STATE OF IDAHO
DIVISION OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706-1255 • (208) 373-0502

Dirk Kempthorne, Governor
C. Stephen Allred, Administrator

JUN 19 2000

June 13, 2000

Donald N. Rasch
Environmental Technical Support Division
U.S. DOE, Idaho Operations Office
850 Energy Dr., MS 1146
Idaho Falls, ID 83401-1562

Dear Mr. Rasch:

Enclosed is a signed copy of the Consent Order to address hazardous waste compliance concerns at the Idaho National Engineering Laboratory (INEEL). We appreciate your cooperation in this matter.

If you have any questions, please contact me at (208) 373-0502.

Sincerely,

Brian R. Monson
Hazardous Waste Program Manager
State Waste Management & Remediation Program Office

BRM:tg c:\...\mike\ineel\ineel.let

Enclosure

cc: Darrell Early, Deputy Attorney General
James S. Johnston, Administrator, DEQ Idaho Falls Regional Office
Kathleen Trever, INEEL Oversight
Source File
COF

IDAHO DEPARTMENT OF HEALTH AND WELFARE

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

1. PARTIES

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 & Environmental Laboratory (INEEL) located in Butte, Jefferson, Clark, Bonneville, and Bingham Counties near Idaho Falls, Idaho.

2. JURISDICTION

2.1 The Parties enter into this Consent Order pursuant to the Idaho Hazardous Waste Management Act of 1983 (HWMA), as amended, Idaho Code §§ 39-4401, et seq. The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) and the Federal Facility Compliance Act of 1992, 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. DOE, a department of the executive branch of the federal government, owns and operates the INEEL, a nuclear research and development facility.

2.2 The Department administers a hazardous waste management program pursuant to the HWMA and the Idaho Rules and Standards for Hazardous Waste, IDAPA 16.01.05.000 to 05.999. The State of Idaho is authorized, pursuant to RCRA, to administer this hazardous waste management program in lieu of the federal program. 55 Fed. Reg. 11015 (March 26, 1990). DOE generates, transports, stores, treats, and manages hazardous waste at the INEEL and is therefore subject to and must comply with all federal and state requirements respecting hazardous waste, including the HWMA and the Idaho Rules and Standards for Hazardous Waste.

2.3 DOE agrees not to contest the jurisdictional elements of this Consent Order, or to contest the Department's authority to seek enforcement of the terms and conditions of this Consent Order.

3. DEFINITIONS

3.1 Except as otherwise specifically defined herein, the terms used in this Consent Order, including the attached Action Plan, shall have the same meaning as that used in the HWMA and the Idaho Rules and Standards for Hazardous Waste.

3.2 "Covered Matters" are those potential violations specifically identified in the attached Action Plan or subsequently added to the Action Plan pursuant to Section 11.2 of the Consent Order.

3.3 "Deliverable" is a written submittal required to be made to the Department by DOE to document DOE's satisfaction of compliance with the actions identified under the milestone. The deliverable shall be due upon the same date as the milestone with which it is associated. The review and approval procedure for a deliverable is set out in Section 9 of this Consent Order.

3.4 "Milestone" is a fixed date, set in the Action Plan, by which DOE must complete certain actions. Milestones are identified by reference to federal fiscal year quarters. The date of any milestone will be the last day of the quarter identified: the first quarter (1Q) shall have December 31; the second

quarter (2Q) shall have March 31; the third quarter (3Q) shall have June 30; and the fourth quarter (4Q) shall have September 30.

4. COVERED MATTERS AND IMPLEMENTATION OF THE ACTION PLAN

4.1 Beginning in 1996, in a series of telephone calls, meetings, and written submissions, DOE has described factual situations to the Department which may involve violations of HWMA and the Idaho Rules and Standards for Hazardous Waste. Based upon the circumstances of disclosure to the Department and the assumptions described in Section 13.5 of this Consent Order, the Department has decided to exercise its enforcement discretion by not issuing a Notice of Violation or assessing a civil penalty with regard to the potential violations included in this Consent Order as Covered Matters. The attached Action Plan establishes enforceable milestones within which DOE must achieve compliance with regard to the Covered Matters. The Action Plan is incorporated into and made a part of this Consent Order, and is enforceable in the same manner as any other requirement of the Consent Order.

4.2 In order to return to compliance with regard to the Covered Matters, DOE agrees to the provisions of this Consent Order.

