

1 period. Planning dates are not enforceable requirements. Planning dates shall be converted to milestones
2 in accordance with Section 2.2.2. DOE may, by written notification to DEQ, extend a planning date up to
3 a total of one year. Cumulative extensions of greater than one year to any planning date requires approval
4 by the DEQ and are subject to the Revision procedures (Section 2.5) of this STP.

5
6 **2.2.2 Milestones and Planning Dates**

7
8 **2.2.2.1** For the purposes of this STP, milestones shall identify specific dates in a three year rolling
9 period consisting of the current fiscal year (FY) plus two additional fiscal years (FY+1 and FY+2) by
10 which a certain activity (including an event such as submittal of a deliverable) is scheduled to occur and
11 which will be enforceable as set forth in this STP. Planning dates are dates that are outside the three year
12 rolling period (e.g., FY+3, FY+4) and which are unenforceable estimated schedule dates.

13
14 **2.2.2.2** Milestones will be established for a three year period consisting of the current fiscal year
15 plus two additional fiscal years (FY+1 and FY+2) as follows:

16
17 **2.2.2.2.1** On the effective date of this STP and Consent Order, enforceable milestones are
18 established for a three year period. Additionally, planning dates are established for the outlying fiscal
19 years. Subsequently, after expiration of a fiscal year, FY+1 milestones shall be converted to current fiscal
20 year milestones. FY+2 milestones shall be converted to FY+1 Milestones. The FY+3 planning dates
21 shall be converted to FY+2 milestones. All conversions will be automatic and remain in effect, unless
22 DOE notifies the DEQ of any proposed changes. Such changes may be made necessary as DOE identifies
23 milestones and planning dates which cannot be accomplished within available funding levels.
24 Notification of proposed changes to current year milestones (and any adjustments to affected milestones
25 or planning dates) under this paragraph will be submitted in accordance with the applicable provisions of
26 this STP, including, as appropriate, Section 2.14 (Modification), 2.5 (Revisions) or 2.6 (Extensions)
27 within 45 days of DOE-ID, ARG-W, and IBO receiving their approved fiscal year funding allocation
28 from DOE-HQ. Notification of proposed changes to FY+1 and FY+2 milestones (and any adjustments to
29 affected milestones or planning dates) under this paragraph may be submitted in accordance with the
30 applicable provisions of this STP, including 2.14 (Modification), 2.5 (Revisions) or 2.6 (Extensions)
31 within a reasonable period after DOE-ID receives the President's budget request (for FY+1 milestones)
32 and the Office of Management and Budget (OMB) target level funding (for FY+2 milestones). Nothing
33 in this section precludes DOE from proposing or requesting changes to milestones or planning dates at

1 other times. All proposed changes to milestones are subject to Section 2.8, "Funding," and where the
2 Parties cannot agree, to Section 2.9, "Disputes."

3
4 **2.2.2.2.2** In establishing and adjusting milestones and planning dates pursuant to this section,
5 the following, at a minimum, will be considered: (a) funding availability as it is appropriated by
6 Congress, and the amount of funds provided to the INEEL by DOE in its Approved Funding Programs for
7 the current fiscal year for waste management activities and the President's budget for the next fiscal year
8 (FY+1) and associated out-year funding targets for environmental management for the INEEL, (b)
9 sitewide waste management priorities, (c) cost estimates, (d) new or emerging technologies, and (5) other
10 new STP information.

11
12 **2.2.2.3** Schedule dates shall be identified by reference to fiscal year quarters and the specific date
13 of the milestone or planning date shall be the last day of the quarter identified. The first quarter or "1Q"
14 shall have December 31 as its corresponding specific date. The second quarter or "2Q" shall have March
15 31 as its corresponding specific date. The third quarter or "3Q" shall have June 30 as its corresponding
16 specific date. The fourth quarter or "4Q" shall have September 30 as its corresponding specific date.

