

U.S. Department Of Energy
Idaho National Engineering Laboratory
("INEL")
Federal Facility Agreement And
Consent Order

The United States Environmental
Protection Agency, Region 10,
The State Of Idaho,
Department Of Health And Welfare,
And The
United States Department Of Energy

July 22, 1991

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10,
THE STATE OF IDAHO, DEPARTMENT OF HEALTH AND WELFARE,
AND THE
UNITED STATES DEPARTMENT OF ENERGY

IN THE MATTER OF:) FEDERAL FACILITY AGREEMENT
AND CONSENT ORDER
THE U.S. DEPARTMENT OF ENERGY)
IDAHO NATIONAL ENGINEERING)
LABORATORY ("INEL"),)
Idaho Falls, Idaho) Administrative Docket Number:
1088-06-29-120

TABLE OF CONTENTS

		<u>Page</u>
I.	JURISDICTION.	3
II.	DEFINITIONS	5
III.	PARTIES	9
IV.	STATEMENT OF PURPOSE.	11
V.	STATUTORY COMPLIANCE.	12
VI.	REGULATORY DETERMINATIONS	13
VII.	REGULATORY APPROACH	15
	A. Project Management.	15
	B. Response Actions.	16
	C. Permitting.	17
VIII.	CONSULTATION WITH U.S. EPA AND IDHW	19
	A. Applicability	19
	B. General Process for Submission of Documents	20
	C. Primary Documents	21
	D. Secondary Documents	21
	E. Meetings of the Project Managers on Development of Documents.	21

F.	Identification and Determination of Potential ARARs . . . . .	.22
G.	Review and Comment on Draft Documents . . . . .	.23
H.	Availability of Dispute Resolution for Draft Final Primary Documents . . . . .	.26
I.	Finalization of Documents . . . . .	.26 -
J.	Subsequent Modifications of Final Documents . . . . .	.27
IX.	RESOLUTION OF DISPUTES. . . . .	.28
X.	ENFORCEABILITY. . . . .	.34
XI.	STIPULATED PENALTIES. . . . .	.35
XII.	TARGET DATES AND DEADLINES. . . . .	.38
XIII.	EXTENSIONS. . . . .	.39
XIV.	RECOVERY OF EXPENSES. . . . .	.41
	A. U.S. EPA Expense. . . . .	.41
	B. IDHW Expense. . . . .	.42
XV.	ADDITIONAL WORK . . . . .	.43
XVI.	QUALITY ASSURANCE . . . . .	.44
XVII.	REPORTING. . . . .	.45
XVIII.	NOTICE TO THE PARTIES . . . . .	.46
XIX.	SAMPLING AND DATA/DOCUMENT AVAILABILITY . . . . .	.47
XX.	RETENTION OF RECORDS AND ADMINISTRATIVE RECORD. . . . .	.49
XXI.	ACCESS. . . . .	.50
XXII.	FIVE-YEAR REVIEW. . . . .	.52
XXIII.	TRANSFER OF PROPERTY. . . . .	.53
XXIV.	PUBLIC PARTICIPATION. . . . .	.53
XXV.	DURATION/TERMINATION. . . . .	.54
XXVI.	CLASSIFIED AND CONFIDENTIAL INFORMATION . . . . .	.55
XXVII.	FORCE MAJEURE . . . . .	.57
XXVIII.	FUNDING . . . . .	.58
XXIX.	CREATION OF DANGER/EMERGENCY ACTION . . . . .	.63
XXX.	AMENDMENT OF AGREEMENT. . . . .	.64
XXXI.	RESERVATION OF RIGHTS. . . . .	.65
XXXII.	SEVERABILITY. . . . .	.69
XXXIII.	EFFECTIVE DATE. . . . .	.69

ATTACHMENTS

- A. Action Plan and Deadlines
- B. Mutual Cooperative Funding Agreement

Based on the information available to the Parties on the effective date of this Federal Facility Agreement ("Agreement"), and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

1 I. JURISDICTION

2 Each Party is entering into this Agreement pursuant to
3 the following authorities:

4 1.1 The United States Environmental Protection
5 Agency, Region 10 ("U.S. EPA") enters into this Agreement
6 pursuant to Section 120(e) of the Comprehensive Environmental
7 Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C.
8 § 9620(e), as amended by the Superfund Amendments and
9 Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499 (hereinafter
10 jointly referred to as "CERCLA"); Sections 3004(u) and (v), 3005,
11 3008(h), and 6001 of the Resource Conservation and Recovery Act
12 ("RCRA"), 42 U.S.C. §§ 6924(u) and (v), 6925, 6928(h), and 6961,
13 as amended by the Hazardous and Solid Waste Amendments of 1984
14 ("HSWA"), Pub. L. 98-616 (hereinafter jointly referred to as
15 "RCRA"); and Executive Order 12580 (January 8, 1987).

16 1.2 The State of Idaho, Department of Health and
17 Welfare ("IDHW"), by and through its Director, enters into this
18 Agreement pursuant to Sections 107, 120, and 121 of CERCLA,
19 42 U.S.C. §§ 9607, 9620 and 9621; Sections 3004(u) and (v), 3006,
20 and 6001 of RCRA, 42 U.S.C. §§ 6924(u) and (v), 6926, and 6961;
21 the Environmental Protection and Health Act ("EPHA"), Idaho Code
22 ("I.C.") § 39-101, et seq.; and the Hazardous Waste Management
23 Act ("HWMA"), I.C. § 39-4401 et seq.

24 1.3 U.S. DOE enters into this Agreement pursuant
25 to Section 120(e) of CERCLA, 42 U.S.C. § 9620(e); Sections

1 3004(u) and (v), 3008(h), and 6001 of RCRA, 42 U.S.C. §§ 6924(u)
2 and (v), 6928, and 6961; Executive Orders 12580 (January 8, 1987)
3 and 12088 (October 1978); the National Environmental Policy Act
4 ("NEPA"), 42 U.S.C. § 4321 et seq.; and the Atomic Energy Act of
5 1954 ("AEA"), as amended, 42 U.S.C. § 2011 et seq.

6 1.4 It is the position of IDHW that corrective
7 action requirements are applicable to INEL and that such
8 requirements are enforceable pursuant to state and federal law.
9 It is the position of U.S. DOE and U.S. EPA that such
10 requirements are not enforceable because INEL is listed on the
11 National Priorities List. Subject to, and without waiving the
12 provisions of, Part XXXI, to the extent, if any, corrective
13 action is required pursuant to RCRA and HWMA at INEL, the Parties
14 agree that this Agreement shall be deemed to constitute, and to
15 fulfill the requirements of, a Consent Order under
16 I.C. § 39-4413; provided, however, that in the event of any
17 judicial or administrative action, nothing in this Agreement
18 shall constitute or be interpreted as an admission or stipulation
19 (nor evidence thereof) of a waiver by U.S. DOE and U.S. EPA of
20 any jurisdictional or other claim or defense, including any
21 jurisdictional or other claim or defense regarding the
22 applicability of Idaho law.

23 1.5 As provided in 55 Fed. Reg. 11,015-11,018
24 (March 26, 1990), U.S. EPA authorized the State of Idaho to
25 operate its hazardous waste program in lieu of the federal

1 hazardous waste program. U.S. EPA retains oversight authority
2 pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and
3 40 C.F.R. 271.19.

4 5 II. DEFINITIONS

6 2.1 The terms used in this Agreement shall have
7 the same meaning as defined in Section 101 of CERCLA, 42 U.S.C.
8 § 9601; the National Oil and Hazardous Substances Pollution
9 Contingency Plan ("NCP"), 40 C.F.R. Part 300; Section 1004 of
10 RCRA, 42 U.S.C. § 6903; and HWMA, I.C. § 39-4413. In addition:

11 (a) "Action Plan" shall mean the CERCLA/NCP response
12 action process for implementing this Agreement, which is set
13 forth as Attachment B;

14 (b) "Additional Work" shall mean any new or different
15 work beyond the approved Scope of Work as provided for by Part
16 XV;

17 (c) "Agreement" shall mean this document and shall
18 include all attachments, modifications, and final primary
19 documents which shall be in writing are hereby fully incorporated
20 herein and are fully enforceable;

21 (d) "ARARs" shall mean all Applicable or Relevant and
22 Appropriate Requirements for response actions as required by
23 Section 121(d) of CERCLA, 42 U.S.C. § 9621(d);

24 (e) "Authorized representative" shall include any
25 person, including a Party's contractors, who is specifically

1 designated by a Party to have a defined capacity, including an
2 advisory capacity;

3 (f) "CERCLA" shall mean the Comprehensive
4 Environmental Response, Compensation, and Liability Act,
5 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments
6 and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499, and any
7 regulations promulgated pursuant thereto;

8 (g) "Consent Order" shall mean an Agreement which in
9 no way constitutes or shall be construed as a unilateral order of
10 any kind;

11 (h) "Days" shall mean calendar days, unless otherwise
12 specified. Any submittal under the terms of this Agreement that
13 would be due on a Saturday, Sunday, or a state or federal holiday
14 shall be due on the following business day;

15 (i) "Deadline" shall mean an enforceable date which is
16 also subject to stipulated penalties;

17 (j) "Document" shall mean every document, report,
18 schedule, deliverable, work plan, or other item to be submitted
19 to U.S. EPA and/or IDHW pursuant to this Agreement;

20 (k) "Hazardous substances" shall mean all hazardous
21 wastes, pollutants, contaminants, or constituents regulated under
22 CERCLA, RCRA, or HWMA;

23 (l) "HWMA" shall mean the Idaho Hazardous Waste
24 Management Act of 1983, I.C. §§ 39-4401 et seq., as amended, and
25 any regulations promulgated pursuant thereto;

1 (m) "IDHW" shall mean the State of Idaho Department of
2 Health and Welfare or any of its successor agencies, employees,
3 and authorized representatives;

4 (n) "INEL" shall mean the Idaho National Engineering
5 Laboratory located near Idaho Falls, Idaho, as described at
6 54 Fed. Reg. 48,184 (November 21, 1989);

7 (o) "Interim Action" ("IA") shall mean any early
8 action taken in an operable unit to achieve significant risk
9 reduction quickly, or to expedite completion of total site
10 cleanup, and which should not be inconsistent with nor preclude
11 the implementation of the final remedy;

12 (p) "Lead Agency" shall mean the regulatory agency
13 (U.S. EPA or IDHW) which is assigned primary administrative and
14 technical oversight responsibility with respect to implementing
15 this Agreement at a particular operable unit pursuant to the
16 Action Plan;

17 (q) "NCP" shall mean the National Oil and Hazardous
18 Substances Pollution Contingency Plan, 40 C.F.R. Part 300, as
19 amended;

20 (r) "Paragraph" shall mean a numbered Paragraph of
21 this Agreement;

22 (s) "Part" shall mean one of the subdivisions of this
23 Agreement which is designated by a Roman Numeral;

24 (t) "Parties" shall mean U.S. DOE, U.S. EPA, and IDHW;

1 (u) "Project Manager" shall mean each Party's primary
2 lead for all INEL-related contacts under this Agreement;

3 (v) "RCRA" shall mean the Resource Conservation and
4 Recovery Act, 42 U.S.C. §§ 6901 et seq., as amended by the
5 Hazardous and Solid Waste Amendments of 1984 ("HSWA"),
6 Pub. L. 98-616, and any regulations promulgated pursuant thereto;

7 (w) "Response Action" includes all activities taken
8 pursuant to the Action Plan of this Agreement, subject to
9 Paragraph 5.3, to satisfy the requirements of CERCLA and the
10 corrective action requirements of HWMA.

