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IDAHO DEPARTMENT OF HEALTH AND WELFARE

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

## I. PARTIES

1.1 The Idaho Department of Health and Welfare (Department) and the United States Department of Energy (DOE), the Parties, enter into this Consent Order regarding DOE's Idaho National Engineering Laboratory (INEL) located near Idaho Falls, Idaho.

## II. JURISDICTION

2.1 DOE and the Department enter into this Consent Order pursuant to the Idaho Hazardous Waste Management Act of 1983 (HWMA), as amended, Idaho Code §§ 39-4401 to 4432. The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 *et seq.*, 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 waste. 42 U.S.C. § 6961; Executive Order 12088. DOE, a department of the executive branch of the federal government, owns and operates the INEL, a nuclear research and development facility located near Idaho Falls, Idaho.

2.2 The Department administers a hazardous waste management program pursuant to the HWMA and the Rules, Regulations and Standards for Hazardous Waste, IDAPA §§ 16.01.5000 to 5999. The State of Idaho is authorized, pursuant to RCRA, to administer this hazardous waste management program. 55 Fed. Reg. 11015 (March 26, 1990). DOE generates, transports, and manages hazardous waste at the INEL and is therefore subject to and must comply with all federal and state requirements respecting hazardous waste, including the HWMA and the Rules, Regulations and Standards for Hazardous Waste, IDAPA §§ 16.01.5000 to 5999.

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

## III. CONCURRENCE BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10

3.1 The United States Environmental Protection Agency, Region 10 (EPA) has reviewed and, by its signature, approves this Consent Order in order to resolve the Notice of Noncompliance (NON) (Docket No. 1090-1-24-6601) issued by EPA to DOE on January 29, 1990. DOE's compliance with the terms of this Consent Order shall be deemed to satisfy any requirements that EPA would otherwise have imposed pursuant to RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616) (HSWA), to resolve the NON.

## IV. DEFINITIONS

4.1 Except as otherwise specifically defined herein, the terms used in this Consent Order, including all appendices, shall have the same meaning as used in the HWMA and the Rules, Regulations and Standards for Hazardous Waste, IDAPA §§ 16.01.5000 to 5999.

## V. STATEMENT OF FACTS

5.1 On June 5-9, 1989, EPA and the Department conducted a routine inspection of the INEL to determine compliance with federal and state hazardous waste requirements. The inspection found alleged violations of federal and state hazardous waste requirements, including requirements relating to the generation, accumulation and storage of hazardous wastes.

5.2 By NON (Docket No. 1090-1-24-6601) dated January 29, 1990, EPA notified DOE of these alleged violations. DOE does not admit the allegations or other contents of the NON. The NON is, however, expressly incorporated by reference into this Consent Order. On February 21, 1990, DOE submitted to EPA and the Department a timely response to the NON (Response) addressing the alleged violations. DOE supplemented its Response with submittals dated March 16, April 6, and April 13, 1990. On April 18-19, 1990, EPA, the Department and DOE conducted a Settlement Conference to discuss the NON, DOE's Response and a format for resolving the NON. DOE, EPA and the Department have agreed that the NON shall be resolved by execution of this Consent Order between DOE and the Department pursuant to the HWMA, Idaho Code § 39-4413.

## VI. HAZARDOUS WASTE REQUIREMENTS

In order to resolve the alleged violations listed in the NON, DOE agrees to the provisions of this Consent Order and the

following terms and actions. The requirements below correspond to the alleged violations as listed in the NON.

6.1 Violation No. 1

DOE has resolved Violation No. 1 by removing all hazardous waste lead located at the TRA to TRA-610, an interim status hazardous waste storage facility.

6.2 Violation No. 2

DOE has resolved Violation No. 2 by removing the hazardous waste container from CFA-633, Room 122, labeling and dating the container pursuant to IDAPA § 16.01.5006 (40 C.F.R. § 262.34(a)), and transferring the container to CFA-637, an interim status hazardous waste storage facility.

6.3 Violation No. 3

DOE shall resolve Violation No. 3 by repositioning, within ninety (90) days of the effective date of this Consent Order, all hazardous waste containers located in Building CFA-637 so as to maintain at all times a minimum of one (1) foot of aisle space between all pallets of containers holding hazardous wastes and all facility walls, and a minimum of two (2) feet of aisle space between individual rows of pallets holding containers of hazardous waste.

6.4 Violation No. 4

DOE has resolved Violation No. 4 by demonstrating compliance with IDAPA §§ 16.01.5006 and 5011 (40 C.F.R. §§ 262.31 and 268.7(a)(1)).

6.5 Violation No. 5

DOE has resolved Violation No. 5 by demonstrating that the sand blast grit generated from the cleaning of painted objects at the CFA-623 Paint Shop Building was not a hazardous waste.

6.6 Violation No. 6

DOE has resolved Violation No. 6 by shipping off-site approximately sixty percent (60%) of the nonhazardous waste lead and stockpiling the remaining nonhazardous waste lead at SPERT-II for use by DOE.