17
18 **2.2.3 Categories of Milestones and Planning Dates**

19
20 The categories of activities for which milestones and planning dates will be provided are the
21 different types of treatment approaches in the STP and are listed in Tables 2-1 through 2-3 and in other
22 provisions below. The categories of activities are based on Section 3021(b)(1)(B)(i), (ii) and (iii) of
23 RCRA, as appropriate.

24
25 **2.2.3.1 Plan Where Treatment Technologies Exist [RCRA Section 3021(b)(1)(B)(i)].** For
26 identified and developed treatment technologies for waste which will be treated on-site, the milestones
27 and planning dates identified in Section 5.1, "Schedules for Treatment Facilities for Which Technology
28 Exists," shall apply. When submitting new schedules under this subsection to DEQ for approval, DOE
29 shall propose appropriate milestones and planning dates from the categories of milestones in Table 2-1
30 below.

**Table 2-1. SCHEDULE FOR WASTES WITH
EXISTING TREATMENT TECHNOLOGIES**

Categories of Milestones/Planning Dates:

- a) Submit RCRA permit applications to the DEQ
- b) Procure contracts
- c) Initiate construction
- d) Conduct systems testing
- e) Commence operations
- f) Submit for approval a schedule for processing backlogged and currently generated mixed wastes

1

2

3

4

5

6

7

8

9

10

2.2.3.2 Plan Where Technologies Must Be Developed [3021(b)(1)(B)(ii)]. For some mixed wastes at INEEL, treatment technologies either have not been identified and/or developed or treatment technologies must be modified or adapted to be made applicable to INEEL mixed waste. For these wastes which will be treated on-site, the milestones and planning dates identified in Section 5.2, "Schedules for Treatment Facilities for Which Technology Exists but Needs Adaptation, or for Which No Technology Exists," shall apply. When submitting new schedules under this subsection to DEQ for approval, DOE shall propose appropriate milestones and planning dates from the categories of milestones in Table 2-2 below.

1

**Table 2-2. SCHEDULE FOR MIXED WASTE WITHOUT
EXISTING TREATMENT TECHNOLOGIES**

Categories of Milestones/Planning Dates:

- a) Identify funding requirements for identification and development of technology
- b) Identify and develop technology
- c) Submit treatability study exemptions
- d) Submit R&D (RD&D) permit applications
- e) Submit schedule for treatment in accordance with Table 2-1 or new schedule for development of alternative treatment technologies in accordance with this section.

2

3

4

2.2.3.3 Requirements Pertaining to Radionuclide Separation [RCRA Section 3021(b)(1)(B)(iii)].

5

6

7

8

9

10

11

12

The FFC Act sets additional requirements in cases where DOE intends to conduct radionuclide separation of mixed waste. No current plans exist to separately conduct radionuclide separation of mixed wastes generated or stored at INEEL. Should DOE determine to conduct radionuclide separation of such mixed wastes, DOE will provide for such wastes which will be treated on-site those milestones and planning date categories for submitting the required information as identified in Table 2-3, "Schedule for Radionuclide Separation of Mixed Wastes," as follows:

Table 2-3. SCHEDULE FOR RADIONUCLIDE SEPARATION OF MIXED WASTES

Categories of Milestones/Planning dates:

- a) Submit estimation of the volume of waste generated by each case of radionuclide separation
- b) Submit estimation of the volume of waste that would exist or be generated without radionuclide separation
- c) Submit estimation of the costs of waste treatment and disposal if radionuclide separation is used, compared to the estimated costs if it is not used
- d) Submit assumptions underlying such waste volume and cost estimates

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

2.2.3.4 Plan for On-Site Mixed Waste Streams to be Treated Off-Site. For on-site mixed waste which will be treated off-site, milestones and planning dates are identified in Section 5.3, "Schedules for Mixed Waste Streams Planned for Treatment Offsite." The final enforceable milestone for waste treatment of such waste under the STP shall be shipment to an off-site treatment facility. Residuals from the treatment of such waste may be returned to INEEL for storage pending disposal. DOE shall report information in the Annual STP Report of all waste shipments off-site to both DOE and commercial facilities for purposes of waste inventory review.