11 (x) "RI/FS Work Plan" is a plan which contains five
12 (5) distinct components. These are: (1) a Work Plan; (2) a
13 Sampling and Analysis Plan which consists of a Field Sampling
14 Plan and a Quality Assurance Project Plan; (3) a Data Management
15 Plan Supplement; (4) a Health and Safety Plan; and (5) a
16 Community Relations Plan Supplement;

17 (y) "State" shall refer to the State of Idaho,
18 Department of Health and Welfare, its employees, and authorized
19 representatives;

20 (z) "Support Agency" shall mean the regulatory agency
21 (U.S. EPA or IDHW) which has not been assigned as Lead Agency.
22 The Support Agency provides review, comments, and consultation as
23 resources permit;

24 (aa) "Target date" shall not mean an enforceable date
25 and shall not be subject to stipulated penalties;

1 (bb) "United States Department of Energy" ("U.S. DOE")
2 shall mean the United States Department of Energy, and any of its
3 successor agencies, employees, and authorized representatives;

4 (cc) "United States Environmental Protection Agency"
5 ("U.S. EPA") shall mean the United States Environmental
6 Protection Agency, including Region 10, and any of its successor
7 agencies, employees, and authorized representatives;

8 (dd) "WAG Unit Manager" shall mean each Party's lead
9 for implementing WAG-specific Action Plan requirements; and

10 (ee) "Waste Area Groups" or "WAG" shall mean one of the
11 ten (10) permanent management areas of INEL as defined in the
12 Action Plan. Each WAG contains one or more operable units, with
13 designated Lead and Support Agencies as specified in the Action
14 Plan.

15 16 III. PARTIES

17 3.1 The Parties to this Agreement are U.S. EPA,
18 IDHW, and U.S. DOE. Each undersigned representative of a Party
19 certifies that she or he is fully authorized to enter into the
20 terms and conditions of this Agreement.

21 3.2 Contractors of each Party are not considered
22 Parties to this Agreement. The Parties shall be responsible for
23 ensuring that their respective contractors conduct their
24 activities in conformance with the requirements of this
25 Agreement.

1 3.3 U.S. DOE shall provide a copy of this
2 Agreement and relevant attachments to each of its prime
3 contractors at INEL. A copy of this Agreement shall be made
4 available to all other contractors and subcontractors at INEL
5 retained to perform work under this Agreement.

6 3.4 U.S. DOE agrees to undertake all actions
7 required by the terms and conditions of this Agreement and not to
8 contest IDHW or U.S. EPA jurisdiction to execute this Agreement
9 and enforce its requirements as provided herein, including, but
10 not limited to, Part X and subject to Part XXXI.

11 3.5 This Part III shall not be construed as a
12 promise to indemnify any person.

13 3.6 Under no condition shall a Party under this
14 Agreement utilize the services of any consultant, prime
15 contractor, or subcontractor who has been suspended, debarred, or
16 voluntarily excluded within the scope of 40 C.F.R. Part 32 or
17 under the Federal Acquisition Regulations ("FAR") at 48 C.F.R.
18 Subpart 9.4 et seq.

19
20 IV. STATEMENT OF PURPOSE

21 4.1 The general purposes of this Agreement are
22 to:

23 (a) Ensure that the environmental impacts associated
24 with releases or threatened releases of hazardous substances at
25 INEL are thoroughly investigated and that appropriate response

1 actions are undertaken and completed as necessary to protect the
2 public health, welfare, and the environment;

3 (b) Establish a procedural framework and schedule for
4 developing, prioritizing, implementing, and monitoring
5 appropriate response actions at INEL in accordance with CERCLA,
6 RCRA, and HWMA;

7 (c) Facilitate cooperation, exchange of information,
8 and participation of the Parties in such actions;

9 (d) Minimize the duplication of analysis and
10 documentation;

11 (e) Expedite the cleanup process to the maximum extent
12 practicable consistent with protection of human health and the
13 environment; and

14 (f) Supersede the Consent Order and Compliance
15 Agreement ("COCA"), Docket No. 1086-05-16-3008/3013, issued
16 pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and executed
17 on July 10, 1987.

18 4.2 Specifically, the purposes of this Agreement
19 are to:

20 (a) Identify IA alternatives which are appropriate at
21 INEL prior to the implementation of final actions at INEL. IA
22 alternatives shall be identified and informally proposed by the
23 Parties as early as possible and prior to formal proposal. This
24 process is designed to promote cooperation among the Parties in
25 promptly identifying IA alternatives;

1 (b) Establish requirements for the performance of
2 investigations to determine fully the nature and extent of any
3 threat to the public health or welfare or the environment caused
4 by any release or threatened release of hazardous substances at
5 INEL, and to establish requirements for the performance of
6 studies for U.S. DOE to identify, evaluate, and select
7 alternatives for the appropriate action(s) to prevent, mitigate,
8 or abate the release or threatened release of hazardous
9 substances at INEL;

10 (c) Implement the selected response actions in
11 accordance with the Action Plan; and

12 (d) Assure compliance with applicable federal and
13 state hazardous waste laws and regulations for matters covered
14 herein.

15
16 V. STATUTORY COMPLIANCE

17 5.1 This Agreement integrates U.S. DOE's CERCLA
18 response obligations and RCRA and HWMA corrective action
19 obligations at INEL which relate to the release(s) of hazardous
20 substances covered by this Agreement. Compliance with activities
21 required by this Agreement will be deemed to: achieve compliance
22 with CERCLA, 42 U.S.C. § 9601, et seq.; satisfy the corrective
23 action requirements of Sections 3004(u) and (v) of RCRA,
24 42 U.S.C. §§ 6924(u) and (v), for a RCRA permit, and Section
25 3008(h), 42 U.S.C. § 6928(h), for interim status facilities;

1 satisfy the corrective action requirements of HWMA; and meet or
2 exceed all applicable or relevant and appropriate federal and
3 state laws and regulations to the extent required by Section 121
4 of CERCLA, 42 U.S.C. § 9621.

5 5.2 Based upon the foregoing, the Parties intend
6 that any response action selected, implemented, and completed
7 under this Agreement will be protective of human health and the
8 environment such that remediation of releases covered by this
9 Agreement shall obviate the need for further response action
10 under federal or state law.

11 5.3 Nothing in this Agreement shall alter
12 U.S. DOE authority with respect to removal actions which are
13 conducted pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, as
14 provided by Executive Order 12580.

15
16 VI. REGULATORY DETERMINATIONS

17 6.1 The following sections of this Part
18 constitute a summary of the facts upon which U.S. EPA and IDHW
19 are proceeding for the purposes of this Agreement. Neither the
20 facts nor determinations stated in this Agreement shall be
21 considered admissions by U.S. DOE; nor shall they be used for any
22 purpose other than determining the jurisdictional basis of this
23 Agreement.

24 6.2 INEL is a facility as defined in Section
25 101(9) of CERCLA, 42 U.S.C. § 9601(9) and was listed by U.S. EPA

1 on the National Priorities List ("NPL") on November 21, 1989.

2 54 Fed. Reg. 44,184 (November 21, 1989).

3 6.3 Since the establishment of the INEL Site in
4 1949, materials subsequently defined as hazardous substances have
5 been produced, disposed of, and released at INEL;

6 6.4 U.S. DOE is a generator of hazardous waste
7 and an owner/operator of a hazardous waste management facility at
8 INEL. Facilities at INEL engaged in treatment, storage, or
9 disposal of hazardous waste at the INEL facility are subject to
10 interim status requirements;

11 6.5 U.S. DOE owned and operated its facility as a
12 hazardous waste management facility on and after
13 November 19, 1980, the applicable date which renders facilities
14 subject to interim status requirements or the requirement to have
15 a permit under Sections 3004 and 3005 of RCRA, 42 U.S.C. §§ 6924
16 and 6925, and HWMA; and July 3, 1986, the applicable date for
17 interim status for permits under Sections 3004 and 3005 of RCRA,
18 42 U.S.C. §§ 6924 and 6925, and HWMA for mixed waste facilities.

19 6.6 Pursuant to Section 3010 of RCRA, 42 U.S.C.
20 § 6930, U.S. DOE notified U.S. EPA of its hazardous waste
21 activity. In its notification, U.S. DOE identified itself as a
22 generator of hazardous waste and an owner/operator of INEL, a
23 treatment, storage, and disposal facility for hazardous waste;

24 6.7 There have been releases and there may
25 continue to be releases and threatened releases of hazardous

1 substances into the environment within the meaning of Sections
2 101(22), 104, 106, and 107 of CERCLA, 42 U.S.C. §§ 9601(22),
3 9604, 9606, and 9607; Section 3004(u) of RCRA, 42 U.S.C.
4 § 6924(u); and HWMA, I.C. 39-4408, at or from INEL. With respect
5 to those releases or threatened releases, U.S. DOE is a
6 responsible person within the meaning of Section 107 of CERCLA,
7 42 U.S.C. § 9707, and HWMA, I.C. 39-4403;

8 6.8 The actions to be taken pursuant to this
9 Agreement are reasonable and necessary to protect the public
10 health, welfare, or the environment.

11 12 VII. REGULATORY APPROACH

13 A. Project Management

14 7.1 As provided in the Action Plan, each Party
15 shall designate a Project Manager for the purpose of overseeing
16 the implementation of this Agreement. Any Party may change its
17 designated Project Manager by written notification to the other
18 Parties ten (10) days before the change, to the extent possible.
19 To the maximum extent possible, communications between the
20 Parties concerning the terms and conditions of this Agreement
21 shall be directed through the Project Manager. Each Project
22 Manager shall be responsible for assuring that all communications
23 from the other Parties are appropriately disseminated to that
24 responsible Project Manager's organization. Any Party may also
25 provide written notification of a temporary alternate.

1 7.2 The Action Plan shall identify all Waste Area
2 Groups ("WAGs") and designate the Lead Regulatory Agency
3 ("Lead Agency") for each WAG at INEL. U.S. EPA and IDHW will
4 reevaluate the Lead Agency assignments for all WAGs four (4)
5 years after the effective date of this Agreement. This Agreement
6 shall be amended by U.S. EPA and IDHW to incorporate transitional
7 changes, as necessary.

8 7.3 The Lead Agency responds to all submittals in
9 accordance with Part VIII. The regulatory agency not designated
10 as Lead Agency shall be the Supporting Regulatory Agency
11 ("Support Agency"). The Support Agency receives copies of all
12 submittals and provides review, comment, and consultation as
13 resources permit in accordance with Part VIII. In the event of a
14 disagreement, disputes are resolved according to Part IX.

15 B. Response Actions

16 7.4 The Parties seek to ensure site-wide
17 consistency, minimize the potential for conflict, eliminate
18 potentially duplicative or uncoordinated requirements, utilize
19 well-established and available processes and guidance, achieve
20 compliance with CERCLA, RCRA, and HWMA, and agree that the HWMA
21 corrective action process is functionally equivalent to the
22 CERCLA response action process. Therefore, the requirements of
23 CERCLA and the NCP shall be reflected in the Action Plan.

24 7.5 The Parties agree to apply the Action Plan at
25 all WAGs, regardless of the Lead Agency designation.