4.3 This Consent Order covers three types of Covered Matters, as follows:

1. Covered Matters with Detailed Action Plans (Non-Tiered Milestones). Appendix A of the Action Plan address certain Covered Matters which have specifically identified milestones the completion of which will bring DOE into compliance with regard to the particular Covered Matter.

2. Covered Matters with Tiered Milestones. Appendix B of the Action Plan address certain Covered Matters which have "tiered" milestones identified. The implementation of the tiered milestones shall be conducted pursuant to Section 4.4 of this Consent Order. Interim actions for Covered Matters with tiered milestones will be identified in Appendix B, as appropriate.

3. Covered Matters that Are Closed. Appendix C of the Action Plan lists certain Covered Matters that are closed under the provisions of this Consent Order and the Action Plan. With regard to these Covered Matters, the Department has determined that DOE has taken all actions necessary to resolve any identified issues of potential non-compliance, or is resolving the potential noncompliance through a process outside this Consent Order.

4.4 For Covered Matters with Tiered Milestones included in Appendix B of the Action Plan, completion of the initial milestones will provide DOE and the Department with necessary information to determine if additional action is needed to achieve compliance with regard to the Covered Matter. Department approval of the deliverables required to achieve the initial milestones may not bring these Covered Matters to compliance. With regard to any particular Covered Matter in this category it may be necessary to establish further tiered milestones. To complete the initial milestones for this category of Covered Matters, DOE shall make a determination of whether further action is required and submit it to the Department (along with any relevant supporting information) for review and approval as a deliverable by the date identified in Appendix B. Based upon the information in the deliverable, if DOE determines that:

1. No further action is required and the Department approves that deliverable the Covered Matter shall be transferred to Appendix C of the Action Plan as a closed Covered Matter; or

2. Further action is required, DOE must, within ninety (90) days of the Department's approval of the milestone deliverable, submit a milestone deliverable which includes a description of interim actions, if necessary, along with a proposed schedule of further milestones or

tiered milestones and associated actions to achieve compliance with regard to the Covered Matter.

4.5 Upon the Department's approval of a final deliverable submitted to achieve a milestone which completes the requirements of this Consent Order with regard to a particular Covered Matter, the Covered Matter shall be transferred to Appendix C of the Action Plan as a closed Covered Matter.

5. ANNUAL ACTION PLAN REVISIONS & PROGRESS REPORTS

5.1 Commencing October 31, 2000, and annually on or before every October 31 thereafter, DOE shall submit to the Department, for review and approval, a Progress Report and a revised Action Plan. The period each Progress Report and revised Action Plan shall cover is, inclusively, from October 1 of the preceding calendar year through September 30 of the calendar year the submittal is made (federal fiscal year).

5.2 The Progress Report shall summarize, in narrative form, the activities taken to implement the Consent Order over the previous federal fiscal year. The Report shall identify any issues that have affected or may affect DOE's compliance with the Consent Order requirements, including compliance with milestones. The Progress Report shall also identify and describe any pending notifications or requests for extensions under Section 7 of this Consent Order, the status of any deliverables pending review, comment, approval, modification, revision, or other action under Section 9 of this Consent Order, and the consequences of any extensions sought or obtained.

5.3 The revised Action Plan shall specifically incorporate all actions taken during the relevant period including but not limited to: the transfer of Covered Matters within the Action Plan pursuant to Section 4; the removal of Covered Matters from the Consent Order pursuant to Sections 9.5.5 or 13.5; the addition of tanks to the Covered Matters pursuant to Section 7.5; or the extension of any milestones or other deadlines pursuant to Section 7 or Section 9.6.

5.4 The requirement to submit an annual Progress Report and revised Action Plan shall not change or alter in any manner the notification requirements of Section 7.1 of this Consent Order, any notification requirements to which DOE is subject pursuant to any other order, agreement or applicable law, or the requirements of this Consent Order with regard to the addition, removal, or closure of Covered Matters or the revision of milestones or other Consent Order requirements, terms and conditions.

6. STIPULATED PENALTIES

6.1 Unless and until the Department has granted DOE an extension pursuant to Section 7 of this Consent Order, DOE hereby stipulates and agrees that, if DOE fails to complete on time any milestone required by this Consent Order, or if the Department disapproves a deliverable pursuant to Section 9.5 of this Consent Order, DOE shall be subject to a stipulated penalty of one thousand dollars ($1,000) for each violation for each day that DOE fails to achieve compliance with the requirement violated.