2.2.3.5 Plan for Mixed Waste Streams from Off-Site to be Treated On-Site. For mixed waste from off-site DOE facilities to be treated at INEEL as identified in Section 4.4, milestones and planning dates are identified in Section 5. Off-Site waste shall not be stored or disposed at INEEL prior to or following treatment except as specifically approved by the DEQ, provided, however, DOE has specifically reserved its rights as provided in paragraph 5.4 of the Consent Order incorporating this STP.

2.2.3.6 Plan for On-Site Mixed Transuranic Waste. For on-site mixed transuranic waste, to be

1 shipped to the Waste Isolation Pilot Plant (WIPP), the requirements, milestones and planning dates are
2 identified in Section 5.4, "Mixed Transuranic-Contaminated Waste Shipped to WIPP."

3
4 **2.2.3.7 Plan for On-Site Mixed Wastes not Sufficiently Characterized to Allow Identification**
5 **of Appropriate Treatment.** For new on-site mixed waste streams requiring characterization to identify
6 appropriate treatment milestones and planning dates, DOE shall submit a plan for characterization to the
7 DEQ for approval. The characterization plans are in Section 5.5, "Mixed Waste Streams Requiring
8 Further Characterization."
9

10 **2.3 Quarterly Meetings, Annual STP Updates, and Reports**

11
12 **2.3.1** This section provides a mechanism to: (a) communicate and exchange information about
13 schedule, technology development, funding and other concerns that affect the implementation of the STP;
14 (b) propose and establish the next ensuing milestones; and (c) update and propose changes or Revisions to
15 the STP.
16

17 **2.3.2 Quarterly Meetings** The Project Managers shall meet each quarter to discuss progress on
18 milestones and planning dates, any changes to waste streams and volumes, and other pertinent
19 information. In order to facilitate these meetings, DOE shall provide in writing to the DEQ Project
20 Manager notification of new waste streams, an updated STP errata sheet, notification of completed
21 milestones for the quarter, and a proposed agenda for the meeting. Proposed changes or revisions to the
22 STP may be included in writing for discussion at the meeting.
23

24 **2.3.3 Annual Update to the STP** By each November 15 after the fiscal year in which the STP is
25 approved, the DOE shall submit an Annual Update to the STP to the DEQ. The Annual Update to the
26 STP shall incorporate any covered waste volume changes, planning date extensions less than one year,
27 approved milestone extensions less than one year, or Revisions to the STP over the previous fiscal year.
28 Subsequent changes or Revisions to the STP during the current fiscal year shall be indexed on an STP
29 errata sheet to be submitted by DOE to the DEQ at least quarterly.
30

31 **2.3.4** At the same time and along with the Annual Update to the STP, DOE shall submit to the DEQ an
32 Annual STP Report to the STP for review and comment. The Annual STP Report:
33

- 1 (a) Shall include and collate information from the Quarterly Project Manager meetings and
2 provide the DEQ with information to track progress on milestones and planning dates
3
- 4 (b) May include any proposed Extensions, Revisions (including proposed waste treatment
5 plans for new waste streams) or other changes to the STP
6
- 7 (c) Shall include information on DOE's funding for the STP and identify any funding issues
8 which may impact the STP schedules
9
- 10 (d) May include notification of planning date extensions and changes in covered waste
11 volumes
12
- 13 (e) May be a vehicle for input from the public, affected states, and EPA to be obtained if
14 Revisions to the STP are proposed.
15

16 **2.4 Inclusion of New Mixed Waste Streams**

17

18 **2.4.1** This section establishes a method for including new mixed waste streams which are discovered,
19 identified, generated on-site, or to be received from off-site, and mixed waste streams which are generated
20 on-site through environmental restoration to the extent such wastes are to become identified as a covered
21 waste pursuant to Section 2.1 and as set forth in this section (including wastes covered by the Federal
22 Facility Agreement and Consent Order executed by the State of Idaho, DOE, and EPA on December 9,
23 1991, which would otherwise not be covered by this STP pursuant to RCRA Section 3021(b)(1)(ii)).
24