6.7 Violation No. 7

DOE has resolved Violation No. 7 by performing a hazardous waste determination on the five (5) drums of unknown contents located in the TAN-657 Berm Storage Area and the one drum located in the Spent Fuels Facility Yard. The material in the

five (5) drums at TAN-657 was determined to be a hazardous waste and was disposed of by DOE in compliance with the HWMA and the Rules, Regulations and Standards for Hazardous Waste. The material in the one drum at the Spent Fuels Facility Yard was not a hazardous waste.

6.8 Violation No. 8

DOE has resolved Violation No. 8 by demonstrating that the material in the drum at the Central Facilities Fire Training Area was not a hazardous waste.

6.9 Violation No. 9

Violation No. 9 alleged that DOE is storing radioactive mixed waste at the Radioactive Waste Management Complex (RWMC) in violation of the aisle space and inspection requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. §§ 265.15 and 265.35). In order to resolve Violation No. 9, DOE shall take the following actions:

A. Increase in design capacity of radioactive mixed waste storage facilities.

1. DOE shall increase the design capacity at the INEL for the storage of the 35,200 containers of radioactive mixed waste in storage at the Radioactive Waste Management Complex (RWMC) on the effective date of this Consent Order. In November 1988, DOE submitted to the Department, pursuant to IDAPA § 16.01.5012 (40 C.F.R. Part 270), a revised Part A application which included an increase in the design capacity of radioactive mixed waste storage facilities at the INEL. On May 29, 1991 DOE submitted to the Department, pursuant to IDAPA § 16.01.5012 (40 C.F.R. Part 270), a Part B permit application for an increase in the design capacity of radioactive mixed waste storage facilities at the INEL. In order to increase the design capacity for the storage of the 35,200 containers of radioactive mixed waste, DOE shall construct four (4) new storage buildings at the INEL.

2. DOE shall complete transfer of the 35,200 containers of radioactive mixed waste currently in storage to the new storage buildings as follows:

a. Fifty percent (50%) of the containers shall be transferred on or before January 1, 1996; and

b. The remaining fifty percent (50%) of the containers shall be transferred on or before January 1, 1998.

B. Inspections at new storage buildings.

DOE has proposed, and the Department has agreed, that during the pendency of the Part B permit application procedure, and as long as DOE is operating the new storage buildings under interim status, DOE shall inspect the new storage buildings and the containers of radioactive mixed waste as set forth below in order to comply with the hazardous waste inspection requirements of IDAPA § 16.01.5009 (40 C.F.R. § 265.15).

1. DOE shall conduct weekly health physics surveys of the storage buildings using portable instruments to check for radiation levels and radiation contamination.

2. DOE shall take health physics smear surveys (surveys) of the containers of radioactive mixed waste as follows:

   a. While containers remain in the air support buildings and prior to their movement to the new storage buildings, DOE shall quarterly take surveys of a minimum of 5% or 120 containers, whichever is less, on a randomly selected basis.

   b. As the containers are moved from the air support buildings to the new storage buildings, DOE shall take surveys of a minimum of 20% of the containers on a randomly selected basis.

   c. In the new storage buildings, DOE shall quarterly take surveys of a minimum of 5% or 120 containers, whichever is less, stored in the new storage buildings at the commencement of the quarter on a randomly selected basis.

   d. In addition, surveys will be taken on any and all containers which are observed to have signs of deterioration.

   e. Quarters shall commence April 1, July 1, October 1, and January 1.

3. DOE shall conduct weekly visual inspections of containers of radioactive mixed waste from the building center and side aisle by visually looking up and down each aisle space between the rows of containers. The inspector shall move from row to row inspecting each visible container for approximately one-half (1/2) the length of each aisle. The inspector shall proceed from aisle to

aisle, and then move to the opposite end of the aisle and inspect each visible container for the remaining one-half (1/2) length of each aisle. DOE shall also conduct quarterly inspections of containers of radioactive mixed waste stored in each storage building. During the quarterly inspections, the inspector shall walk through each aisle and inspect each visible container for leaks and for deterioration caused by corrosion or other factors. DOE shall maintain an inspection log which shall be used to document all weekly and quarterly inspections, the results of each inspection, and all remedial measures taken by DOE. DOE shall provide the inspection log upon written or oral request by the Department.

4. DOE shall use Continuous Air Monitors (CAMs) to detect radioactive contamination which may be present in the new storage buildings. The CAMs shall be routinely calibrated in accordance with ANSI-N323-1978 Radiation Protection Instrumentation Test and Calibration Requirements. CAM filters shall be changed at least once per week. Each CAM filter shall be analyzed for radioactivity in order to detect airborne radioactive releases.

C. Storage Configuration and Aisle Space.

During the pendency of the Part B permit application procedure, and as long as DOE is operating the new storage buildings under interim status, DOE shall take the following actions regarding the storage configuration of containers of radioactive mixed waste at the new storage buildings. DOE shall also take the actions listed below to comply with IDAPA § 16.01.5009 (40 C.F.R. § 265.35) regarding aisle space at the new storage buildings.