1 7.6 It is the intent of the Parties that the
2 Action Plan process shall apply to all cleanups covered by this
3 Agreement to the exclusion of any process in future RCRA or HWMA
4 corrective action regulations which would otherwise be
5 applicable. In the event that the regulatory agencies determine
6 that the process of such corrective action regulations become
7 applicable and could impose inconsistent or duplicative
8 requirements, the Parties shall amend this Agreement to assure
9 compliance with CERCLA and ensure that the CERCLA/NCP response
10 action process referenced in the Action Plan continues to be
11 applied at all WAGs.

12 C. Permitting

13 7.7 The Parties recognize that under Section
14 121(e)(1) of CERCLA, 42 U.S.C. 9621(e)(1), response actions
15 called for by this Agreement and conducted entirely on the INEL
16 Site are exempted from the procedural requirement to obtain
17 federal, state, or local permits, when such response action is
18 selected and carried out in compliance with Section 121 of
19 CERCLA, 42 U.S.C. 9621. Nonetheless, these actions shall
20 satisfy, to the extent authorized by law, all the applicable or
21 relevant and appropriate federal and state standards,
22 requirements, criteria, or limitations which would have been
23 included in any such permit. Accordingly, when U.S. DOE proposes
24 that a response action be conducted entirely on the INEL Site
25 which, in the absence of Section 121(e)(1) of CERCLA and the NCP,

1 would require a federal or state permit, U.S. DOE shall include
2 in the appropriate documents submitted to the Lead and Support
3 Agencies:

4 (a) Identification of each permit which would
5 otherwise be required;

6 (b) Identification of the standards, requirements,
7 criteria, or limitations which would have had to have been met to
8 obtain each permit; and

9 (c) Explanation of how the response action proposed
10 will meet the standards, requirements, criteria, or limitations
11 of this Part.

12 7.8 The Parties further recognize that on-going
13 hazardous waste management activities at INEL not subject to this
14 Agreement may require the issuance of permits under federal and
15 state laws. This Agreement does not affect the requirements, if
16 any, to obtain such permits. However, this Agreement shall be
17 referenced and incorporated as corrective action in any permit
18 issued to U.S. DOE for ongoing hazardous waste management
19 activities at INEL. With respect to response action portions of
20 this Agreement incorporated by reference into permits, the
21 Parties intend that judicial review of the incorporated portions
22 shall, to the extent authorized by law, only occur under the
23 provisions of CERCLA.

1 VIII. CONSULTATION WITH U.S. EPA AND IDHW

2 A. Applicability

3 8.1 The provisions of this Part establish the
4 procedures that shall be used by the Parties to provide each
5 other with appropriate notice, review, comment, and response to
6 comments regarding submitted documents, specified herein as
7 either primary or secondary documents. In accordance with
8 Section 120 of CERCLA, 42 U.S.C. § 9620, U.S. DOE will normally
9 be responsible for issuing primary and secondary documents to
10 U.S. EPA and IDHW. As of the effective date of this Agreement,
11 all draft and final documents for any deliverable document
12 identified herein shall be prepared, distributed, and subject to
13 dispute in accordance with Paragraphs 8.3 through 8.24 below.

14 8.2 The designation of a document as "draft" or
15 "final" is solely for purposes of consultation with U.S. EPA and
16 IDHW in accordance with this Part. Such designation does not
17 affect the obligation of the Parties to issue documents, which
18 may be referred to herein as "final," to the public for review
19 and comment as appropriate and as required by law.

20 B. General Process for Submission of Documents

21 8.3 Primary documents include those documents
22 that are major, discrete portions of required activities.
23 Primary documents shall be initially issued by U.S. DOE in draft,
24 subject to review and comment by U.S. EPA and IDHW. Following
25 receipt of comments on a particular draft primary document,

1 U.S. DOE shall respond to the comments received and issue a draft
2 final primary document subject to dispute resolution. The draft
3 final primary document shall become the final primary document
4 either thirty (30) days after submittal of a draft final document
5 if dispute resolution is not invoked, unless otherwise agreed as
6 provided in Paragraph 8.18, or as modified by decision of the
7 dispute resolution process. The lead/support agencies shall,
8 within the first fifteen (15) days of this thirty (30) day period
9 for finalization of primary documents, identify to U.S. DOE any
10 issues or comments in order to provide sufficient time for
11 review, discussion, and modification of draft final documents, as
12 necessary, to resolve potential disputes.

13 8.4 Secondary documents include those documents
14 that are discrete portions of the primary documents and are
15 typically input or feeder documents. Secondary documents shall
16 be issued by U.S. DOE in draft subject to review and comment by
17 U.S. EPA and IDHW. Although U.S. DOE shall respond to comments
18 received, the draft secondary documents may be finalized in the
19 context of the corresponding draft final primary document to be
20 issued. A secondary document may be disputed at the time the
21 corresponding draft final primary document is issued.

22 C. Primary Documents

23 8.5 As required by the Action Plan, U.S. DOE
24 shall complete and transmit for each OU/WAG the applicable
25

1 primary documents to U.S. EPA and IDHW for review and comment in
2 accordance with the provisions of this part:

- 3 a. Remedial Investigation ("RI")/Feasibility
4 Study ("FS") Scope of Work ("SOW")
- 5 b. RI/FS Work Plan
- 6 c. RI/FS Report
- 7 d. Record of Decision ("ROD")
- 8 e. Remedial Design ("RD")
- 9 f. Remedial Action ("RA") Work Plan
- 10 g. RA Report
- 11 h. Operations and Maintenance Report

12 8.6 Only the draft final versions for the primary
13 documents identified above shall be subject to dispute
14 resolution. U.S. DOE shall complete and transmit draft primary
15 documents in accordance with the deadlines established in
16 Table A.1 of Appendix A of the Action Plan. The Action Plan is
17 appended to the Agreement as Attachment A.

18 D. Secondary Documents

19 8.7 As required by the Action Plan, U.S. DOE
20 shall complete and transmit the following applicable draft
21 secondary documents to U.S. EPA and IDHW for review and comment
22 in accordance with the provisions of this part:

- 23 (a) Scope of Work for Interim Actions
- 24 (b) Preliminary Scoping Track 2 Sampling and
25 Analysis Plan
- 26 (c) Preliminary Scoping Track 2 Summary Report

1 (d) RI Report/Baseline Risk Assessment

2 (e) Proposed Plan

3 (f) Health and Safety Plans submitted with RI/FS
4 Work Plans

5 8.8 Although U.S. EPA and IDHW may comment on the
6 draft documents for the secondary documents listed above, such
7 documents shall not be subject to dispute resolution except as
8 provided by Paragraphs 8.4 and 8.6. Target dates are established
9 for the completion and transmission of draft secondary documents
10 pursuant to the Action Plan.

11 E. Meetings of the Project Managers on Development of Documents

12 8.9 The Project Managers shall meet or confer
13 approximately every fourteen (14) days, except as otherwise
14 agreed by the Parties, to review and discuss the progress of work
15 being performed at INEL on the primary and secondary documents.
16 Prior to preparing any draft document specified in Paragraphs 8.5
17 and 8.7 above, the Project Managers shall meet to discuss the
18 document in an effort to reach a common understanding, to the
19 maximum extent practicable, with respect to the results to be
20 presented in the draft document.

21 F. Identification and Determination of Potential ARARs

22 8.10 For those primary documents or secondary
23 documents that consist of or include ARAR determinations, the
24 Project Managers shall meet prior to the issuance of a draft
25 document, to identify and propose, to the best of their ability,

1 all potential ARARs pertinent to the document being addressed.
2 Draft ARAR determinations shall be prepared by U.S. DOE in
3 accordance with Section 121(d)(2) of CERCLA, 42 U.S.C.
4 § 9621(d)(2), the NCP, and pertinent guidance issued by U.S. EPA
5 and IDHW which is not inconsistent with CERCLA and the NCP.

6 8.11 In identifying potential ARARs, the Parties
7 recognize that actual ARARs can be identified only on a
8 site-specific basis and that ARARs depend on the specific
9 hazardous substances at a site, the particular actions proposed
10 as a remedy, and the characteristics of a site. The Parties
11 recognize that ARAR identification is necessarily an iterative
12 process and that potential ARARs must be re-examined throughout
13 the RI/FS process until a ROD is issued.

14 G. Review and Comment on Draft Documents

15 8.12 U.S. DOE shall complete and transmit each
16 draft primary document to U.S. EPA and IDHW on or before the
17 corresponding deadline established for the issuance of the
18 document. U.S. DOE shall complete and transmit the draft
19 secondary document in accordance with the target dates
20 established for the issuance of such documents established
21 herein.

22 8.13 Unless the Parties mutually agree to another
23 time period, all draft primary documents shall be subject to a
24 forty-five (45) day period for review and comment, and all draft
25 secondary documents shall be subject to a thirty (30) day period

1 for review and comment with the exception of the RI with Baseline
2 Risk Assessment which shall be forty-five (45) days. Review of
3 any document by U.S. EPA or IDHW concerns all aspects of the
4 document (including completeness) and should include, but is not
5 limited to, technical evaluation of any aspect of the document,
6 and consistency with CERCLA, the NCP, and any pertinent guidance
7 or policy promulgated by U.S. EPA or IDHW. Comments by U.S. EPA
8 and IDHW shall be provided with adequate specificity so that
9 U.S. DOE may respond to the comments and, if appropriate, make
10 changes to the draft document. Comments shall refer to any
11 pertinent sources of authority or references upon which the
12 comments are based, and, upon request of U.S. DOE, U.S. EPA, or
13 IDHW, shall provide a copy of the cited authority or reference.
14 In cases involving complex or unusually lengthy documents, the
15 Lead Agency may extend the forty-five (45) day comment period for
16 an additional twenty (20) days by written notice to the other
17 Parties prior to the end of the forty-five (45) day period. On
18 or before the close of the comment period, the Lead Agency shall,
19 and the Support Agency may, transmit their written comments to
20 U.S. DOE.

21 8.14 Representatives of U.S. DOE shall make
22 themselves readily available to U.S. EPA and IDHW during the
23 comment period for purposes of informally responding to questions
24 and comments on draft documents. Oral comments made during such
25

1 discussions need not be the subject of a written response by
2 U.S. DOE on the close of the comment period.

3 8.15 In commenting on a draft document which
4 contains a proposed ARARs determination, U.S. EPA and IDHW shall
5 include a reasoned statement of whether they object to any
6 portion of the proposed ARARs determination. To the extent that
7 U.S. EPA or IDHW do object, they shall explain the basis for
8 their objection in detail and shall identify any ARARs which they
9 believe were not properly addressed in the proposed ARARs
10 determination.

11 8.16 Following the close of the comment period for
12 a draft document, U.S. DOE shall give full consideration to all
13 written comments on the draft document submitted during the
14 comment period. With the exception of the RI with Baseline Risk
15 Assessment, which shall be forty-five (45) days, U.S. DOE shall
16 transmit to U.S. EPA and IDHW its written response to comments
17 received during the comment period within thirty (30) days of the
18 close of the comment period on a draft secondary document.
19 Within forty-five (45) days of the close of the comment period on
20 a draft primary document, U.S. DOE shall transmit to U.S. EPA and
21 IDHW a draft final primary document, which shall include
22 U.S. DOE's response to all written comments received within the
23 comment period. While the resulting draft final document shall
24 be the responsibility of U.S. DOE, it shall be the product of
25 consensus to the maximum extent possible.

1 8.17 In cases involving complex or unusually
2 lengthy documents, U.S. DOE may extend the comment period
3 provided in Paragraph 8.16 for an additional twenty (20) days by
4 providing notice to U.S. EPA and IDHW. In appropriate
5 circumstances, this time period may be further extended in
6 accordance with Part XIII.