25 **2.4.2** DOE shall provide written notification to the DEQ as part of the Quarterly Meetings of new
26 mixed waste streams which have been discovered, identified, or generated and stored on-site, and mixed
27 wastes anticipated to be generated and stored at INEEL, which are expected to be covered wastes. Unless
28 and until the proposed waste treatment plan of Section 2.4.4 is disapproved by DEQ after exhaustion of
29 disputes procedures or appeal under Section 2.9, the mixed waste will be covered waste and subject to the
30 requirements of this STP (a) upon receipt of such notification, (b) when generated or stored at INEEL
31 after notification, or (c) such other time as specified in the notification, whichever is later. DOE shall
32 provide a description of the waste codes, waste form, volume, technology and capacity needs, and similar
33 pertinent information in the Quarterly Meetings. Any revisions to the STP Section 2.2, "Compliance

1 Schedules," shall be proposed in the Quarterly Meetings or the next regularly scheduled Annual STP
2 Report. The information provided pursuant to this subsection is subject to DEQ approval to the extent
3 provided for in Subsection 2.4.4.
4

5 **2.4.3.** If DOE cannot provide such information or schedules as required by 2.4.2 because of inadequate
6 characterization or it is otherwise impracticable, DOE shall submit for approval a proposed plan and
7 schedule for complying with Section 2.4.2, along with appropriate justification and supporting
8 information.
9

10 **2.4.4.** DOE shall submit a proposed waste treatment plan for new waste streams to the DEQ for
11 approval, approval with modification or disapproval under Section 2.13, "Submittal and Review of
12 Deliverables". The waste treatment plan ties the new wastes to facilities under this STP and may consist
13 of proposed changes to Section 4, "Covered Waste," of this STP. DOE may also propose changes or
14 revisions to the STP schedules to accommodate new waste streams. In the absence of DEQ approval, new
15 waste shall no longer be covered waste for the purposes of this STP after conclusion of Dispute
16 Resolution or appeal under Section 2.9.
17

18 **2.5 Revisions**

19
20 **2.5.1** A Revision to the STP requires, for those affected portions of the STP, publication of a notice of
21 availability to the public and consultation with affected states and EPA pursuant to this STP and Section
22 3021(b)(2) and (3) of RCRA. A Revision is (a) the addition of a treatment facility at INEEL or
23 technology development not previously included in the STP, (b) extension to a milestone or planning date
24 for a period greater than one year, or (c) waste treatment plans for a new waste stream. Changes in waste
25 volume of covered waste; extensions or changes to milestones or planning dates for a period less than one
26 year shall not, by themselves, constitute a Revision.
27
28

1 **2.5.2** Revisions to the STP shall be made as follows:
2

3 **2.5.2.1** DOE shall propose Revisions to the STP and provide supporting information for the
4 Revision in writing pursuant to Quarterly Meetings or in the Annual STP Report pursuant to Section 2.13,
5 Submittal and Review of Deliverables. Under those procedures, DEQ may conditionally approve the
6 Revision or return it to DOE with comments so that changes can be made for resubmittal, or disapprove it
7 within 30 days. Approvals with modification or disapprovals may be subject to the procedures of Section
8 2.9, Disputes. In reviewing the Proposed Revision, DEQ shall consider the need for regional treatment
9 facilities. Conditional approval of a Revision is a determination by the DEQ that the Revision is
10 acceptable subject to the results of public comment and consultation with affected states and EPA.

11 **2.5.2.2** Within 30 days subsequent to conditional approval, the DEQ shall publish a notice of
12 availability and make the proposed revision available to the public for review and comment and to
13 affected states and EPA for consideration and consultation. Revisions shall be approved or approved with
14 modification or disapproved by DEQ within 6 months after DEQ's receipt of the Proposed Revision. Any
15 approval with modifications or disapproval of the Proposed Revision shall include supporting explanation
16 and information. DOE shall have 30 days to discuss the approval with modifications or disapproval with
17 DEQ. If agreement is not reached on the proposed modifications in this 30 day period, the procedures of
18 Section 2.9, Disputes, will apply.
19