1. Storage Configuration

a. Width

DOE shall not store containers of radioactive mixed waste in the new storage buildings more than four (4) containers wide.

b. Height

DOE shall not store drums of radioactive mixed waste in the new storage building more than five (5) drums high and shall not store boxes of radioactive mixed waste in the storage buildings more than four (4) boxes high.

c. Depth

DOE shall not store drums of radioactive mixed waste in the storage buildings more than twenty-four (24) drums deep and shall not store boxes of radioactive mixed waste in the new storage buildings more than twelve (12) deep.

2. Aisle Space

DOE shall provide a minimum of twenty (20) feet of aisle space down the center of each storage building. DOE shall maintain a minimum of three (3) feet of aisle space between all other rows of radioactive mixed waste and between all interior and exterior walls in each of the new storage buildings.

D. Closure of Old Storage Facilities.

DOE shall submit a closure plan for the existing radioactive mixed waste storage facilities (Air Support Buildings: ASB 11 and C&S) at the RWMC within the time frame specified in 40 C.F.R. § 265.112(d). DOE shall perform all closure and post closure requirements for these radioactive mixed waste storage facilities at RWMC pursuant to 40 C.F.R. Part 265, Subpart G.

E. The inspection and monitoring requirements set forth in § 6.9 reflect the agreement of the Department and DOE that certain hazardous waste regulatory requirements will be satisfied by monitoring the radioactive component of the radioactive mixed waste. The requirements of § 6.9 are enforceable to the same extent and in the same manner as any other requirements of this Consent Order. However, nothing in this Consent Order establishes or grants the Department or EPA jurisdiction or authority to independently set requirements, control, or limits, or otherwise regulate, the radioactive component of the radioactive mixed waste.

6.10 Violation No. 10

DOE has resolved Violation No. 10 by updating the Radioactive Mixed Waste Storage Facility (RMWSF) Contingency Plan to include the current Emergency Coordinator, and by ensuring that the emergency equipment listed in the Contingency Plan is located at the facility.

6.11 Violation No. 11

DOE has resolved Violation No. 11 by demonstrating that the industrial ethyl alcohol stored in Tanks 715 and 716 at ANL-W was not a hazardous waste.

6.12 Violation No. 12

A. Violation No. 12 alleged that DOE was storing hazardous waste sodium in violation of the Rules, Regulations and Standards for Hazardous Wastes in two (2) large orange tanks and seven (7) small tanks at ANL-W. Since the time of the inspection, DOE has added two (2) additional small tanks to the sodium storage area at ANL-W. The Department shall dismiss that portion of Violation No. 12 relating to sodium stored in the two (2) large orange tanks at ANL-W based on information provided by DOE that the sodium stored in the tanks is not a solid waste. The Department shall dismiss that portion of Violation No. 12 relating to the sodium stored in four (4) of the nine (9) small tanks at ANL-W based on information provided by DOE that those four (4) tanks were empty at the time of the inspection. DOE has resolved the remaining portion of Violation No. 12 by consolidating the sodium in the remaining (5) small tanks located at ANL-W into one (1) tank and adding the sodium to the Experimental Breeder Reactor-II secondary cooling system during November, 1991.

B. See Section 6.14.D.

6.13 Violation No. 13

DOE has resolved Violation No. 13 by demonstrating that the paint filters in the ANL-W 782 Machine Shop/Paint Shop were not hazardous wastes.

6.14 Violation No. 14

A. Violation No. 14 alleged that, in violation of hazardous waste regulations, DOE was storing 1,400-55 gallon drums of hazardous waste sodium in the ANL-W 703 Sodium Drum Storage Building. DOE denies that the sodium is a hazardous waste, and the parties recognize that DOE and EPA are continuing to discuss the issue of whether or not this sodium is a hazardous waste subject to regulation under applicable hazardous waste laws. DOE shall have a maximum of two (2) years from the effective date of this Consent Order to resolve this issue with EPA through (a) a final decision by EPA that the sodium is or is not a hazardous waste, and administrative review of any such final decision, including exhaustion of any applicable dispute resolution procedures between EPA and DOE; or (b)

amendment or modification of this Consent Order pursuant to § 10.1 of this Consent Order. Pending resolution of this issue with EPA, and commencing on the effective date of this Consent Order, DOE shall manage the sodium in the 1,400-55 gallon drums in compliance with all applicable interim status provisions of the HWMA and the Rules, Regulations and Standards for Hazardous Waste; provided, however, DOE shall be allowed one hundred twenty (120) days from the effective date of this Consent Order to achieve compliance with 40 C.F.R. § 265.13 (waste analysis plan), 40 C.F.R. § 265.37 (arrangements with local authorities), 40 C.F.R. Part 265, Subpart D (contingency plan), and 40 C.F.R. Part 265, Subpart G (closure plan). In the event that, within two (2) years from the effective date of this Consent Order, DOE has not resolved this issue with EPA in a manner that is accepted in writing by the Department (such acceptance shall not be unreasonably withheld), or DOE has not exercised its right to seek any available judicial review of the issue of whether the sodium is a hazardous waste by filing an action in a court of competent jurisdiction, DOE shall be deemed to have waived any argument that the sodium is not a hazardous waste and DOE shall henceforth manage the sodium in compliance with all applicable requirements of the HWMA and the Rules, Regulations and Standards for Hazardous Waste. During the pendency of any judicial review sought by DOE, DOE shall, without admission or prejudice, manage the sodium in compliance with all applicable requirements of the HWMA and the Rules, Regulations and Standards for Hazardous Waste except as may be otherwise agreed to by the parties or ordered by a court of competent jurisdiction.