7 8.18 Project Managers may agree to extend by
8 fifteen (15) days the period for finalization of the draft final
9 primary documents provided in Paragraph 8.3 as necessary for
10 editing purposes.

11 H. Availability of Dispute Resolution for
12 Draft Final Primary Documents

13 8.19 Dispute resolution shall be available to the
14 Parties for draft final primary documents as set forth in
15 Part IX. When dispute resolution is invoked on a draft final
16 primary document, work may be stopped in accordance with the
17 procedures set forth in Part IX.

18 I. Finalization of Documents

19 8.20 The draft final primary document shall serve
20 as the final primary document if no Party invokes dispute
21 resolution regarding the document or, if invoked, at completion
22 of the dispute resolution process should U.S. DOE's position be
23 sustained. If U.S. DOE's determination is not sustained in the
24 dispute resolution process, U.S. DOE shall prepare, within not
25

1 more than thirty-five (35) days, a revision of the draft final
2 document which conforms to the results of dispute resolution.
3 In appropriate circumstances, the time period for this revision
4 period may be extended in accordance with Part XIII hereof.

5 J. Subsequent Modifications of Final Documents

6 8.21 Following finalization of any primary
7 document pursuant to Paragraph 8.20, any Party to this Agreement
8 may seek to modify the document, including seeking additional
9 field work, pilot studies, computer modeling, or other supporting
10 technical work, only as provided in Paragraphs 8.22 and 8.23.

11 8.22 A Party may seek to modify a primary document
12 after finalization if it determines, based on new information
13 (i.e., information that became available, or conditions that
14 became known, after the document was finalized) that the
15 requested modification is necessary. A Party may seek such a
16 modification by submitting a concise written request to the
17 Project Manager of the other Parties. The request shall specify
18 the nature of the requested modification and the new information
19 upon which the request is based.

20 8.23 In the event that agreement of the Project
21 Managers is reached, the modification shall be incorporated by
22 reference and become fully enforceable under the Agreement
23 pursuant to Part XXX. In the event that consensus is not reached
24 by the Project Managers on a modification, any Party may invoke
25 dispute resolution as provided in Part IX to determine if such

1 modification shall be made. Modification of a document shall be
2 required only upon a showing that: (1) the requested
3 modification is based on significant new information; and (2) the
4 requested modification could be of significant assistance in
5 evaluating impacts on the public health or the environment, in
6 evaluating the selection of remedial alternatives, or in
7 protecting human health and the environment.

8 8.24 Nothing in this Part shall alter U.S. EPA's
9 or IDHW's ability to request the performance of additional work,
10 in accordance with Part XV.

12 IX. RESOLUTION OF DISPUTES

13 9.1 Except as expressly set forth in this
14 Agreement, if a dispute arises under this Agreement, the
15 procedures of this Part shall apply. It is the intent of the
16 Parties to resolve issues at the OU or WAG Manager level and that
17 the Support Agency shall invoke Dispute Resolution only for
18 significant issues.

19 9.2 All Parties to this Agreement shall make
20 reasonable efforts to informally resolve disputes at the Project
21 Manager or immediate supervisor level. If resolution cannot be
22 achieved informally, the procedures of this Part shall be
23 implemented to resolve a dispute.

24 (a) Within thirty (30) days after: (1) the submittal
25 of a draft final primary document pursuant to Part VIII of this

1 Agreement, or (2) any action which leads to or generates a
2 dispute, the disputing Party shall submit to the other Parties a
3 written statement of dispute setting forth the nature of the
4 dispute, the work affected by the dispute, the disputing Party's
5 position with respect to the dispute and the information the
6 disputing Party is relying upon to support its position.

7 (b) Prior to any Party's issuance of a written
8 statement of dispute, the disputing Party shall engage the other
9 Parties in informal dispute resolution among the Project Managers
10 and/or their immediate supervisors. During this informal dispute
11 resolution period the Parties shall meet as many times as are
12 necessary to discuss and attempt resolution of the dispute.

13 (c) If agreement cannot be reached on any issue within
14 the informal dispute resolution period, the disputing Party shall
15 forward a written statement of dispute to the Dispute Resolution
16 Committee ("DRC") thereby elevating the dispute to the DRC for
17 resolution.

18 (d) The Dispute Resolution Committee ("DRC") will
19 serve as a forum for resolution of disputes for which agreement
20 has not been reached through informal dispute resolution. The
21 Parties shall each designate one individual and an alternate to
22 serve on the DRC. U.S. DOE may designate a different individual
23 and an alternate with respect to matters at the Naval Reactors
24 Facility ("WAG 8") and the Argonne National Laboratory - West
25 ("WAG 9"). The individuals designated to serve on the DRC shall

1 be employed at a policy level equivalent to Senior Executive
2 Service ("SES") or be delegated the authority to participate on
3 the DRC for the purposes of dispute resolution under this
4 Agreement. The U.S. EPA's representative on the DRC is the
5 Hazardous Waste Division Director of U.S. EPA's Region 10
6 ("U.S. EPA Division Director"). The IDHW representative on the
7 DRC is the Chief of the Hazardous Materials Bureau ("Bureau
8 Chief"). U.S. DOE's representative on the DRC is the Assistant
9 Manager for Environmental Restoration and Waste Management.

10 Written notice of any delegation of authority from a Party's
11 designated representative on the DRC shall be provided to all
12 other Parties pursuant to the procedures of Part XVIII.

13 (e) Following elevation of a dispute to the DRC, the
14 DRC shall have twenty-one (21) days to unanimously resolve the
15 dispute and issue a written decision signed by all Parties. If
16 the DRC is unable to unanimously resolve the dispute within this
17 twenty-one (21) day period the written statement of dispute shall
18 be forwarded to the Senior Executive Committee ("SEC") for
19 resolution.

20 (f) The SEC will serve as the forum for resolution of
21 disputes for which agreement has not been reached by the DRC.
22 The U.S. EPA representative on the SEC is the Regional
23 Administrator of U.S. EPA's Region 10 ("U.S. EPA RA"). The
24 IDHW representative on the SEC is the Administrator of the
25 Division of Environmental Quality ("DEQ Administrator").

1 U.S. DOE's representative on the SEC is the Manager of the Idaho
2 Operations Office. The SEC members shall, as appropriate,
3 confer, meet, and exert their best efforts to resolve the dispute
4 and issue a written decision signed by all Parties. If unanimous
5 resolution of the dispute is not reached within twenty-one (21)
6 days, the U.S. EPA RA shall issue a written position for disputes
7 arising at U.S. EPA-lead WAGs, and the DEQ Administrator shall
8 issue a written position for disputes arising at IDHW-lead WAGs.
9 Any Party may, within twenty-one (21) days of the issuance of
10 U.S. EPA's or IDHW's position, issue a written notice elevating
11 the dispute to the Administrator of U.S. EPA for U.S. EPA-lead
12 WAGs or the Governor of the State of Idaho for IDHW-lead WAGs for
13 resolution in accordance with all applicable laws and procedures.
14 In the event that a Party elects not to elevate the dispute to
15 the Administrator or Governor within the designated twenty-one
16 (21) day escalation period, the Party shall be deemed to have
17 agreed with U.S. EPA RA's or DEQ Administrator's written position
18 with respect to the dispute.

19 (g) Upon escalation of a dispute to the Administrator
20 of U.S. EPA or Governor of Idaho pursuant to Paragraph 9.2(f),
21 the Administrator or Governor, as appropriate, shall issue a
22 final written decision to the Parties within twenty-one (21)
23 days. Upon request, and prior to issuance of the final written
24 decision, the U.S. EPA Administrator and the Governor of Idaho
25 shall jointly meet and confer with the Secretary of U.S. DOE to

1 discuss the issue(s) in dispute. If there is disagreement
2 between the Administrator and the Governor regarding a final
3 written decision, within twenty-one (21) days of its issuance,
4 the Administrator or the Governor, as appropriate, shall issue a
5 written statement of position. The duties of the Administrator
6 and the Governor of Idaho as set forth in this Part shall not be
7 delegated.

8 (h) The pendency of any dispute under this Part shall
9 not affect U.S. DOE's responsibility for timely performance of
10 the work required by this Agreement, except that the time period
11 for completion of work affected by such dispute shall be extended
12 for a period of time usually not to exceed the actual time taken
13 to resolve any good faith dispute in accordance with the
14 procedures specified herein or as mutually agreed. All elements
15 of the work required by this Agreement which are not affected by
16 the dispute shall continue and be completed in accordance with
17 the applicable schedule.

18 (i) When dispute resolution is in progress, work
19 affected by the dispute shall immediately be discontinued if the
20 appropriate Lead Agency DRC representative requests, in writing,
21 that work related to the dispute be stopped because, in its
22 opinion, such work is inadequate or defective, and such
23 inadequacy or defect is likely to yield an adverse effect on
24 human health or the environment, or is likely to have a
25 substantial adverse effect on the remedy selection or

1 implementation process. To the extent possible, the Party
2 seeking a work stoppage shall consult with the other Parties
3 prior to initiating a work stoppage request. After stoppage of
4 work, if a Party believes that the work stoppage is inappropriate
5 or may have potential significant adverse impacts, the Party may
6 meet with the Party ordering a work stoppage to discuss the work
7 stoppage. Following this meeting, and further consideration of
8 the issues, the appropriate Lead Agency DRC representative will
9 issue, in writing, a final decision with respect to the work
10 stoppage. This final written decision may immediately be
11 subjected to formal dispute resolution. Such dispute may be
12 brought directly to either the DRC or the SEC, at the discretion
13 of the Party requesting dispute resolution.

14 (j) Within thirty-five (35) days of resolution of a
15 dispute pursuant to the procedures specified in this Part,
16 U.S. DOE shall incorporate the resolution and final determination
17 into the appropriate plan, schedule, or procedures and proceed to
18 implement this Agreement according to the amended plan, schedule,
19 or procedures.

20 (k) All Parties shall abide by all terms and
21 conditions of any final resolution of dispute obtained pursuant
22 to this Part of this Agreement, except as provided in Part XXXI.

1 (a) Upon the effective date of this Agreement, any
2 standard, regulation, condition, requirement, or order which has
3 become effective under CERCLA and is incorporated into this
4 Agreement is enforceable by any person pursuant to Section 310 of
5 CERCLA, 42 U.S.C. § 9659, and any violation of such standard,
6 regulation, condition, requirement, or order shall be subject to
7 civil penalties under Sections 310(c) and 109 of CERCLA,
8 42 U.S.C. §§ 9659 and 9609;

9 (b) All timetables or deadlines associated with the
10 development, implementation, and completion of the RI/FS shall be
11 enforceable by any person pursuant to Section 310 of CERCLA,
12 42 U.S.C. § 9659, and any violation of such timetables or
13 deadlines will be subject to civil penalties under Sections
14 310(c) and 109 of CERCLA, 42 U.S.C. §§ 9659(c) and 9609;

15 (c) All terms and conditions of this Agreement which
16 relate to interim or final response actions, including
17 corresponding timetables, deadlines, or schedules, and all work
18 associated with the interim or final response actions, shall be
19 enforceable by any person pursuant to Section 310 of CERCLA,
20 42 U.S.C. § 9659, and any violation of such terms or conditions
21 will be subject to civil penalties under Sections 310(c) and 109
22 of CERCLA, 42 U.S.C. §§ 9659(c) and 9609; and

23 (d) Any final resolution of a dispute pursuant to Part
24 IX of this Agreement which establishes a term, condition,
25 timetable, deadline, or schedule shall be enforceable by any

1 person pursuant to Section 310 of CERCLA, 42 U.S.C. § 9659, and
2 any violation of such term, condition, timetable, deadline, or
3 schedule will be subject to civil penalties under Sections 310(c)
4 and 109 of CERCLA, 42 U.S.C. §§ 9659(c) and 9609.

