a modification, any party may refer the issue to dispute resolution in accordance with the above dispute resolution provisions.

57. The parties may, by mutual consent, extend any time-frames specified in this Compliance Order on Consent.

58. K-H is hereby released from this Order on Consent in the event its contract with DOE is not renewed or extended. In such case, K-H's release shall be effective at midnight on the termination date of its integrating management contract with DOE. Further, in the event DOE awards an integrating management or similar contract to another entity, the Department agrees to substitute that party for K-H.

59. Except as to Excluded Chemicals, this Order on Consent shall terminate for each Facility Group when the work contemplated in the Waste Chemical Plan for that Group is completed. As to Excluded Chemicals, this Order on Consent shall terminate when each chemical is transferred into another enforceable regulatory mechanism (e.g., Compliance Order, permit, etc.), or when all Excluded Chemicals are managed, stored or disposed of in accordance with the requirements of the Act and Regulations.

RESERVATION OF RIGHTS

60. The Department reserves the right to bring any action or to seek civil or administrative penalties for any past, present or future violations of the Act or the Regulations not

specifically addressed herein. Further, the Department has the right to bring any action to enforce this Order on Consent, and to seek penalties for any violation of the Order on Consent.

61. Except as is expressly stated in this Order on Consent, DOE and K-H reserve their rights and defenses each may have, whether procedural or substantive, in law or in equity, with respect to the Department and with respect to any person not a party to this Order on Consent.

AUTHORIZATION TO SIGN

62. The undersigned represent and warrant that they are authorized to bind legally their respective principals to this Order on Consent. This Order on Consent may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Order on Consent.

For The Colorado Department of Public Health and Environment:

8-21-97

Howard A. Roitman Date
Director
Hazardous Materials and Waste Management Division

Approved as to form:

Daniel S. Miller #14225* Date
First Assitant Attorney General
Natural Resources Section
Attorneys for the Department

1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: (303) 866-5110
*Counsel of Record

For the United States Department of Energy

Jessie M. Roberson Date
Manager
Rocky Flats Field Office
U.S. Department of Energy

For Kaiser-Hill Company, L.L.C.:

Robert G. Card 9/4/97
President Date
Kaiser-Hill Company, L.L.C.