6.2 For the Department to recover a stipulated penalty from DOE for matters covered by this Consent Order, the Department must give DOE written notice of the alleged violation for which the Department seeks a penalty. The notice shall describe the alleged violation and demand payment of the penalty. Upon receipt of such notice from the Department, DOE shall reply in writing within seven (7) days. The reply shall: (a) explain the reason for the alleged violation and the proposed means and time required to remedy the same; or (b) state why DOE believes the Department's claim is invalid. The Department shall thereafter respond to DOE's reply by notifying DOE whether DOE

must pay the stipulated penalty. Any stipulated penalty shall be paid by DOE to the Department within sixty (60) days of DOE's receipt of the Department's final response, except as otherwise provided for or limited by law.

6.3 All stipulated penalties shall begin to accrue upon the day a violation occurs and shall continue to accrue through the day (a) the violation is corrected or the Consent Order requirement is met, or (b) DOE receives written notice from the Department that the relevant Covered Matter is withdrawn from the scope of this Consent Order pursuant to Section 9.5.5 or 13.5, whichever comes first.

6.4 Nothing shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Order.

6.5 The payment of stipulated penalties shall not alter in any way DOE's obligation to complete the performance of this Consent Order. DOE recognizes that failure to comply with the terms of this Consent Order, or any of the statutes or regulations upon which it is based, may result in an action for any relief available to the Department. The Department reserves its right to assess monetary penalties under the HWMA in lieu of stipulated penalties for violations of this Consent Order for either the entire duration or a discrete portion of the duration of the violation.

6.6 If required, payment shall be made by electronic transfer of funds or by check payable to the Idaho Department of Health and Welfare and sent to the following address:

Accounts Receivable
Financial Management Services Division
Idaho Division of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255

7. EXTENSIONS, MODIFICATIONS, AMENDMENTS

7.1 If any event occurs that causes, or may cause, delay in the achievement of any milestone 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 Section shall 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 burden of proving that any delay is caused by circumstances beyond the reasonable control of DOE shall rest wholly with DOE.

7.2 In addition to situations covered in other sections of this Consent Order, DOE may request, for good cause and in writing, an amendment of this Consent Order, or a modification of the Action Plan, including the extension of a milestone.

7.3 If DOE submits a request pursuant to Sections 7.1 or 7.2, the Department shall notify DOE of its determination within thirty (30) days of receipt of the request of the Department's decision whether to grant the request. If the Department does not respond to DOE's request within thirty (30) days, the request shall be deemed denied.

7.4 A timely and good faith request for an extension pursuant to Sections 7.1 or 7.2 shall toll any accrual of stipulated penalties with regard to the affected milestone until DOE receives the Department's final decision as to whether the requested extension is granted. If the request for extension is ultimately denied, stipulated penalties shall accrue from the date of the original milestone. Following the Department's approval of an extension, stipulated penalties shall accrue only from the most recently extended milestone.

7.5 If a modification requested by DOE pursuant to this section includes the addition of a tank or any tanks to the Covered Matters in the Action Plan, the Department's decision whether to allow the inclusion of a particular tank as a Covered Matter under this Consent Order shall be based upon the operational and regulatory status of the tank and its similarity to the tanks already included as Covered Matters. The burden of demonstrating the appropriateness of including a tank as a Covered Matter shall be on DOE. Once an individual tank is added as a Covered Matter, the tank shall be subject to the terms and conditions of this Consent Order.

7.6 The Action Plan may be modified by the Project Managers, except that the following modifications shall only be made by mutual agreement of the undersigned representatives of the Department and DOE or persons in comparable positions of authority:

1. Extensions of a milestone for any given Covered Matter for a cumulative period of more than one year;

2. Addition of any Covered Matter (except for a tank pursuant to Section 7.5 above) to the Action Plan; and

3. Any other modification determined by the Department Project Manager to require such approval.

7.7 The language of this Consent Order, excluding the Action Plan, may only be amended by mutual agreement of the undersigned representatives of the Department and DOE or persons in comparable positions of authority.

7.8 Any modification or amendment of this Consent Order, including the Action Plan, shall be in writing and shall be incorporated into this Consent Order and be enforceable in the same manner as any other requirement of this Consent Order. All modifications to the Action Plan shall be documented in the revised Action Plan submitted by DOE pursuant to Section 5.

8. PROJECT MANAGERS & COMMUNICATIONS

8.1 DOE and the Department have each designated the following as Project Managers:

D. Michael Gregory,
Hazardous Waste Enforcement Coordinator
State Waste Management and Remediation Program Office
Idaho Division of Environmental Quality
1410 N. Hilton St., 2nd floor
Boise, Idaho 83706-1255

Donald N. Rasch, Environmental Compliance Manager
Environmental Technical Support Division
United States Department of Energy, Idaho Operations Office
850 Energy Drive, MS 1146
Idaho Falls, Idaho 83401-1562

8.2 Either DOE or the Department may change its designated Project Manager by providing timely

written notice.