20 **2.5.3** To the extent practicable, comments from the public, affected states, and EPA on the
21 conditionally approved Revisions will be obtained in conjunction with the Annual STP Report. However,
22 if a conditionally approved Revision is proposed to become effective before it could be addressed in the
23 regularly scheduled Annual STP Report, the DEQ shall publish a Notice of Availability and consult with
24 affected states and EPA, as appropriate, within 30 days of such conditional approval. In the event that the
25 final approved Revision differs from the conditionally approved Revision after public comment and
26 consultation, DOE shall not be subject to enforcement actions for interim activities conducted in
27 accordance with the conditionally approved Revision.
28
29

2.6 Extensions

1
2
3 **2.6.1** A milestone may be extended or a planning date may be extended for a period of greater than one
4 year upon receipt of a timely request for extension where good cause exists. Any request for an extension
5 shall be made to the DEQ in writing prior to the milestone or planning date. The written request shall be
6 provided to DEQ's project manager and shall be part of the Quarterly Meetings or Annual STP Report as
7 practicable. The written request shall specify:

- 8
- 9 (a) The milestone or planning date sought to be extended;
 - 10
 - 11 (b) The length of the extension sought;
 - 12
 - 13 (c) The good causes(s) for the extension; and
 - 14
 - 15 (d) Any related milestone or planning date that would be affected if the extension were
 - 16 granted.
 - 17

18 **2.6.2** Good cause for an extension includes, but is not limited to:

- 19
- 20 (a) Inadequate funding after DOE complies with Section 2.8, Funding.
 - 21
 - 22
 - 23 (b) A delay caused by DEQ's failure to meet any requirement imposed under the STP or
 - 24 Consent order.
 - 25
 - 26 (c) A delay caused by the good faith invocation of dispute resolution or the initiation of
 - 27 administrative or judicial action;
 - 28
 - 29 (d) A delay caused, or which is likely to be caused, by the grant of an extension in regard to
 - 30 another milestone;
 - 31
 - 32 (e) A delay caused by additional work agreed to by DOE and the DEQ;
 - 33

- 1 (f) Circumstances unforeseen at the time this STP was prepared that significantly affects the
2 work required under the STP;
3
4 (g) Delay in review of a permit application;
5
6 (h) Inconsistency with the requirement of any other existing agreement, order, or permit
7 between DOE and DEQ; and
8
9 (I) Any other event or series of events mutually agreed to by DOE and the DEQ as
10 constituting good cause.
11

12 **2.6.3** Absent agreement of the DOE and the DEQ with respect to the existence of good cause, either or
13 both of them may seek and obtain a determination through the dispute resolution process, Section 2.9,
14 Disputes, whether or not good cause exists.
15

16 **2.6.4** For extension requests by DOE, the procedures of Section 2.13, “Submittal and Review of
17 Deliverables”, shall apply. Pursuant to that provision, if the DEQ approves the requested
18 extension, the affected milestone shall be extended accordingly up to one year. Requested
19 extensions for more than one year may be conditionally approved as proposed Revisions.
20

21 **2.7 Satisfaction of Requirements and Enforceability**

22

23 **2.7.1** Deletion of Wastes - The requirements of the STP and Consent Order shall be satisfied with
24 regard to any covered waste upon DOE's notice to the DEQ and DEQ's concurrence under 2.7.3 of the
25 following:
26

- 27 (a) Completion of treatment pursuant to the STP;
28
29 (b) Shipment of such waste off-site for treatment, storage, or disposal;
30
31 (c) Changes to statute or regulation or determinations of the regulatory authority which cause
32 such waste to be no longer subject to the requirements of RCRA or the LDR
33 requirements of RCRA;

- 1 (d) Storage for the sole purpose of accumulating such quantities of covered wastes as are
2 necessary to facilitate proper recovery, treatment, or disposal in compliance with HWMA
3 and RCRA;
- 4
- 5 (e) Information demonstrating the waste meets the treatment standards of RCRA, Section
6 3004(m);
- 7
- 8 (f) Treatment in accordance with the conditions of an approved LDR treatability variance; or
- 9
- 10 (g) Mutual agreement between DOE and the DEQ.
- 11

12 **2.7.2** The STP shall be satisfied either at such time as (1) there is no longer any mixed waste,
13 regardless of when generated, being stored or generated at the INEEL which does not meet LDR
14 requirements or (2) all mixed waste, regardless of when generated, at the INEEL is being stored, solely
15 for the purpose of accumulating sufficient quantities of mixed wastes as are necessary to facilitate proper
16 recovery, treatment, or disposal.