B. DOE shall, within thirty (30) days of the effective date of this Consent Order, submit to the Department, pursuant to IDAPA § 16.01.5012 (40 C.F.R. Part 270), a revised Part A permit application for storage of the 1,400-55 gallon drums of sodium. The Part A permit application may be submitted by DOE as a protective filing.

C. Nothing in this Consent Order, including the requirements of this section, shall constitute an admission nor evidence of an admission by DOE that the sodium is a solid waste or otherwise subject to regulation as a hazardous waste, and nothing in this Consent Order, nor any actions taken pursuant to it, shall prejudice the position of DOE in any administrative or judicial proceeding regarding the sodium. The Department does not agree to be bound by any decision reached as a result of any dispute resolution between EPA and DOE.

D. Within ninety (90) days of the effective date of this Consent Order, DOE shall submit to the Department a verified report containing the results of tank integrity checks and other relevant evidence demonstrating that sodium has not been released to the environment from the tanks where sodium is stored at ANL-W and from the 1,400-55 gallon drums of sodium. The Department shall, within thirty (30) days of receipt of the report, (a) notify DOE in writing that the Report is approved and no further action is required, or (b) notify DOE in writing of any additional requirements that must be performed in order to ensure that sodium has not been released to the environment. DOE and the Department shall negotiate in good faith to resolve any disputes regarding any additional requirements determined necessary by the Department. If DOE and the Department are unable to agree upon such additional requirements regarding sodium contamination within sixty (60) days of the Department's written notice of such additional requirements, or if DOE fails to perform the requirements of this section, the Department may exercise whatever remedies it may have to insure the proper investigation, cleanup, closure and post-closure care of the area where sodium is or was stored at ANL-W.

E. Nothing in this section shall preclude the parties from agreeing to undertake any cleanup action regarding the sodium stored at ANL-W under the terms of the Federal Facility Agreement and Consent Order entered into among DOE, the Department and EPA on December 9, 1991, rather than to undertake such cleanup under the terms of this Consent Order.

6.15 Violation No. 15

DOE has resolved Violation No. 15 by labeling the satellite accumulation drum in ANL-W 701 pursuant to IDAPA § 16.01.5006 (40 C.F.R. § 262.34(c)).

6.16 Violation No. 16

DOE has resolved Violation No. 16 by establishing a satellite accumulation area in the Waste Management Development Laboratory at CPP-637.

6.17 Violation Nos. 17a, 17b, and 17c

A. DOE has resolved Violation No. 17a by submitting to the Department a revised Part A application authorizing DOE to store hazardous wastes and mixed hazardous wastes at CPP-1619.

B. DOE has resolved Violation No. 17b by updating the Contingency Plan located at the CPP-1619 Mixed Waste Storage Area to include the current Emergency Coordinator and by ensuring that the required emergency equipment contained in the Contingency Plan is located at the facility.

C. DOE has resolved Violation No. 17c by installing an operational telephone at the CPP-1619.

6.18 Violation No. 18

DOE has resolved Violation No. 18 by demonstrating that the lead at CPP-663 was not hazardous waste lead.

6.19 Violation Nos. 19a and 19b

A. DOE has resolved Violation No. 19a by demonstrating that the paint booth filters used at the CPP Paint Shop were not hazardous wastes.

B. DOE has resolved Violation No. 19b by labeling the drum of waste solvent located at the CPP Paint Shop outside storage shed. DOE shall not operate the outside storage shed as a satellite accumulation area for waste solvent. The outside storage shed may be operated as a 90-day hazardous waste storage area in compliance with IDAPA § 16.01.5006 (40 C.F.R. § 262.34 (a)).

6.20 Violation No. 20

Violation No. 20 alleged that tanks and ancillary equipment located at the ICPP Tank Farm are not equipped with secondary containment as required by IDAPA § 16.01.5009 (40 C.F.R. § 265.193). In order to resolve Violation No. 20, DOE shall take the following actions:

A. Lines

DOE shall take the following actions within the time frames set forth below regarding lines at the ICPP Tank Farm.

1. On or before December 31, 1993 DOE shall permanently cease use of Line No. PWL-48048C (3") located between WM-102 and DVB-C37.

2. On or before December 31, 1995 DOE shall permanently cease use of the following lines, or DOE shall replace the following lines with lines which are equipped with secondary containment in compliance with IDAPA § 16.01.5009 (40 C.F.R. § 265.193):

a. Line No. PUA-1014 (3") located between WL-101 and DVB-A2;

b. Line No. PUA-1030 (3") located between WM-102 and DVB-A3A;

c. Line No. PWM-2016Y (3") located between WM-101 and DVB-A3B;

d. Line No. PUA-201 (3") located between WM-181 and DVB-A2;

e. Line No. PUA-203 (3") located between WM-181 and DVB-A2;

f. Line No. PUA-1013 (3") located between WL-101 and DVB-A2;

g. Line No. PWM-1024Y (3") located between WM-180 and DVB-A3A;

h. Line No. PWM-2011Y (3") located between WM-180 and DVB-A3B;

i. Line No. PWM-10018Y (3") located between WM-100 and DVB-A3C;

j. Line No. PWM-10019Y (3") located between WM-180 and DVB-A3C.