8.3 Each Project Manager shall be responsible for oversight of the implementation of this Consent Order. To the extent possible, communications between DOE and the Department concerning implementing the requirements of this Consent Order, including the submission of deliverables or other documents or notices, shall be directed through the Project Managers. Each Project Manager shall be responsible for assuring that all communications from the other Project Manager are disseminated appropriately to that responsible Project Manager's organization. The Project Managers shall have the appropriate level of authority to act for their respective agencies regarding the implementation of this Consent Order.

9. SUBMITTAL AND REVIEW OF DELIVERABLES

9.1 Except as otherwise provided for in this section, where Department review and approval of a document which is also a deliverable is expressly provided for by the HWMA, the Idaho Rules and Standards for Hazardous Waste, or other applicable law, or agreement, such submittal, review, and approval shall be made pursuant to the applicable authority and not in accordance with this section.

9.2 Except for those deliverables identified in Sections 9.1, the provisions of this section as set out below shall apply to all deliverables submitted by DOE for Departmental review and approval. The term "deliverable" is defined in Section 3.3 of this Consent Order. When submitting a deliverable, DOE shall identify the specific Action Plan provision requiring submittal of the deliverable.

9.3 In the course of its review, each party may consult with the other party as necessary regarding the adequacy of a deliverable. Oral comments made during any discussions shall not require a written response, unless requested by one or both of the Parties.

1. The Department's comments on any deliverable shall be provided with adequate specificity so that DOE can make the appropriate changes to the document. To the extent applicable, comments shall include specific citations to any sources of authority or references on which the comments are based. Upon reasonable request of DOE, the Department shall provide a copy of the cited authority or reference.

2. DOE shall submit all deliverables required under this Consent Order in good faith, as complete documents.

9.4 Until the Department's approval of a deliverable is granted, DOE may commence work related to the proposed activity covered by the deliverable only at its own risk.

9.5 The following procedures shall apply to deliverables under this Consent Order:

1. The Department shall, within thirty (30) days of initial receipt: (1) approve the deliverable as submitted, or (2) return the deliverable to DOE with comments so that changes can be made for resubmittal.

2. In the event the Department returns the deliverable to DOE with comments, within thirty (30) days of receipt, DOE shall respond to the Department's comments regarding the deliverable by modifying the deliverable consistent with the comments, or specifically stating the reason for a failure to make such modification, and re-submitting the deliverable. The Department shall, within thirty (30) days of receipt of the revised deliverable: (1) approve the deliverable, (2) disapprove the deliverable, or (3) return the deliverable to DOE with comments so that additional changes can be made for resubmittal. DOE shall continue to revise and re-submit the deliverable as necessary until it is approved or disapproved by the Department,

except that, unless the parties agree otherwise, the deliverable must be approved by the Department within one hundred and fifty (150) days of the milestone or the deliverable shall be deemed disapproved.

3. Except where a deliverable is automatically deemed disapproved by the Department at the end of 150 days pursuant to Section 9.5.2, and subject to Section 9.6, in the event the Department fails to take an action within the time frames specified in this section, the deliverable shall be deemed approved.

4. Subject to Section 9.6, in the event DOE fails to take an action within the time frames specified in this section, at the discretion of the Department and upon written notice to DOE, the deliverable may be disapproved.

5. In the event of disapproval of a deliverable under this section, the Department may by written notice to DOE, withdraw the related Covered Matter from the scope of this Consent Order. In such event, the Department may take any action available under law absent this Consent Order to address the withdrawn Covered Matter or any issue related to the Covered Matter.

9.6 The Parties shall comply with the time frames established in this section unless specifically scheduled or provided for otherwise. Either party may extend a period prescribed in this section for one additional thirty (30) day period by giving the other party written notice prior to the end of the original period. A longer extension period may be granted to DOE by the Department pursuant to Section 7 of this Consent Order, or to the Department by mutual agreement. Any extension of the Department's review period for a deliverable will automatically result in an equivalent extension of any milestone directly dependent upon the results of the review.

9.7 Once approved, actions identified in any deliverable required by this Consent Order shall become part of this Consent Order and shall be enforceable as such.

