Nevada Operations Office

Settlement Agreement

Transuranic Mixed Waste Storage at the Nevada Test Site

Department of Energy
Nevada Field Office
P.O. Box 98518
Las Vegas, NV 89193-8518

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JUN 11 1992

L. H. Dodgion, P.E.
Administrator
Division of Environmental Protection
State of Nevada
333 W. Nye Lane
Carson City, NV 89710

SETTLEMENT AGREEMENT FOR TRANSURANIC (TRU) MIXED WASTE STORAGE ISSUES AT THE NEVADA TEST SITE (NTS)

The U.S. Department of Energy (DOE) is pleased to submit for your signature the enclosed Settlement Agreement to settle the Finding of Alleged Violation (FOAV) and Order of November 1, 1990, and the FOAV of June 24, 1991, related to the TRU waste storage pad at Area 5 of the NTS. We appreciate the time and effort you have expended to resolve these FOAVs with us.

The Settlement Agreement reflects DOE's expectation that TRU mixed waste storage will be limited to the current inventory of waste on the storage pad. Should DOE need to store additional TRU mixed waste in the future at the storage pad, DOE will follow the appropriate state permitting process.

If the enclosed Settlement Agreement is acceptable, please sign it and return it to Sharon A. Hejazi, Office of Chief Counsel, DOE Nevada Field Office. If you have any questions or comments, please call Ms. Hejazi at (702) 295-3581.

Nick C. Aquilina
Manager

ERWM:GLD

Enclosure:
As stated

cc w/encl:
Brian Challey,
State of Nevada,
Carson City, NV

THE STATE OF NEVADA
DIVISION OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF U.S. DEPARTMENT OF ENERGY

SETTLEMENT AGREEMENT

The Nevada Division of Environmental Protection (NDEP) and the United States Department of Energy (DOE), the parties herein, wishing to settle all matters pertaining to this case, have entered into this Settlement Agreement and have agreed to comply with the terms and conditions set forth herein.

A. FINDINGS OF FACT

1. The DOE owns and is responsible for the operation of the Nevada Test Site (NTS), a nuclear testing and research and development facility located in Nye County, Nevada.

2. On November 1, 1990, NDEP issued a Finding of Alleged Violation (FOAV) and Order to the DOE Nevada Field Office (DOE/NV). The FOAV alleged, inter alia, that DOE's operation of the transuranic (TRU) waste storage pad at the NTS Area 5 Radioactive Waste Management Site (RWMS) violated Nevada hazardous waste laws and regulations.

3. The Order required DOE/NV to (a) prepare and submit a plan and schedule for determining which wastes stored on the pad were TRU mixed waste, i.e., radioactive waste containing a hazardous waste component; and (b) upon completion of the determination, to remove all TRU mixed waste to a properly permitted facility.

4. On November 29, 1990, DOE/NV submitted to NDEP its plan and schedule for characterization of the TRU waste stored at the Area 5 RWMS and expressed its hope that a mutually satisfactory resolution would be reached.

5. On December 12, 1990, DOE/NV requested a hearing on the FOAV and Order but requested that scheduling of the hearing be delayed to allow time to resolve the issues by agreement.

6. On January 18, 1991, the NDEP responded to DOE/NV's November 29, 1990, plan and schedule for characterizing the TRU waste and reiterated its earlier order to remove any TRU mixed waste from the pad.

7. On April 22, 1991, DOE/NV submitted to NDEP an inventory of the TRU mixed waste on the pad, and requested an opportunity to settle the remaining issues through a compliance agreement.

8. On June 3, 1991, the NDEP responded to DOE/NV's April 22, 1991, inventory submittal and again reiterated its order to remove the TRU mixed waste.

9. On June 24, 1991, NDEP issued a second FOAV to DOE/NV, alleging, inter alia, that DOE increased the design capacity of the TRU storage pad without prior NDEP approval as required by State law.

10. In an administrative appeal of the FOAVs and Order referenced herein, a three member panel of the State Environmental Commission (SEC) received evidence and heard oral arguments by the parties on September 5 and 12, 1991, and November 5, 1991. Prior to a decision by the SEC, DOE and NDEP agreed to attempt to settle this matter.