3. On or before March 31, 2009 DOE shall permanently cease use of the following lines:

a. Line No. PUA-1033 (2") located between WM-182 and DVB-C2;

b. Line No. PUA-1099 (2") located between WM-182 and DVB-C2;

c. Line No. PUA-1035 (2") located between WM-183 and DVB-C5;

d. Line No. PUA-1098 (2") located between WM-183 and DVB-C5.

4. On or before June 30, 2015 DOE shall permanently cease use of the following lines, or DOE shall replace the following lines with lines which are equipped with secondary containment in compliance with IDAPA § 16.01.5009 (40 C.F.R. § 265.193):

a. Line No. PWM-28004Y (4") located between WM-180 and DVB-C3;

b. Line No. PWM-28104Y (4") located between WM-181 and DVB-C7;

c. Line No. PUA-1089 (3") located between WM-187 and DVB-B9;

d. Line No. PUA-1090 (3") located between WM-187 and DVB-B9;

e. Line No. PUA-1203 (3") located between WM-188 and DVB-B9;

f. Line No. PUA-1204 (3") located between WM-188 and DVB-B9;

g. Line No. PUA-1303 (3") located between WM-189 and DVB-B10;

h. Line No. PUA-1304 (3") located between WM-189 and DVB-B10;

i. Line No. PUA-1315 (3") located between WM-190 and DVB-B10;

j. Line No. PUA-1316 (3") located between WM-190 and DVB-B10.

5. DOE shall, whenever possible, restrict the use of all lines which do not comply with the secondary containment requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. § 265.193) until the lines are replaced or DOE ceases use of the lines as required in this Consent Order.

B. Tanks and Vaults

DOE shall take the following actions within the time frames set forth below regarding tanks and vaults at the ICPP Tank Farm.

1. On or before March 31, 1993 DOE shall make improvements to the leak detection system for Valve Box No. DVB-WM-PW-B10 located between WM-187 and WM-190 so as to achieve compliance with IDAPA § 16.01.5009 (40 C.F.R. § 265.193 (c)(3)).

2. On or before December 31, 1993 DOE shall achieve compliance with all secondary containment requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. § 265.193) regarding the following valve boxes;

a. Valve Box No. DVB-WM-PW-C2 located between WM-180 and WM-182;

b. Valve Box No. DVB-WM-PW-C3 located between WM-180 and WM-182;

c. Valve Box No. DVB-WM-PW-C4 located north of WM-180;

d. Valve Box No. DVB-WM-PW-C5 located south of WM-183;

e. Valve Box No. DVB-WM-PW-C7 located between WM-181 and WM-183;

f. Valve Box No. DVB-WM-PW-C9 located on the north of WM-181;

g. Valve Box No. DVB-WM-PW-C10 located between WM-181 and WM-183;

h. Valve Box No. DVB-WM-PW-C12 located south of WM-181;

i. Valve Box No. DVB-WM-PW-C14 located south of WM-185;

j. Valve Box No. DVB-WM-PW-C16 located north of WM-184;

k. Valve Box No. DVB-WM-PW-C19 located south of WM-186;

l. Valve Box No. DVB-WM-PW-C21 located above WM-187;

m. Valve Box No. DVB-WM-PW-C22 located above WM-188;

n. Valve Box No. DVB-WM-PW-C37 located north of ICPP 604.

3. On or before March 31, 2009 DOE shall permanently cease use of Tank Nos. WM-182, WM-183, WM-184, WM-185, and WM-186 and all associated vaults; or DOE shall achieve compliance with all secondary containment requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. § 265.193) regarding Tank Nos. WM-182, WM-183, WM-184, WM-185, and WM-186 and all associated vaults located at the ICPP Tank Farm.

4. On or before March 31, 2009 DOE shall permanently cease use of the following lines, or DOE shall

achieve compliance with all secondary containment requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. § 265.193) regarding the following lines associated with vaults located at the ICPP Tank Farm:

a. Line Nos. PUA-1005 (3") and PUA-1030 (3") located between DVB-A6 and DVB-C15;

b. Line Nos. PUA-601 (3") and PUA-602 (3") located between WM-182 and DVB-A6;

c. Line Nos. PUA-620 (3") and PUA-621 (3") located between WM-182 and WM-183;

d. Line Nos. PUA-609 (3") and PUA-610 (3") located between WM-183 and DVB-A5;

e. Line Nos. PUA-630 (3") and PUA-631 (3") located between WM-184 and DVB-A7;

f. Line Nos. PUA-208 (3") and PUA-1029 (3") located between WM-185 and DVB-B3;

g. Line Nos. PUA-1016 (3") and PUA-1040 (3") located between WM-186 and DVB-B2.