9.8 This section shall apply in cases where the parties determine that closure pursuant to IDAPA 16.01.05.009 [40 C.F.R. Part 265, subpart G] is the appropriate action for a particular Covered Matter.

1. If, after completing the initial milestone(s) or as otherwise provided for in the Action Plan, DOE determines that closure is the appropriate action, the next deliverable shall be identified as, "Submit milestone for submittal of draft closure plan and identify interim actions." This deliverable will be reviewed in accordance with Section 9.5.

2. As provided for in the Action Plan, DOE shall submit the draft closure plan as a deliverable. This deliverable shall also include a schedule for Department review and DOE revision of the closure plan, and the milestone by which the closure plan shall be submitted. The schedule shall provide for not more than two revisions before submittal of the closure plan. Only the schedule provided in the deliverable will be reviewed in accordance with Section 9.5. In addition, stipulated penalties under Section 6 shall only apply if the milestone for submittal of the draft closure plan is not met, or if the schedule is disapproved.

3. Upon approval of the schedule in the deliverable, the date for submittal of a closure plan shall become the next enforceable milestone. The draft closure plan will be reviewed pursuant to the schedule established in the Action Plan, and not Section 9.5. Other dates in the review and revision schedule are subject to Section 9.7, but are not milestones.

4. If in any instance the Department fails to meet its commitment for review as identified in the approved schedule, there shall be an automatic extension, equal to the length of the delay,

of the Department's review date and all subsequent dates in the schedule, including the milestone date for submittal of the closure plan.

5. Upon submittal, the closure plan shall be reviewed in accordance with Section 9.5, but such review and approval, and the applicability of stipulated penalties under Section 6, shall only be for purposes of determining that the milestone has been met and that the closure plan is ready for release for public comment. After such a determination, public notice, review, and comment shall proceed pursuant to IDAPA 16.01.05.009 (40 CFR § 265.112(d)(4)).

6. The final deliverable related to closure plans shall be the submittal of a certification of closure, with the milestone to be sixty (60) days from the date of completion of closure, as identified in the final closure plan. Upon approval of the deliverable associated with this milestone, the Covered Matter shall be transferred to Appendix C of the Action Plan as a closed Covered Matter.

7. The process for submittal of a Closure Plan under this Consent Order is illustrated in Appendix D to the Action Plan.

9.9 This section shall apply in cases where the parties determine that application for a RCRA permit is the appropriate action for a particular Covered Matter.

1. If, after completing the initial milestone(s) or as otherwise provided for in the Action Plan, DOE determines that a particular unit should be permitted, the next deliverable shall be identified as, "Submit notice for RCRA permitting and identify any necessary interim actions." This deliverable shall be reviewed in accordance with Section 9.5.

2. If the Department approves DOE's determination that a RCRA permit is required, the schedule for submittal and approval of the permit shall be in accordance with the RCRA Part B Work Plan, and shall not be subject to the review process in Section 9.5 of this Consent Order or stipulated penalties. However, the Covered Matter and any identified interim actions will continue to be covered under this Consent Order in accordance with Section 9.7 until the permit is issued or the matter otherwise comes into compliance and becomes a Closed Matter.

3. If the Department either: a) disapproves DOE's determination that a RCRA permit is required; or b) disapproves the RCRA permit application; then DOE shall, within 90 days after the Department's disapproval, either: a) submit a deliverable which includes milestones for submittal of a draft closure plan in accordance with Section 9.8; or b) submit a deliverable which includes milestone(s) for further Consent Order actions in accordance with Section 4.4.2.

4. Nothing in this Consent Order shall effect the Department's authority to require DOE's submission of a RCRA permit application at any time.

5. The process for submittal of a RCRA permit application under this Consent Order is illustrated by Appendix D to the Action Plan.

9.10 This section shall apply in cases where the parties determine that a Covered Matter should be addressed under the Federal Facility Agreement and Consent Order (FFA/CO), executed by DOE, the Department, and the Environmental Protection Agency Region 10 on December 9, 1991.

1. If, after completing the initial milestone(s) or as otherwise provided for in the Action Plan, DOE determines that a particular Covered Matter should be addressed under the FFA/CO,

the next deliverable shall be identified as, "Submit schedule for submittal of New Site Identification Form (NSIF)." This deliverable shall be reviewed in accordance with Section 9.5.

2. Upon approval of the schedule in the deliverable, the date for submittal of the NSIF shall become the next enforceable milestone. However, the review and approval process for the NSIF shall be in accordance with the process established through the FFA/CO, and not Section 9.5. In addition, stipulated penalties under Section 6 shall only apply if the milestone for submittal of the NSIF is not met.