5 10.2 This Agreement shall be referenced and
6 incorporated, in pertinent part, in any HWMA hazardous waste
7 permit for corrective action issued by IDHW to INEL. Permit
8 requirements, including corrective action, may be enforced in
9 accordance with Part XXXI.

10 10.3 The Parties agree that all Parties shall have
11 the right to enforce the terms of this Agreement, subject to
12 Part XXXI.

13
14 XI. STIPULATED PENALTIES

15 11.1 In the event that U.S. DOE fails to submit a
16 primary document pursuant to the appropriate deadline in
17 accordance with the requirements of this Agreement, or fails to
18 comply with a term or condition of this Agreement which relates
19 to an interim or final response action at an EPA-lead OU,
20 U.S. EPA may assess a stipulated penalty against U.S. DOE. If
21 IDHW determines at a state-lead OU that U.S. DOE has failed in a
22 manner as set forth above at an OU, it may identify and recommend
23 stipulated penalties to U.S. EPA and, unless disputed pursuant to
24 Part IX, such penalties may be assessed in accordance with this
25 Part. A stipulated penalty may be assessed in an amount up to

1 Five Thousand Dollars (\$5,000) for the first week (or part
2 thereof), and up to Ten Thousand Dollars (\$10,000) for each
3 additional week (or part thereof) for which a failure set forth
4 in this Paragraph occurs.

5 11.2 Upon determining that U.S. DOE has failed in
6 a manner set forth in Paragraph 11.1, U.S. EPA shall so notify
7 U.S. DOE in writing. If the failure in question is not or has
8 not already been subject to dispute resolution at the time such
9 notice is received, U.S. DOE shall have fifteen (15) days after
10 receipt of the notice to invoke dispute resolution on the
11 question of whether the failure did, in fact, occur. U.S. DOE
12 shall not be liable for the stipulated penalty assessed if the
13 failure is determined, through the dispute resolution process,
14 not to have occurred. No assessment of a stipulated penalty
15 shall be final until the conclusion of dispute resolution
16 procedures related to the assessment of the stipulated penalty.

17 11.3 The annual reports required by Section
18 120(e)(5) of CERCLA, 42 U.S.C. § 9620(e)(5), shall include, with
19 respect to each final assessment of a stipulated penalty against
20 U.S. DOE under this Agreement, each of the following:

- 21 (a) The facility responsible for the failure;
22 (b) A statement of the facts and circumstances giving
23 rise to the failure;

1 (b) A statement of the facts and circumstances giving
2 rise to the failure;

3 (c) A statement of any administrative action taken at
4 the relevant facility, or a statement of why such measures were
5 determined to be inappropriate;

6 (d) A statement of any additional action taken by or
7 at the facility to prevent recurrence of the same type of
8 failure; and

9 (e) The total dollar amount of the stipulated penalty
10 assessed for the particular failure.

11 11.4 Stipulated penalties assessed pursuant to
12 CERCLA and this Part shall be payable to the Federal Hazardous
13 Substances Response Trust Fund from funds authorized and
14 appropriated for that specific purpose.

15 11.5 In no event shall this Part give rise to a
16 CERCLA stipulated penalty in excess of the amount set forth in
17 Section 109 of CERCLA, 42 U.S.C. § 9609.

18 11.6 This Part shall not affect U.S. DOE's ability
19 to obtain an extension of a timetable and deadline or schedule
20 pursuant to Part XIII.

21 11.7 Nothing in this Agreement shall be construed
22 to render any officer or employee of U.S. DOE personally liable
23 for the payment of any stipulated penalty assessed pursuant to
24 this Part.

1 11.8 In the event that current and applicable law
2 respecting fines and penalties changes, the Parties agree to meet
3 and negotiate whether modifications to this Part are appropriate.
4 The dispute process in Section IX shall not apply to this issue.
5

6 XII. TARGET DATES AND DEADLINES

7 12.1 A summary of enforceable deadlines is set
8 forth in Appendix A of the Action Plan as Table A.1.

9 12.2 Within twenty-one (21) days of issuance of
10 the ROD for each OU requiring remedial action, U.S. DOE shall
11 submit a RD/RA SOW, subject to dispute within thirty (30) days of
12 submittal under Paragraph 9.2(a)(2). The RD/RA SOW shall
13 identify, and establish target dates for submittal of, remedial
14 design secondary documents and deadlines for submittal of the
15 drafts of the RD/RA Work Plan (primary documents identified in
16 Paragraph 8.5(e) and (f)). The RA Work Plan shall identify, and
17 establish target dates for submittal of, RA secondary documents.
18 The draft of the RA Report (a primary document identified in
19 Paragraph 8.5(g)) shall be submitted within sixty (60) days of
20 the final inspection. The draft of the Operations and
21 Maintenance Report (a primary document identified in
22 Paragraph 8(h)) shall be submitted within ninety (90) days of the
23 completion of operations and maintenance activities.

24 12.3 The deadlines set forth in this Part may be
25 extended pursuant to Part XIII. The Parties recognize that one

1 possible basis for extension of the deadlines for completion of
2 the RI/FS Reports is the identification of significant new Site
3 conditions during the performance of the RI.

4 5 XIII. EXTENSIONS

6 13.1 Either a timetable and deadline or a schedule
7 shall be extended upon receipt of a timely request for extension
8 and when good cause exists for the requested extension. Any
9 request for extension by U.S. DOE shall be submitted to the
10 Project Managers in writing and shall specify:

11 (a) The timetable and deadline or the schedule that is
12 sought to be extended;

13 (b) The length of the extension sought;

14 (c) The good cause(s) for the extension; and

15 (d) Any related timetable and deadline or schedule
16 that would be affected if the extension were granted.

17 13.2 Good cause exists for an extension when
18 sought in regard to:

19 (a) An event of Force Majeure;

20 (b) A delay caused by another Party's failure to meet
21 any requirement of this Agreement;

22 (c) A delay caused by the good faith invocation of
23 dispute resolution or the initiation of judicial action;

1 (d) A delay caused, or which is likely to be caused,
2 by the grant of an extension in regard to another timetable and
3 deadline or schedule; and

4 (e) Any other event or series of events mutually
5 agreed to by the Parties as constituting good cause, including
6 delays that result from compliance with other federal laws.

7 13.3 Absent agreement of the Parties with respect
8 to the existence of good cause, U.S. DOE may seek and obtain a
9 determination through Part IX.

10 13.4 Within seven (7) days of receipt of a request
11 for an extension of a timetable and deadline or a schedule,
12 U.S. EPA and IDHW shall advise U.S. DOE in writing of their
13 respective positions on the request. Any failure by U.S. EPA or
14 IDHW to respond within the seven (7) day period shall be deemed
15 to constitute concurrence in the request for extension.
16 If U.S. EPA or IDHW does not concur in the requested extension,
17 it shall include in its statement of nonconcurrence an
18 explanation of the basis for its position.

19 13.5 If there is consensus among the Parties that
20 the requested extension is warranted, U.S. DOE shall extend the
21 affected timetable and deadline or schedule accordingly.
22 If there is no consensus among the Parties as to whether all or
23 part of the requested extension is warranted, the timetable and
24 deadline or schedule shall not be extended except in accordance
25

1 with a determination resulting from the dispute resolution
2 process.

3 13.6 Within seven (7) days of receipt of a
4 statement of nonconcurrence with the requested extension,
5 U.S. DOE may invoke dispute resolution under Part IX.

6 13.7 A timely and good faith request for an
7 extension shall toll any assessment of stipulated penalties or
8 application for judicial enforcement of the affected timetable
9 and deadline or schedule until a decision is reached on whether
10 the requested extension shall be approved. If dispute resolution
11 is invoked and the requested extension is denied, stipulated
12 penalties may be assessed and may accrue from the date of the
13 original timetable, deadline, or schedule. Following the grant
14 of an extension, an assessment of stipulated penalties or an
15 application for judicial enforcement may be sought only to compel
16 compliance with the timetable and deadline or schedule as most
17 recently extended.

18 19 XIV. RECOVERY OF EXPENSES

20 A. U.S. EPA Expense

21 14.1 U.S. EPA shall take all necessary steps and
22 make efforts to obtain timely funding to meet its obligations
23 under this Agreement. Notwithstanding any other provision of
24 this Agreement, in the event that U.S. EPA, in consultation with
25 U.S. DOE and IDHW, determines that sufficient funds have not been

1 appropriated to meet any post Fiscal Year 1992 commitments
2 established by this Agreement, U.S. EPA may terminate this
3 Agreement by written notice to U.S. DOE and IDHW.

4 B. IDHW Expense

5 14.2 U.S. DOE shall reimburse IDHW for costs of
6 response action directly related to implementation of this
7 Agreement, pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607,
8 and not inconsistent with the NCP, in accordance with the
9 following provisions:

10 (a) A separate grant shall be the specific
11 mechanism for transfer of funds between U.S. DOE and IDHW for
12 payment of the costs referred to herein;

13 (b) On an annual basis, and in accordance with
14 10 C.F.R. Parts 600 and 1024: (1) IDHW shall submit, in a timely
15 fashion and in writing, to U.S. DOE a grant application including
16 a proposed Scope of Work and estimates of costs to be incurred
17 relating to CERCLA response actions, as defined herein, to be
18 performed under this Agreement by IDHW for the upcoming year, and
19 (2) subsequent to negotiation between U.S. DOE and IDHW, U.S. DOE
20 shall make a grant award;

21 (c) In the event that U.S. DOE contends that any
22 costs incurred were not directly related to the implementation of
23 this Agreement, or were incurred in a manner inconsistent with
24 CERCLA, the NCP, or the grant award, U.S. DOE may challenge the
25 costs allowable under the grant to IDHW. If unresolved, IDHW's

1 demand, and U.S. DOE's challenge, may be resolved through the
2 appeals procedures set forth in 10 C.F.R. Part 600 and 10 C.F.R.
3 Part 1024;

4 (d) U.S. DOE shall not be responsible for
5 reimbursing IDHW for any costs actually incurred in excess of the
6 maximum U.S. DOE obligation as defined in the grant award; and

7 (e) IDHW's performance of its obligations under
8 this Agreement shall be excused if its justifiable response costs
9 as defined herein are not paid as required by this Part.

10
11 XV. ADDITIONAL WORK

12 15.1 In the event that additional work, or
13 modification to work, including remedial investigatory work,
14 engineering evaluation, and changes to operable units is
15 necessary to accomplish the objectives of this Agreement,
16 notification and description of such additional work or
17 modification to work shall be provided to U.S. DOE. U.S. DOE
18 will evaluate the request and notify the requesting Party within
19 thirty (30) days of receipt of such request of its intent and
20 ability to perform such work, including the impact such
21 additional work will have on budgets and schedules. If U.S. DOE
22 does not agree that such additional work is required by this
23 Agreement or if U.S. DOE asserts such additional work is
24 otherwise inappropriate, the matter shall be resolved in
25 accordance with the dispute resolution procedures of this

1 Agreement, as appropriate. Field modifications, as set forth in
2 the Action Plan, are not subject to this Section.

3 15.2 Any additional work or modification to work
4 determined to be necessary by U.S. DOE shall be proposed by
5 U.S. DOE and will be subject to review in accordance with the
6 appropriate dispute resolution procedures of this Agreement, as
7 appropriate, prior to initiation.