5. On or before June 30, 2015 DOE shall permanently cease use of Tank Nos. WM-180, WM-181, WM-187, WM-188, WM-189, and WM-190 and all associated vaults; or DOE shall achieve compliance with all secondary containment requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. § 265.193) regarding Tank Nos. WM-180, WM-181, WM-187, WM-188, WM-189, and WM-190 and all associated vaults located at the ICPP Tank Farm.

6. On or before June 30, 2015 DOE shall permanently cease use of the following valve boxes; or DOE shall achieve compliance with all secondary containment requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. § 265.193) regarding the following valve boxes:

a. Valve Box No. DVB-WM-PW-A5 located between WM-181 and WM-183;

b. Valve Box No. DVB-WM-PW-A6 located between WM-181, WM-183, WM-184, and WM-185;

c. Valve Box No. DVB-WM-PW-A7 located south of WM-184;

d. Valve Box No. DVB-WM-PW-B1 located southeast of WM-184;

e. Valve Box No. DVB-WM-PW-B4 located west of WM-188;

f. Valve Box No. DVB-WM-PW-B5 located west of WM-187 and WM-188;

g. Valve Box No. DVB-WM-PW-B9 located west of WM-187 and WM-188;

h. Valve Box No. DVB-WM-PW-B10 located between WM-187 and WM-190.

7. On or before June 30, 1993, DOE shall achieve compliance with all secondary containment requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. § 265.193) regarding Tank Nos. WL-101 and WL-102.

C. Valve Boxes

1. On or before September 30, 1991 DOE completed installation of the leak detection systems on Junction Box No. 7 and all ancillary equipment located at WM-187 and WM-188, and on Junction Box No. 8 and all ancillary equipment located at WM-189 and WM-190. The leak detection systems shall comply with all requirements of IDAPA § 16.01.5009 (40 C.F.R. § 265.193 (c)(3)).

2. On or before December 31, 1993 DOE shall re-route the drains associated with Valve Boxes Nos. DVB-WM-PW-A2, DVB-WM-PW-A3A, and DVB-WM-PW-A3B so that hazardous wastes discharged from those valve boxes will no longer drain to unlined vaults.

3. On or before December 31, 1995 DOE shall achieve compliance with all secondary containment requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. § 265.193) regarding the transfer lines above the unlined concrete portion of Valve Box No. DVB-WM-PW-B2 and Valve Box No. DVB-WM-PW-B3.

4. On or before December 31, 1995 DOE shall permanently cease use of Valve Box No. DVB-WM-PW-A3C located north of ICPP-604.

5. On or before March 31, 2009 DOE shall permanently cease use of Valve Box Nos. DVB-WM-PW-A2, DVB-WM-PW-A3A, and DVB-WM-PW-A3B.

6. On or before June 30, 2015 DOE shall permanently cease use of, or DOE shall achieve compliance with all secondary containment requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. § 265.193) regarding, Junction Box No. 7 located at WM-187 and 188, Junction Box No. 8 located at WM-189 and WM-190, and Valve Box Nos. DVB-WM-PW-B2, DVB-WM-PW-B3, and DVB-WM-PW-C15.

D. DOE may not satisfy any requirement in this Section (§6.20) of the Consent Order requiring DOE to achieve compliance with all secondary containment requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. § 265.193) by making an equivalency demonstration or obtaining a variance pursuant to IDAPA § 16.01.5009 (40 C.F.R. § 265.193(d)(4) and (h)).

E. Continued Operation of the Idaho Chemical Processing Plant (ICPP)

DOE expressly agrees that the compliance schedules and deadlines set forth in § 6.20 of the Consent Order shall remain in full force and effect as long as DOE commences and continues operation of the ICPP. In the event that DOE does not commence operation of the ICPP on or before January 1, 1993, or DOE discontinues operation of the ICPP for a period of three (3) or more consecutive years, DOE shall notify the Department and EPA in writing and the parties shall negotiate in good faith to amend or modify this Consent Order, pursuant to § 10.1, to address the closure requirements of IDAPA § 16.01.5008-9 (40 C.F.R. § 264-5) and any other applicable hazardous waste requirements. In addition, DOE may request, pursuant to § 7, an extension of any compliance deadlines for the ICPP.

In the event that the parties are unable to agree upon an amended or modified compliance plan for the ICPP Tank Farm within ninety (90) days of the date DOE notifies the Department and EPA, or the Department and EPA determine, that the ICPP is not operating, § 6.20 of this Consent Order shall become null and void and the Department shall be entitled to take whatever remedies it may have to enforce the applicable provisions of the HWMA, the Rules, Regulations and Standards for Hazardous Waste, or other applicable law.

For purposes of this Consent Order only, operation of the ICPP shall be defined as the calcination of high level liquid radioactive waste stored at the ICPP by operation, under normal conditions, of the New Waste Calcining Facility. Routine repair, replacement and maintenance shall not be deemed operation of the ICPP. DOE shall

submit to the Department every six (6) months commencing July 1, 1992, a report summarizing operations of the ICPP over the previous six (6) months and the schedule for operation of the ICPP for the following six (6) months.