17 **2.7.3** DOE will notify the DEQ of such satisfaction in writing pursuant to the Quarterly Meetings or
18 Annual STP Reports. The DEQ shall approve or disapprove the notice in writing within 30 days. Any
19 disapproval by DEQ shall be subject to the provisions of Section 2.9, Disputes.

21 **2.8 Funding**

22

23 **2.8.1** DEQ shall have an opportunity to have input formulating the INEEL budget and setting the
24 INEEL budget priorities as set forth in this section and Section 2.2.2, Milestones and Planning dates.
25 Nothing in the STP affects DOE authority over its budget and funding level submissions. Further, any
26 requirement for the expenditure or obligation of funds by DOE established by the terms of the STP and
27 Consent Order requiring compliance with the STP would be subject to the availability of appropriated
28 funds, and no provision of the STP or Consent Order shall be interpreted to require the obligation or
29 expenditure of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, as amended. In cases
30 where the expenditure or obligation of funds would constitute a violation of the Anti-Deficiency Act, the
31 dates established requiring the expenditure or obligation of such funds shall be appropriately adjusted.

32 **2.8.2** It is the expectation of the Parties that all obligations of DOE arising under this STP and Consent
33 Order will be fully funded. The Parties recognize that successful implementation of this STP and Consent

1 Order is dependent upon prudent use of resources and that resource requirements and constraints will be
2 considered during the work planning, budget formulation, and budget execution process. To ensure the
3 development of responsible budget requests consistent with the requirements of the STP and applicable
4 federal/state statutes, the Parties will work cooperatively and in good faith.

5
6 **2.8.3** DOE shall take all necessary steps to obtain sufficient funding to comply with the provisions of
7 this STP as set forth in this section through consultation with DEQ and submission of timely budget
8 requests.

9
10 **2.8.4** Pursuant to Section 2.10, the Project Managers will meet periodically and discuss projects being
11 funded in the current FY and any events or new information that may cause significant changes to
12 schedules or other issues relevant to activities being performed under this STP and Consent Order. DOE
13 shall provide projected and actual cost information regarding such changes for these meetings, to the
14 extent practicable.

15 **2.8.5** DOE shall consult with DEQ in formulating its annual INEEL Environmental Management (EM)
16 FY+2 budget request as set forth in this section.

17
18 **2.8.5.1** No later than 30 days prior to the submission of their budget requests to DOE-HQ, DOE-
19 ID, ARG-W, and IBO (as appropriate) shall provide DEQ with information or a briefing on the proposed
20 INEEL EM FY+2 budget allocation, including appropriate supporting documents. In the process of
21 formulating its annual FY+2 budget request, DOE may be subject to target funding guidance directed by
22 the Office of Management and Budget (OMB). The information or briefing will address the impacts of
23 such OMB target funding guidance.

24
25 DEQ agrees not to release confidential budget information to any other person or entity prior to
26 submission by the President of his budget request to Congress unless authorized by DOE or required to
27 do so by court order. DOE may seek to intervene in any proceeding brought to compel or enjoin release
28 of this information. If allowed to intervene, DOE shall assert its interest in, and the legal basis for,
29 maintaining the confidentiality of this information.

1 **2.8.5.2** Before DOE-ID, ARG-W (through DOE-CH), or IBO submit their annual EM budget
2 request and supporting budget formulation documents, if any, to DOE-HQ, the Parties shall attempt to
3 reach agreement regarding work scope, priorities, schedules/milestones, and funding levels required to
4 accomplish the purpose of the STP and Consent Order. DEQ shall, to the extent practicable, provide
5 comments on the proposed budget request and proposed activities and make recommendations
6 appropriate to accomplish the intent of the STP, including those that cannot be accommodated within the
7 respective environmental management funding target level for the DOE-ID, ARG-W, and IBO.