B. AGREED UPON SETTLEMENT PROVISIONS

For purposes of this proceeding only and in order to avoid further litigation and to settle all matters pertaining to this proceeding, the parties have agreed to the following settlement provisions. It is understood and agreed that this Settlement Agreement does not constitute an admission by DOE/NV, its attorneys, or authorized officials of any allegations of fact or law raised by the FOAVs and Order in issue in this proceeding.

Except as set forth herein, NDEP reserves and does not waive any right or authority it may have under Nevada law by entering into this Agreement. Additionally, DOE reserves and does not waive any of its rights, defenses, or claims available under applicable law by entering into this Agreement.

In consideration of DOE/NV's entering into this Agreement, the State hereby covenants not to initiate or maintain any civil claim or civil cause of action against DOE, its employees, or contractors, for the alleged violations addressed by this Agreement, for as long as DOE/NV is in compliance with this Agreement.

Now, therefore, to promote the public interest and in settlement of all matters pertaining to this proceeding, the parties agree to the following:

1. TRU mixed waste storage at Area 5 of the NTS will be limited to the current inventory of approximately 150,000 gallons. DOE will obtain a State permit if TRU mixed wastes beyond existing volumes are to be stored at the NTS.

2. DOE will initiate removal of the current inventory of TRU mixed waste as soon as the Waste Isolation Pilot Plant in New Mexico (WIPP) can begin accepting this particular waste. DOE, however, may ship the waste to a treatment facility, if necessary.

3. Within 90 days of the effective date of this Agreement, DOE will provide to NDEP, for review, documentation of why the current inventory of TRU mixed waste cannot be removed until after WIPP becomes operational. Should NDEP disagree with the documentation, the Parties agree to negotiate in good faith through the dispute resolution process defined in Section C of this Agreement. Should such negotiations fail to produce agreement, this Settlement Agreement will terminate. DOE's document will be reviewed on a 3-year basis by the parties. Should the parties agree that removal of the waste to a facility other than WIPP is appropriate, the waste will be moved.

4. DOE will report annually on its progress in certifying that the TRU waste stored at NTS meets the WIPP Waste Acceptance Criteria (WAC). Steps appropriate for waste certification, such as treatment, will be taken, if necessary.

5. DOE will not engage in any future construction or modification of the Area 5 TRU waste storage pad, including a cover for the waste, without obtaining prior approval from the NDEP.

6. DOE will operate the Area 5 TRU waste storage pad in the interim period until waste removal is completed in accordance with 40 CFR 265 Subpart I, as adopted by the Nevada State Environmental Commission.

7. Upon NDEP's approval, as set forth in paragraph 5 above, DOE will construct a cover for the waste.

8. Upon ratification of this Agreement by the Nevada State Environmental Commission, DOE will move to dismiss the appeal and NDEP will dismiss with prejudice the two Findings of Alleged Violation and Order referenced herein.

C. DISPUTE RESOLUTION

In the event of any dispute regarding the terms or implementation of this Settlement Agreement, DOE and NDEP agree that they will attempt to resolve any such dispute informally through discussions between the State Administrator of Environmental Protection, and the DOE/NV Director of the Environmental Protection Division. If a mutually satisfactory resolution cannot be achieved, the matter will then be referred to the Nevada State Director, Department of Conservation of Natural Resources, and the DOE Manager of DOE/NV for final resolution.

D. EFFECTIVE DATE

This Agreement shall become effective upon the approval of the State Environmental Commission of DOE/NV's motion for the dismissal of the appeal and NDEP's written dismissal with prejudice of the two Findings of Alleged Violation and Order referenced herein.

THE PARTIES SO AGREE:

United States Department of Energy

Nick C. Aquilina, Manager
DOE Nevada Field Office

DATE: 6-11-92

Office of Chief Counsel

DATE: 6-11-92

The Nevada Department of Environmental Protection

L. H. Dodgion, P.E., Administrator
Division of Environmental Protection

DATE: 6/23/92

DATE: 6/22/92