8 15.3 If, during implementation of any additional
9 work or modification to work, U.S. DOE determines that the work
10 will adversely affect work schedules or will require significant
11 revisions to an approved schedule, the U.S. EPA and IDHW Project
12 Managers shall be immediately notified of the situation followed
13 by a brief written explanation within seven (7) days of the
14 initial notification. Requests for extension of deadlines or
15 schedule(s) shall be evaluated in accordance with Part XIII.

16 15.4 Any additional work accomplished pursuant to
17 this Part shall be reflected in a written amendment to this
18 Agreement as provided for in Part XXX.

19
20 XVI. QUALITY ASSURANCE

21 16.1 All response work performed pursuant to this
22 Agreement shall be done under the direction and supervision of,
23 or in consultation with, as necessary, a qualified engineer,
24 hydrogeologist, or other expert, with experience and expertise in
25

1 hazardous waste management, hazardous waste site investigation,
2 cleanup, and monitoring.

3 16.2 Throughout all sample collection,
4 transportation, and analyses activities conducted in connection
5 with this Agreement, U.S. DOE shall use procedures for quality
6 assurance, and for quality control, and for chain-of-custody in
7 accordance with approved U.S. EPA methods, including "Interim
8 Guidelines and Specifications for Preparing Quality Assurance
9 Project Plans," QAMS-005/80, "Data Quality Objective Guidance,"
10 U.S. EPA 1540/687/003 and 004, and subsequent amendments to such
11 guidelines. All Parties shall require each laboratory it uses to
12 perform analyses according to approved U.S. EPA methods. Each
13 laboratory shall be required to participate in a quality
14 assurance/quality control program equivalent to that which is
15 followed by U.S. EPA and which is consistent with U.S. EPA
16 document QAMS-005/80. U.S. DOE shall submit a Quality Assurance
17 Project Plan ("QAPP") to U.S. EPA and IDHW for approval prior to
18 use and in accordance with the Action Plan. In general, U.S. EPA
19 and IDHW shall follow the QAPP requirements specified in this
20 Paragraph.

21 22 XVII. REPORTING

23 17.1 U.S. DOE shall submit to IDHW and U.S. EPA
24 monthly written progress reports which describe the actions which
25 U.S. DOE has taken during the previous month to implement the

1 requirements of this Agreement. Progress reports, similar in
2 content to the May 1990 COCA Report, shall also describe the
3 activities scheduled to be taken during the upcoming three (3)
4 months. Progress reports shall be submitted by the twenty-fifth
5 (25th) day of each month following the effective date of this
6 Agreement. The progress reports shall also include a detailed
7 statement of how the requirements and time schedules set out in
8 the attachments to this Agreement are being met, identify any
9 anticipated delays in meeting time schedules, include the
10 reason(s) for the delay, actions taken to prevent or mitigate the
11 delay, and identify any potential problems that may result in a
12 departure from the requirements and time schedules.

14 XVIII. NOTICE TO THE PARTIES

15 18.1 All Parties shall transmit primary and
16 secondary documents, comments, and all notices required herein by
17 U.S. Mail, next day mail (i.e., express mail), hand delivery, or
18 facsimile followed by mailing of originals. Time limitations
19 shall commence upon receipt.

20 18.2 Notice to the individual Parties shall be
21 provided under this Agreement to the Parties, unless otherwise
22 provided, at the following addresses:

1 (a) For U.S. DOE:

2 INEL IAG Project Manager
3 U.S. Department of Energy
4 Idaho Operations Office
5 785 DOE Place
6 Idaho Falls, Idaho 83402
7 (208) 526-1989

8 (b) For U.S. EPA:

9 INEL IAG Project Manager
10 Region 10
11 U.S. Environmental Protection Agency
12 1200 Sixth Avenue, HW-112
13 Seattle, Washington 98101
14 (206) 553-7261

15 (c) For the State of Idaho:

16 INEL IAG Project Manager
17 Hazardous Materials Bureau
18 1410 North Hilton Street
19 Boise, Idaho 83706
20 (208) 334-5879

21 18.3 U.S. DOE shall submit six (6) copies of all
22 documents and notices to U.S. EPA and IDHW. Where practicable,
23 all submittals shall be two-sided copies on recycled paper.

24 XIX. SAMPLING AND DATA/DOCUMENT AVAILABILITY

25 19.1 The Parties intend to make available to each
26 other quality assured results of sampling, tests, or other data
27 generated by any Party, or on their behalf, with respect to the
28 implementation of this Agreement within seventy-five (75) days of
collection. Quality assured data or results shall be submitted
as they become available but no later than one hundred and twenty
(120) days after collection.

1 19.2 Non-quality assured data results received by
2 U.S. DOE will, upon request, be made available to U.S. EPA or
3 IDHW at INEL. Neither U.S. EPA nor IDHW will duplicate or remove
4 these records, information, or data, unless U.S. EPA or IDHW
5 provide written assurance that U.S. EPA or IDHW will treat the
6 non-quality assured data as confidential and not disclose the
7 data pending completion of quality assurance or expiration of the
8 one hundred and twenty (120) day period provided for completing
9 quality assurance.

10 19.3 To the extent that non-quality assured data
11 are made available to, or reviewed by, U.S. EPA or IDHW prior to
12 the one hundred and twenty (120) day period established in
13 Paragraph 19.1, such data so disclosed:

14 (a) shall not form the basis for agency action;
15 provided, however, that U.S. EPA or IDHW may request that
16 U.S. DOE accelerate completion of quality assurance procedures
17 regarding specific data; and

18 (b) shall be held in confidence and shall not be
19 further disclosed except with the consent of U.S. DOE or as may
20 be mandatory under applicable law. Prior to any mandatory
21 further disclosure under this paragraph, U.S. EPA and IDHW shall
22 consult and coordinate with U.S. DOE; provided, however, that
23 U.S. EPA shall, upon U.S. DOE's request, promptly transfer
24 responsibility for responding to a request for such data
25 to U.S. DOE as provided in 40 C.F.R. Section 2.111(d)(2).

1 19.4 At the request of either the IDHW or U.S. EPA
2 Project Manager, U.S. DOE shall allow split or duplicate samples
3 to be taken by IDHW or U.S. EPA during sample collection
4 conducted during the implementation of this Agreement. U.S. DOE
5 shall have the opportunity to take split samples when U.S. EPA or
6 IDHW undertakes such activity pursuant to this Agreement. The
7 Project Managers shall notify the other respective Project
8 Managers not less than fourteen (14) business days in advance of
9 any well drilling, sample collection, or other monitoring
10 activity conducted pursuant to this Agreement. The fourteen (14)
11 day notification can be waived upon mutual agreement among the
12 Project Managers for U.S. DOE, U.S. EPA, and IDHW.

13 19.5 If preliminary analysis indicates a potential
14 imminent and substantial endangerment to the public health, all
15 Project Managers shall be immediately notified.
16

17 XX. RETENTION OF RECORDS AND ADMINISTRATIVE RECORD

18 20.1 U.S. DOE will establish and maintain
19 databases for compilation of site-wide validated and quality
20 assured technical decision-level data that will be considered or
21 relied upon in selection of response actions. The data will be
22 maintained at a U.S. DOE-designated storage location(s) and
23 summarized in the administrative record file, located at the INEL
24 Technical Library in Idaho Falls, Idaho. U.S. DOE will provide
25 U.S. EPA and IDHW with access to the data pursuant to Part XIX of

1 the Agreement. Hard copies of the electronically maintained data
2 will be available to U.S. EPA, IDHW, or members of the public
3 upon request.

4 20.2 U.S. DOE shall preserve for a minimum of ten
5 (10) years after termination of this Agreement all of the records
6 in its possession, or in the possession of its contractors,
7 related to sampling, analysis, investigations, and monitoring
8 conducted in accordance with this Agreement. After this ten (10)
9 year period, U.S. DOE shall notify U.S. EPA and IDHW at least
10 forty-five (45) days prior to destruction or disposal of any such
11 records. Upon request, U.S. DOE shall make such records or true
12 copies available, to the other Parties.

13 20.3 U.S. DOE agrees it shall establish and
14 maintain an Administrative Record and Index at the INEL Technical
15 Library in Idaho Falls, Idaho, in accordance with Section 113(k)
16 of CERCLA, 42 U.S.C. § 9613(k), and current and future U.S. EPA
17 policy and guidance on administrative records for selection of
18 CERCLA response actions. U.S. DOE will provide a periodically
19 updated Index and a copy of each document placed in the
20 administrative record to U.S. EPA and IDHW.

21 22 XXI. ACCESS

23 21.1 Consistent with applicable security
24 requirements and necessary safety precautions, but without
25 limitation on any other authority conferred on either agency by

1 law, U.S. EPA, IDHW, or their authorized representatives, shall
2 have authority to enter INEL at all reasonable time(s) with or
3 without prior notification for the purposes of carrying out the
4 terms of this Agreement.

5 21.2 U.S. DOE will identify an individual as a
6 point of contact for access to each facility at INEL. With
7 respect to matters concerning access at the Naval Reactors
8 Facility ("NRF"), the Manager, Naval Reactors, Idaho Branch
9 Office of U.S. DOE, will be the point of contact. With respect
10 to matters concerning access at the Argonne National
11 Laboratory - West ("ANL-W"), the Site Manager/Assistant
12 Laboratory Director will be the point of contact.

13 21.3 The stated reasons for any denial of access
14 shall be immediately provided in writing, handwritten or
15 otherwise.

16 21.4 To the extent that this Agreement requires
17 access to property not owned and controlled by U.S. DOE, U.S. DOE
18 shall exercise its authorities to obtain written access
19 agreements pursuant to Section 104(e) of CERCLA, 42 U.S.C.
20 § 9604(e). U.S. DOE shall use its best efforts to obtain signed
21 access agreements for itself, its authorized representatives, and
22 U.S. EPA and IDHW and their authorized representatives, from the
23 present owners or lessees in advance of the date such activities
24 are scheduled to commence. U.S. DOE shall provide U.S. EPA and
25 IDHW with copies of such agreements. With respect to

1 non-U.S. DOE property upon which monitoring wells, pumping wells,
2 treatment facilities, or other response actions are to be
3 located, U.S. DOE shall use its best efforts to obtain access
4 agreements that provide that no conveyance of title, easement, or
5 other interest in the property shall be consummated without
6 provisions for the continued operation of such wells, treatment
7 facilities, or other response actions on the property; and
8 provide that the owners of any property where monitoring wells,
9 pumping wells, treatment facilities, or other response actions
10 are located shall notify U.S. DOE, IDHW, and U.S. EPA by
11 certified mail, at least thirty (30) days prior to any
12 conveyance, of the property owner's intent to convey any interest
13 in the property and of the provisions made for the continued
14 operation of the monitoring wells, treatment facilities, or other
15 response actions installed pursuant to this Agreement.