3. If the NSIF is approved through the FFA/CO process, the Covered Matter shall be moved to Appendix C as a Closed Matter. If the NSIF is disapproved through the FFA/CO process and all processes for review of that decision are exhausted, DOE shall, within 90 days of a final determination under the FFA/CO, submit a deliverable for further action in accordance with Section 4.4.2 of this Consent Order.

4. The process for submittal of a NSIF under this Consent Order is illustrated by Appendix D to the Action Plan.

10. ENFORCEABILITY

10.1 DOE expressly recognizes that failure to comply with the terms of this Consent Order may result in an enforcement action for any relief available to the Department. In any such civil or administrative proceeding by the Department to enforce this Consent Order, DOE agrees not to contest the validity of the provisions of this Consent Order or the Department's authority to enforce this Consent Order.

10.2 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).

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

11. TERMINATION

11.1 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; or, with regard to a specific Covered Matter, until the Covered Matter is withdrawn from this Consent Order pursuant to Sections 9.5.5 or 13.5. A request for the Department's written termination of this Consent Order shall not be unreasonably denied.

11.2 This Consent Order shall not relieve DOE of its obligation to comply with any of the applicable provisions of the HWMA, or the Idaho Rules and Standards for Hazardous Waste, including any permit, closure, post-closure, public notice and comment, or other hazardous waste requirement except as specifically provided in this Consent Order. This Consent Order shall not relieve DOE of its obligation to comply with any other applicable federal, state, or local law, or with the terms of any interagency or other agreements between the Department and DOE.

12. FUNDING

12.1 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. Based upon the amount of annual funding it receives, pursuant to Sections 7 and 11 of this Consent Order, DOE may be able to seek an adjustment of its commitments under this Consent Order. DOE may request that the Department consider DOE's funding constraints in making a final decision with regard to such proposed adjustment.

12.2 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 or 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 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 milestones 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 .

13. COVENANTS AND RESERVATIONS

13.1 This Consent Order shall stand in lieu of any administrative, legal and equitable remedies which are available to the Department against DOE and all parties bound by this Consent Order with respect to Covered Matters, 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.

13.2 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 or deliverables submitted by DOE. Except as set forth in Section 13.1, 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 or agreement.

13.3 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 claim of jurisdiction over matters which may be reserved to DOE by law, including the Atomic Energy Act. Nothing in this Consent Order shall constitute an admission on the part of DOE, in whole or in part, in any proceeding except in a proceeding to enforce this Consent Order. DOE specifically reserves all rights it may have by law to seek and obtain administrative or judicial review or appeal according to law of any determination made by the Department during DOE's performance of its obligations under this Consent Order. During the pendency of any such administrative review or appeal, DOE shall continue to comply with the requirements of this Consent Order unless otherwise authorized or required by law or a court of competent jurisdiction. DOE specifically reserves all rights it may have by law to seek and obtain administrative or judicial review or appeal of permit requirements.

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

13.5 As described in Section 4.1 of this Consent Order, based upon the assumption that the Covered

Matters have been fully identified by the Department and DOE, no Notice of Violation was issued to and no civil penalties were assessed against DOE by the Department for the Covered Matters addressed by this Consent Order. If, subsequent to the effective date of this Consent Order, new information is obtained by the Department regarding a Covered Matter, or if DOE violates the provisions of this Consent Order regarding a Covered Matter, the Department may determine that the Covered Matter should no longer be a Covered Matter for purposes of this Consent Order. The Department may then terminate, by written notice, the requirements of this Consent Order with regard to the particular Covered Matter, and the Department may take any action available under law absent this Consent Order to address the terminated Covered Matter or any issue related to the Covered Matter.

14. STATE LIABILITY

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

15. ACCESS

Nothing in this Consent Order limits or otherwise affects the Department's right of access and entry pursuant to applicable federal, state, or local law.

16. EFFECTIVE DATE

The effective date of this Consent Order shall be the date of signature by the Administrator of the Idaho Division of Environmental Quality. 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 5/31/00 SIGNED: Beverly Cook

BEVERLY COOK
MANAGER
U.S. DEPARTMENT OF ENERGY
IDAHO OPERATIONS OFFICE

DATE 6/14/2000 SIGNED:

C. STEPHEN ALLRED
ADMINISTRATOR
DIVISION OF ENVIRONMENTAL QUALITY
IDAHO DEPT. OF HEALTH & WELFARE
STATE OF IDAHO