6.21 Violation Nos. 21a, 21b, and 21c

A. DOE has resolved Violation No. 21a by demonstrating that the necessary emergency spill response equipment was located at CPP-1617 at the time of the inspection.

B. DOE has resolved Violation No. 21b by installing a telephone at CPP-1617.

C. DOE has resolved Violation No. 21c by installing warning signs on the fence surrounding CPP-1617 indicating that site access is restricted to authorized personnel.

6.22 Violation No. 22

DOE has resolved Violation No. 22 by performing a hazardous waste determination on the nine drums of waste nitric acid (HNO3). The nitric acid was a hazardous waste (D002), and DOE has demonstrated that the nitric acid was treated and disposed of on-site in compliance with the HWMA and the Rules, Regulations and Standards for Hazardous Waste.

6.23 Violation No. 23

DOE has resolved Violation No. 23 by demonstrating that DOE's Congressional Budget Request of December 9, 1985 was approved and that funding was received by July 3, 1986 for the construction of the Liquid Effluent Treatment and Disposal facility (LETD).

6.24 Violation No. 24

DOE has resolved Violation No. 24 by installing a new jet system to retrieve liquid waste in the secondary containment area at CPP-601.

6.25 Violation No. 25

DOE has resolved Violation No. 25 by containerizing the hazardous waste lead in the outside storage area at TAN-647 and transporting the hazardous waste lead to the RWMC for storage in compliance with the HWMA and the Rules, Regulations and Standards for Hazardous Waste.

6.26 Violation No. 26

DOE has resolved Violation No. 26 by performing a hazardous waste determination on the waste sand-blast grit at the TAN-

603 Weld Shop. The waste sand-blast grit was a hazardous waste and was disposed of in compliance with the HWMA and the Rules, Regulations and Standards for Hazardous Waste.

6.27 Violation No. 27

DOE has resolved Violation No. 27 by verifying the presence of the TAN-603 Medical Unit Contingency Plan and ensuring that TAN-603 Medical Unit facility personnel are familiar with the Contingency Plan and its contents.

6.28 Violation No. 28

Violation No. 28 alleged that DOE had stored eleven (11) drums of mixed hazardous waste at an unpermitted storage area for over one (1) year. Ten (10) of the eleven (11) drums contained hazardous waste. DOE has resolved Violation No. 28 by transferring the ten (10) drums of mixed hazardous waste to the RWMC for storage in compliance with the HWMA and the Rules, Regulations and Standards for Hazardous Waste.

## VII. DELAYS IN ACHIEVING COMPLIANCE

7.1 If any event occurs that causes, or may cause, delay in the achievement of any compliance deadline or other requirement of this Consent Order, DOE shall notify the Department in writing within ten (10) days of the date DOE knew, or reasonably should have known, of the event. Any notice under this paragraph should describe in detail the anticipated length of the delay, the precise cause or causes of the delay, all the anticipated consequences of the delay, measures taken by DOE to prevent or minimize the delay, and a timetable by which those measures will be implemented. DOE shall utilize all reasonable measures to avoid or minimize any such delay. If the Department determines that the delay, or anticipated delay, in achieving any of the requirements of this Consent Order has been, or will be, caused by circumstances beyond the reasonable control of DOE, the Department will grant an extension for a period equal to the length of the delay caused by such circumstances. The Department shall notify DOE of its determination within twenty (20) days of the date of receipt of DOE's notification. The burden of proving that any delay is caused by circumstances beyond the reasonable control of DOE shall rest wholly with DOE. In agreeing to the compliance deadlines and other requirements of this Consent Order, DOE has taken into account reasonably foreseeable delays which may be caused by adverse weather conditions, encountering minor amounts of contaminated soil, the need to design equipment for heel removal from tanks and to gain experience operating such equipment, transportation delays, and delays associated with the procurement of parts or the maintenance of machinery or equipment.

7.2 DOE may request, pursuant to § 7.1, an extension of the compliance deadlines established by this Consent Order. The Department shall review any such request pursuant to the requirements of § 7.1.

## VIII. COMMUNICATIONS

Except as later modified by written agreement of the Parties:

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

Brian R. Monson, Acting Chief
Operating Permits Bureau
DEQ Permits and Enforcement Division
1410 North Hilton Street
Boise, Idaho 83706

and

Chief, RCRA Compliance Section
USEPA, Region 10
MS-HW 104
1200 Sixth Avenue
Seattle, Washington 98101

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

Chief, Environmental Support Branch
United States Department of Energy
Idaho Field Office
785 DOE Place
Idaho Falls, Idaho 83401-1562.

## IX. ENFORCEABILITY

9.1 This Consent Order is enforceable notwithstanding the fact the Department has not issued a Notice of Violation to DOE. DOE expressly recognizes that failure to comply with the terms of this Consent Order may result in an enforcement action for relief available under the HWMA. In any civil or administrative proceeding by the Department or EPA to enforce this Consent Order, DOE agrees not to contest the validity of the provisions of this Consent Order nor the Department or EPA's authority to enforce this Consent Order.