16
17 XXII. FIVE-YEAR REVIEW

18 22.1 Consistent with Section 121(c) of CERCLA,
19 42 U.S.C. § 9621(c), and in accordance with this Agreement,
20 U.S. DOE agrees that U.S. EPA may review response action(s) for
21 OUs that allow hazardous substances to remain on-site, no less
22 often than every five (5) years after the initiation of the final
23 response action for such OU to assure that human health and the
24 environment are being protected by the response action being
25 implemented. If upon such review it is the judgment of U.S. EPA,

1 after consultation with IDHW, that additional action or
2 modification of the response action is appropriate in accordance
3 with Sections 104, 106, and 120 of CERCLA, 42 U.S.C. §§ 9604,
4 9606, and 9620, U.S. EPA and IDHW may require U.S. DOE to
5 implement such Additional Work pursuant to Part XV.
6

7 XXIII. TRANSFER OF PROPERTY

8 23.1 Conveyance of title, easement, or other
9 interest in the real property subject to this Agreement shall be
10 in accordance with Section 120(h) of CERCLA, 42 U.S.C. § 9620(h),
11 and any applicable requirements of RCRA or HWMA.
12

13 XXIV. PUBLIC PARTICIPATION

14 24.1 The Parties agree that this Agreement and any
15 subsequent proposed response action alternative(s) at INEL
16 arising out of this Agreement shall comply with the
17 administrative record and public participation requirements of
18 CERCLA, including Sections 113(k) and 117 of CERCLA, 42 U.S.C.
19 §§ 9613(k) and 9617, U.S. EPA guidance on public participation
20 and administrative records, and, where appropriate, public
21 participation requirements of HWMA.

22 24.2 U.S. DOE has developed a draft comprehensive
23 Community Relations Plan ("CRP") which responds to the need for
24 an interactive relationship with all interested community
25 elements, both on and off INEL, regarding activities and elements

1 of work undertaken by U.S. DOE at INEL under this Agreement. The
2 final CRP shall be implemented in a manner consistent with
3 Section 117 of CERCLA, 42 U.S.C. § 9617, U.S. EPA guidelines set
4 forth in U.S. EPA's Community Relations Handbook, and any
5 modifications thereto, and, where appropriate, public
6 participation requirements of HWMA.

7 24.3 Where appropriate, U.S. DOE intends to
8 coordinate any applicable NEPA review with the public
9 participation requirements of this Agreement.

10
11 XXV. DURATION/TERMINATION

12 25.1 Upon satisfactory completion of the response
13 action phase as described in the Action Plan for a given OU or
14 WAG, U.S. DOE may request and the Lead Agency shall issue a
15 Notice of Completion to U.S. DOE for that OU or WAG. At the
16 discretion of the Lead Agency, a Notice of Completion may be
17 issued for completion of a portion of the response action for an
18 OU or WAG.

19 25.2 This Agreement shall terminate when U.S. DOE
20 has satisfactorily completed all work pursuant to this Agreement
21 and the Action Plan, or when the Parties unanimously agree to
22 termination.

23 25.3 Upon completion of all remedial action for
24 the INEL Site, U.S. DOE may request, in writing, a determination
25 from U.S. EPA that it is appropriate to delete INEL from the NPL.

1 Upon receipt of this submission from U.S. DOE, U.S. EPA, after
2 consultation with IDHW, shall apply the factors outlined in
3 40 CFR § 300.425 and determine whether all appropriate response
4 action has been implemented at the Site, and whether any
5 potential threat to public health or the environment remains.

6 25.4 If U.S. EPA determines, after consultation
7 with IDHW, that no further response is appropriate and that the
8 Site should be deleted from the NPL, U.S. EPA will initiate steps
9 to delete the Site from the NPL, consistent with CERCLA, as
10 amended, and the NCP.

11 25.5 If U.S. EPA determines, after consultation
12 with IDHW, that deletion from the NPL is not warranted, U.S. EPA
13 shall so notify U.S. DOE, in writing, and provide specific
14 reasons for the determination. U.S. DOE shall take appropriate
15 steps to correct any deficiencies noted and may subsequently
16 resubmit for U.S. EPA's reconsideration U.S. DOE's request for
17 deletion in accordance with the provisions of this Part.

18
19 XXVI. CLASSIFIED AND CONFIDENTIAL INFORMATION

20 26.1 Notwithstanding any provision of this
21 Agreement, all requirements of the Atomic Energy Act of 1954, as
22 amended, and all Executive Orders concerning the handling of
23 unclassified controlled nuclear information, naval nuclear
24 propulsion information, restricted data, and national security
25 information, including "need to know" requirements, shall be

1 applicable to any access to information or facilities, or public
2 dissemination of information, covered under the provisions of
3 this Agreement. In addition, those data, documents, records, or
4 files which could otherwise be withheld pursuant to the Freedom
5 of Information Act ("FOIA"), 5 U.S.C. § 552, or the Privacy Act
6 of 1972, 5 U.S.C. § 552(a), unless expressly authorized for
7 release by the originating Party, shall be handled in accordance
8 with those provisions of law and any implementing regulation.
9 Upon submission to IDHW, U.S. DOE shall identify any materials
10 determined by U.S. DOE to be exempt from public disclosure
11 pursuant to FOIA, and, unless expressly authorized by U.S. DOE,
12 such materials shall be exempt from public disclosure by IDHW
13 pursuant to I.C. § 9-340(1). Transmittal of information or data
14 determined by U.S. DOE to be exempt from disclosure shall not be
15 deemed a waiver by U.S. DOE of any rights, benefit, or privilege
16 associated with the information.

17 26.2 Any Party may assert on its own behalf or on
18 behalf of an authorized representative, a confidentiality claim
19 or privilege covering all or any part of the information
20 requested by this Agreement, pursuant to Section 104 of CERCLA,
21 42 U.S.C. § 9604, and State law. Analytical data shall not be
22 claimed as confidential. Parties are not required to provide
23 legally privileged information. At the time any information is
24 furnished which is claimed to be confidential, all Parties shall
25 afford it the maximum protection allowed by law. If no claim of

1 confidentiality accompanies the information, it may be made
2 available to the public without further notice.

4 XXVII. FORCE MAJEURE

5 27.1 A Force Majeure shall mean any event arising
6 from causes beyond the control of a Party that causes a delay in,
7 or prevents the performance of, any obligation under this
8 Agreement, including, but not limited to:

9 (a) acts of God, fire, war, insurrection, civil
10 disturbance, or explosion;

11 (b) unanticipated breakage or accident to machinery,
12 equipment, or lines of pipe despite reasonably diligent
13 maintenance;

14 (c) adverse weather conditions that could not be
15 reasonably anticipated, or unusual delay in transportation;

16 (d) restraint by court order or order of public
17 authority;

18 (e) inability to obtain, consistent with statutory
19 requirements and after exercise of reasonable diligence, any
20 necessary authorizations, approvals, permits, or licenses due to
21 action or inaction of any governmental agency or authority other
22 than U.S. DOE;

23 (f) delays caused by compliance with applicable
24 statutes or regulations governing contracting, procurement, or
25

1 acquisition procedures, despite the exercise of reasonable
2 diligence; and

3 (g) insufficient availability of appropriated funds,
4 if U.S. DOE shall have made timely request for such funds as part
5 of the budgetary process as set forth in Part XXVIII of this
6 Agreement.

7 27.2 A Force Majeure shall also include any strike
8 or other labor dispute, whether or not within the control of the
9 Parties affected thereby. A Force Majeure shall not include
10 increased costs or expenses of response actions, whether or not
11 anticipated at the time such response actions were initiated.

12 27.3 U.S. DOE and IDHW agree that Paragraph
13 27.1(g) does not create any presumption that such event arises
14 from causes beyond the control of a Party. IDHW specifically
15 reserves the right to withhold its concurrence to any extension
16 which is based on such event pursuant to the terms of Part XIII,
17 or to contend that such event does not constitute Force Majeure
18 in any action to enforce this Agreement.

19
20 XXVIII. FUNDING

21 28.1 It is the expectation of the Parties that all
22 obligations of U.S. DOE arising under this Agreement will be
23 fully funded through Congressional appropriations. Consistent
24 with Congressional limitations on future funding, U.S. DOE shall
25 take all necessary steps and use its best efforts to obtain

1 timely funding to meet its obligations under this Agreement,
2 including, but not limited to, the submission of timely budget
3 requests.

4 28.2 The purpose of this Paragraph is to assure
5 that the Parties adequately communicate and exchange information
6 about funding concerns that affect the implementation of the
7 Agreement.

8 (a) U.S. EPA, U.S. DOE, and IDHW Project Managers
9 shall meet periodically throughout each Fiscal Year ("FY") to
10 discuss projects being funded in the current FY, the status of
11 the current year projects, and events causing or expected to
12 cause significant changes to any activity necessary to meet
13 target dates, deadlines, and any other requirements under this
14 Agreement. U.S. DOE shall provide information for these meetings
15 that shows, to the extent possible, projected and actual costs of
16 accomplishing such activities.

17 (b) U.S. EPA and IDHW may comment annually on
18 U.S. DOE-ID cost estimates for the corresponding activities
19 established under this Agreement for each budget year. U.S. DOE-
20 ID will consider any comments received and include those comments
21 along with these cost estimates in submittals sent from U.S. DOE-
22 ID to U.S. DOE-HQ for the relevant budget year.

23 (c) In or about June of each year, U.S. DOE shall
24 provide U.S. EPA and IDHW with current five-year planning cost
25 estimates based upon revision to U.S. DOE's Five-Year Plan.

1 These estimates will be based on the Activity Data Sheets ("ADS")
2 level. This submission shall include a correlation of relevant
3 ADS with activities required under the Agreement.

4 (d) U.S. DOE will provide to U.S. EPA and IDHW a copy
5 of the President's Budget Request to Congress and sections of the
6 U.S. DOE Congressional Budget Request pertaining to the
7 Environmental Restoration and Waste Management Program. After
8 the President has submitted the budget to Congress, U.S. DOE
9 shall notify U.S. EPA and IDHW in a timely manner of any
10 differences between the estimates submitted in accordance with
11 Paragraph 28.2(b) above and the actual dollars that were included
12 in the President's budget submission to Congress.

13 (e) Whenever U.S. DOE proposes a reprogramming,
14 requests a supplemental appropriation, or intends to transfer
15 funds in a manner that is likely to or will affect the ability of
16 U.S. DOE to conduct activities required under this Agreement,
17 U.S. DOE shall notify U.S. EPA and IDHW of its plans and, prior
18 to such a transfer of funds or the submittal of the reprogramming
19 or supplemental appropriation request to Congress, shall consult
20 with them about the effect that such an action is likely to or
21 will have on the activities required under the Agreement.

22 28.3 In accordance with Section 120(e)(5)(B) of
23 CERCLA, 42 U.S.C. § 9620(a)(5)(B), U.S. DOE shall include in its
24 annual report to Congress the specific cost estimates and
25

1 budgetary proposals associated with the implementation of this
2 Agreement.

3 28.4 No provision herein shall be interpreted to
4 require obligation or payment of funds in violation of the
5 Anti-Deficiency Act, 31 U.S.C. § 1341. In cases where payment or
6 obligation of funds would constitute a violation of the
7 Anti-Deficiency Act, the dates established requiring the payment
8 or obligation of such funds shall be appropriately adjusted.
9 U.S. EPA and U.S. DOE agree that any requirement for the payment
10 or obligation of funds by U.S. DOE established by the terms of
11 this Agreement shall be subject to the availability of
12 appropriated funds.