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

"person" within the meaning of § 7002(a) of RCRA, 42 U.S.C. § 6972(a).

9.3 DOE agrees that if Congress waives sovereign immunity, or a court of competent jurisdiction determines that sovereign immunity has been waived, for civil or criminal penalties for violations of state hazardous waste laws, the Department may seek, and if appropriate, obtain such remedies in enforcing this Consent Order pursuant to applicable law.

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

## X. AMENDMENT, MODIFICATION AND TERMINATION

10.1 Except as set forth in § 10.5, this Consent Order may only be amended or modified by mutual agreement of the Department, DOE and EPA. Any amendment or modification of this Consent Order shall be in writing, shall have as the effective date the date of signature by the Director of the Department, and shall be incorporated into this Consent Order and be enforceable in the same manner as any other requirement of this Consent Order.

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

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

10.4 This Consent Order shall not relieve DOE from its obligation to comply with any of the applicable provisions of the HWMA or the Rules, Regulations and Standards for Hazardous Waste, IDAPA §§ 16.01.5000 to 5999, including any permit, closure, post-closure or other hazardous waste requirements. Nor does this Consent Order relieve DOE from its obligation to comply with any other applicable federal, state, or local law, or any interagency or other agreements between the Department and DOE.

10.5 The requirements of this Consent Order may be amended or modified by the Department upon issuance of a permit pursuant to the HWMA and the Rules, Regulations and Standards for Hazardous Waste. At the election of the Department, the

requirements of this Consent Order may be incorporated, with or without change, in any permit issued by the Department. Requirements of this Consent Order incorporated into a final, enforceable permit issued by the Department shall no longer be enforceable under this Consent Order. The Department shall notify DOE in writing if the Department decides to include in any draft permit any permit condition that is inconsistent with the requirements of this Consent Order.

## XI. FUNDING

11.1 DOE shall take all necessary steps to obtain sufficient funding to comply with the provisions of this Consent Order and, once obtained, shall obligate those funds for the purpose of compliance with this Consent Order. The terms of DOE's Five Year Plan shall be consistent with the provisions of this Consent Order, including all compliance deadlines contained in this Consent Order. DOE's Five Year Plan shall be drafted and updated in a manner that ensures that the provisions of this Consent Order are incorporated into the DOE planning and budget process. Nothing in the Five Year Plan shall be construed to affect the enforceability of any provision of this Consent Order.

11.2 DOE maintains that any requirement for the payment or obligation of funds under this Consent Order is subject to the provisions of the Anti-Deficiency Act, 31 U.S.C. § 1341. DOE also maintains that any requirement for the payment of obligation of funds under this Consent Order is subject to the availability of appropriated funds and that the unavailability of such funds may constitute a valid defense to any administrative or judicial action that may be brought to enforce the terms of this Consent Order. The Department recognizes the provisions of the Anti-Deficiency Act but does not agree that the Anti-Deficiency Act, or failure to obtain adequate funds or appropriations to comply with this Consent Order, shall constitute a circumstance beyond the reasonable control of DOE or shall constitute a release from or defense to any administrative or judicial action which may be brought to enforce this Consent Order. DOE and the Department agree that it is premature to raise the validity of such a defense at this time. If, at any time, adequate funds or appropriations are not available to comply with this Consent Order, DOE shall notify the Department in writing and the Department shall determine whether or not it is appropriate to adjust the deadlines set forth in this Consent Order. DOE reserves the right to raise the Anti-Deficiency Act as a defense to any action brought to enforce this Consent Order.

## XII. COVENANTS AND RESERVATIONS

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

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

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

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

12.5 The Department, DOE and EPA agree that EPA reserves all oversight and enforcement authorities EPA possesses regarding

all matters addressed in this Consent Order. EPA's rights include, but may not be limited to, the right to take action under the applicable provisions of the Solid Waste Disposal Act, as amended by RCRA, and the right to enforce the hazardous waste Memorandum of Agreement between the State of Idaho and EPA which became effective on April 9, 1990.

## XIII. STATE OR EPA LIABILITY

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

## XIV. EFFECTIVE DATE

14.1 The effective date of this Consent Order shall be the date of signature by the Director of the Idaho Department of Health and Welfare. Each of the undersigned representatives of the Parties warrants that he or she is fully authorized to and does hereby enter into and legally bind his or her agency to this Consent Order.

SO AGREED:

DATE April 3, 1992 SIGNED: Richard P. Donovan

RICHARD P. DONOVAN
DIRECTOR
IDAHO DEPARTMENT OF HEALTH
AND WELFARE

DATE 3/24/92 SIGNED: A Pitrolo

AUGUSTINE A. PITROLO
MANAGER
U.S. DEPARTMENT OF ENERGY
IDAHO OPERATIONS OFFICE

APPROVED/CONCURRED:

DATE 3/30/92 SIGNED: Randall F Smith

RANDALL F. SMITH
DIRECTOR
HAZARDOUS WASTE DIVISION
U.S. ENVIRONMENTAL PROTECTION
AGENCY, REGION 10