13 28.5 After appropriations have been received from
14 Congress, U.S. DOE, U.S. EPA, and IDHW Project Managers will
15 review the level of available appropriated funds and the most
16 recent estimated cost of conducting activities required under the
17 Agreement. If funding is requested as described in this Part,
18 and if appropriated funds are not available to fulfill U.S. DOE's
19 obligations under this Agreement, the Parties shall attempt to
20 agree upon appropriate adjustments to the dates that require the
21 payment or obligation of such funds. Subject to the terms of
22 this Agreement, if no agreement on appropriate adjustments can be
23 reached, U.S. EPA and IDHW reserve the right to initiate any
24 other action which would be appropriate absent this Agreement.
25 Initiation of any such actions shall not release the Parties from

1 their other obligations under this Agreement. Acceptance of this
2 paragraph, however, does not constitute a waiver by U.S. DOE that
3 its obligations under this Agreement are subject to the
4 provisions of the Anti-Deficiency Act, 31 U.S.C. § 1341. In any
5 action by U.S. EPA or IDHW to enforce any provision of this
6 Agreement, U.S. DOE may raise as a defense that its failure or
7 delay was caused by the unavailability of appropriated funds.

8 28.6 If appropriated funds are available to
9 U.S. DOE's Office of Environmental Restoration [or other relevant
10 U.S. DOE office to the extent they are responsible for
11 implementing this Agreement], to fulfill U.S. DOE's obligations
12 under this Agreement, U.S. DOE shall obligate the funds in
13 amounts sufficient to support the requirements specified in the
14 Agreement unless otherwise directed by Congress or the President,
15 or unless those requirements are modified in accordance with
16 provisions of this Agreement.

17 28.7 The participation by U.S. EPA and IDHW under
18 this Part is limited solely to the aforementioned and is in no
19 way to be construed to allow U.S. EPA and IDHW to become involved
20 with the internal U.S. DOE budget process, nor to become involved
21 in the Federal budget process as it proceeds from U.S. DOE to the
22 Office of Management and Budget and ultimately to Congress
23 through the President's submittal. Nothing herein shall affect
24 U.S. DOE's authority over its budgets and funding level
25 submissions.

1 XXIX. CREATION OF DANGER/EMERGENCY ACTION

2 29.1 In the event U.S. EPA or IDHW determine that
3 activities conducted pursuant to this Agreement, or any other
4 circumstances or activities, are creating an imminent and
5 substantial endangerment to the health or welfare of the people
6 at INEL, or in the surrounding area, or to the environment,
7 either U.S. EPA or IDHW may require or order U.S. DOE to stop
8 further implementation of this Agreement for twenty-four (24)
9 hours or, upon agreement of the Parties, such period of time as
10 needed to abate the danger. Any unilateral work stoppage for
11 longer than twenty-four (24) hours requires the concurrence of
12 the appropriate Lead Agency DRC representative.

13 29.2 In the event U.S. DOE determines that
14 activities undertaken in furtherance of this Agreement or any
15 other circumstances or activities at INEL are creating an
16 imminent and substantial endangerment to the health or welfare of
17 people at INEL, or in the surrounding areas, or to the
18 environment, U.S. DOE may stop implementation of this Agreement
19 for such periods of time necessary for the Lead Agency to
20 evaluate the situation and determine whether U.S. DOE should
21 proceed with implementation of the Agreement or whether the work
22 stoppage should be continued until the danger is abated.

23 U.S. DOE shall notify the Project Managers as soon as possible,
24 but not later than twenty-four (24) hours after such stoppage of
25 work, and provide the Lead Agency with documentation of its

1 analysis in reaching this determination. If the Lead Agency
2 disagrees with U.S. DOE's determination, it may require U.S. DOE
3 to resume implementation of this Agreement.

4 29.3 If the Lead Agency concurs in the work
5 stoppage by U.S. DOE, or if U.S. EPA or IDHW require or order a
6 work stoppage, U.S. DOE's obligations shall be suspended and the
7 time periods for performance of that work, as well as the time
8 period for any other work dependent upon the work which was
9 stopped, shall be extended, pursuant to Part XIII, or such period
10 of time as U.S. EPA and IDHW determines is reasonable under the
11 circumstances. Any disagreements pursuant to this Part shall be
12 resolved through the dispute resolution procedures in Part IX by
13 referral directly to the DRC committee.

14 29.4 U.S. DOE shall prepare and provide U.S. EPA
15 and IDHW Project Managers a copy of the documentation required in
16 Paragraph 29.2 immediately, but no later than ten (10) working
17 days after stoppage of work.

18
19 XXX. AMENDMENT OF AGREEMENT

20 30.1 Except as provided in Paragraph 30.2, this
21 Agreement may only be amended by unanimous agreement of the
22 Parties or upon completion of Dispute Resolution, as applicable.

23 30.2 Amendments pursuant to Parts VIII(D), (E),
24 and (G), XIII, XV, XVI, and XIX may be made by the unanimous
25 agreement of the Project Managers.

1 30.3 Any such amendment shall be in writing, shall
2 become effective on the date it is signed by all the Parties, and
3 shall be incorporated into, and modify, this Agreement.
4

5 XXXI. RESERVATION OF RIGHTS

6 31.1 The Parties have determined that the
7 activities to be performed under this Agreement are in the public
8 interest. U.S. EPA and IDHW agree that compliance with this
9 Agreement shall stand in lieu of any administrative and judicial
10 remedies against U.S. DOE which are available to U.S. EPA and
11 IDHW regarding releases or threatened releases of hazardous
12 substances at INEL which are the subject of the activities
13 performed by U.S. DOE under this Agreement.

14 31.2 Nothing in this Agreement shall preclude
15 U.S. EPA or IDHW from exercising any administrative or judicial
16 remedies available to them under the following circumstances:

17 (a) In the event or upon the discovery of a
18 violation of, or noncompliance with, any provision of RCRA or
19 HWMA, including any discharge or release of hazardous waste which
20 is not addressed by this Agreement; or

21 (b) Upon discovery of new information regarding
22 hazardous substances, including but not limited to, information
23 regarding releases of hazardous substances to the environment
24 which is not addressed by this Agreement; or
25

1 (c) Upon U.S. EPA's or IDHW's determination,
2 after dispute resolution, that a proposed remedy will not be
3 protective of human health and the environment under CERCLA. If
4 IDHW exercises its rights under this subparagraph, it shall
5 withdraw from the Agreement with respect to the ROD at issue
6 within sixty (60) days following the effective date of the ROD.

7 31.3 In the event of a judicial dispute concerning
8 IDHW authority over any hazardous substance at an IDHW-lead OU,
9 IDHW shall continue in the lead role as provided herein as to the
10 issues in dispute except in exceptional circumstances as
11 determined jointly by U.S. EPA and IDHW. As to the issues under
12 judicial dispute, U.S. EPA shall select the remedy during the
13 pendency of the judicial dispute or in the event of a judicial
14 decision limiting IDHW's authority to do so.

15 31.4 Neither U.S. EPA nor IDHW shall be held out
16 as a Party to any contract entered into by U.S. DOE to implement
17 the requirements of this Agreement.

18 31.5 This Agreement shall not be construed to
19 limit in any way the right provided by law to the public or any
20 citizen to obtain information about the work to be performed
21 under this Agreement or to sue or intervene in any action to
22 enforce state or federal law.

23 31.6 Except as provided herein, U.S. DOE is not
24 released from any liability which it may have pursuant to any
25 provisions of state and federal law. U.S. DOE is not released

1 from any claim for liability for destruction or loss of natural
2 resources.

3 31.7 This Agreement shall not transfer U.S. EPA's
4 authorities as prohibited by Section 120(g) of CERCLA, 42 U.S.C.
5 § 9620(g), or in any way authorize a physically inconsistent
6 response action, as prohibited by Section 122(e)(6) of CERCLA,
7 42 U.S.C. § 122(e)(6), or provide for review inconsistent with
8 Section 113(h) of CERCLA, 42 U.S.C. § 9613(h), subject to
9 exhaustion of rights under Part IX.

10 31.8 IDHW reserves the right under HWMA to enforce
11 permit requirements, including corrective action. IDHW agrees to
12 exhaust its rights under Part IX prior to taking any action to
13 enforce the permit corrective action requirements.

14 31.9 In the event of any administrative or
15 judicial action by U.S. EPA or IDHW under this Part, all Parties
16 reserve all rights, claims, and defenses available under law,
17 including the right to contest the legal enforceability of State
18 corrective action or other requirements against U.S. DOE.
19

20 XXXII. RELATIONSHIP TO U.S. DOE'S FIVE-YEAR PLAN

21 32.1 U.S. DOE is preparing an Environmental
22 Restoration and Waste Management Five-Year Plan (the "Five-Year
23 Plan") to identify, integrate, and prioritize U.S. DOE's
24 compliance and cleanup activities at all U.S. DOE nuclear
25 facilities and sites. The Five-Year Plan will assist U.S. DOE in

1 addressing environmental requirements at its facilities and sites
2 and in developing and supporting its budget requests. U.S. DOE
3 will update the Five-Year Plan on an annual basis.

4 32.2 The terms of the Five-Year Plan shall be
5 consistent with the provisions of this Agreement, including all
6 requirements and schedules contained herein; U.S. DOE's
7 Five-Year Plan shall be drafted and updated in a manner that
8 ensures that the provisions of this Agreement are incorporated
9 into the U.S. DOE planning and budget process. Nothing in the
10 Five-Year Plan shall be construed to affect the provisions of
11 this Agreement.

12 32.3 U.S. DOE is developing a national
13 prioritization system for inclusion in the Five-Year Plan.
14 U.S. DOE's application of its national prioritization system may
15 indicate to U.S. DOE that amendment or modification of the
16 provisions and/or schedules established by this Agreement is
17 appropriate. In that event, U.S. DOE may request, in writing,
18 amendment or modification of this Agreement, including deadlines
19 established herein. Where the Parties are unable to reach
20 agreement on a request amendment or modification, U.S. DOE may
21 invoke the dispute resolution provisions of this Agreement.
22 Pending resolution of any such dispute, the provisions and
23 deadlines in effect pursuant to this Agreement shall remain in
24 effect and enforceable in accordance with the terms of this
25 Agreement. Any amendment or modification of this Agreement will

1 be incorporated, as appropriate, in the annual update to
2 U.S. DOE's Five-Year Plan.

3
4 XXXIII. SEVERABILITY

5 33.1 If any provision of this Agreement is ruled
6 invalid, illegal, or unconstitutional, the remainder of the
7 Agreement shall not be affected by such ruling.

8
9 XXXIV. EFFECTIVE DATE

10 34.1 This Agreement is effective upon signature by
11 all Parties.

Signature sheet for the foregoing Federal Facility
Agreement for the Idaho National Engineering Laboratory among the
U.S. Environmental Protection Agency, the U.S. Department of
Energy, and the Idaho Department of Health and Welfare.

EFFECTIVE this ____ day of _____, 1991.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

DANA A. RASMUSSEN
Regional Administrator, Region 10
U.S. Environmental Protection Agency

Date

REPRESENTED BY: Monica Kirk, Esq.

FOR THE UNITED STATES DEPARTMENT OF ENERGY:

U.S. Department of Energy

Date

REPRESENTED BY: Brett Bowhan, Esq.
Dean Monroe, Esq.
Debra Wilcox, Esq.

FOR THE IDAHO DEPARTMENT OF HEALTH AND WELFARE:

RICHARD P. DONOVAN
Director
Idaho Department of Health and Welfare

Date

REPRESENTED BY: Curt Fransen, Esq.

FEDERAL FACILITY AGREEMENT - Page 70
IDAHO NATIONAL ENGINEERING LABORATORY

July 22, 1991