8
9 **2.8.5.3** DOE-ID, ARG-W, and IBO may revise their EM budget requests and supporting
10 documents, if any, to resolve the comments of DEQ to the extent agreed by the Parties or DOE otherwise
11 deems it appropriate.

12
13 **2.8.5.4** DOE-ID, ARG-W (through DOE-CH), and IBO will submit to DOE-HQ their EM
14 budget requests with detailed budget formulation documents, if any, and shall forward with it the target
15 budget level funding and any unresolved issues regarding funding for additional or accelerated activities
16 submitted by DEQ, and any other unresolved issues raised by DEQ. If these issues are not subsequently
17 resolved prior to DOE's submission of its budget to OMB, DOE-HQ shall forward in conjunction with its
18 budget request any such unresolved issues and additional or accelerated activities, and related funding
19 information to OMB.

20
21 **2.8.6** Funds authorized and appropriated annually by Congress for EM activities (currently under the
22 “Defense Environmental Restoration and Waste Management”, and “Energy Supply, Research and
23 Development Activities” appropriation(s) in the Energy and Water Development Appropriations Act) and
24 allocated by the DOE Assistant Secretary for Environmental Management to INEEL waste management
25 activities or other specifically designated funds for INEEL waste management activities will be the sole
26 source of funds for activities required by this STP.

27
28 **2.8.6.1** If funding has been requested as described in Subsections 2.8.4 - 2.8.5, and if
29 appropriated funds allocated to INEEL for waste management activities by the DOE Assistant Secretary
30 for Environmental Management are not available to accomplish the milestones and planned activities
31 under this STP and Consent Order, the Parties shall attempt to negotiate appropriate extensions under this
32 STP.

33
34 **2.8.6.2** If the Parties are unable to reach agreement, then the Parties shall use Section 2.9,

1 Disputes, to determine the extent that activities shall be adjusted or the length of the extensions for
2 milestones and planning dates in order to accommodate the INEEL FY funding allocation for waste
3 management activities. The Parties agree that, unless DOE-ID, ARG-W (through DOE-CH), or IBO has
4 not followed the procedures set out in Subsections 2.8.4 - 2.8.5, the dispute resolution procedure shall not
5 result in a decision requiring activities that DOE-ID, ARG-W, or IBO cannot accomplish given its FY
6 funding allocation for waste management activities. Failure to agree on adjustments to FY+1 or FY+2
7 milestones in the current fiscal year shall not prejudice DOE's right to request adjustments to these
8 milestones in subsequent fiscal years or to appeal any decision of the DEQ regarding such future requests.
9

10 **2.8.7** If DEQ agrees or a court determines, after dispute resolution and exhaustion of administrative
11 appeals, that DOE funding is insufficient to meet any milestone and the Parties cannot agree on an
12 appropriate modification, the milestone shall be null and void and not subject to the remedy of specific
13 performance. However, any mixed waste associated with such milestone shall, subsequent to such
14 agreement or final determination, be deemed to not be covered waste under this STP, and DOE shall be
15 subject to administrative or judicial enforcement actions for storage and any other violation of RCRA or
16 HWMA with regard to such mixed waste.
17

18 **2.8.8** If the DOE-ID, ARG-W, or IBO takes steps, as set forth in this section, through consultation with
19 DEQ, this will constitute a good faith effort to comply with the requirements of this STP and Consent
20 Order. Subsequent receipt of less funding than submitted shall not constitute a knowing violation under
21 RCRA or applicable State law for purpose of criminal or civil fines and penalties.
22

23 **2.8.9** Nothing herein shall affect DOE's ultimate authority and responsibility to formulate and submit to
24 the President appropriate budget requests and to allocate appropriated funds to meet the DOE's
25 obligation and to serve the DOE's missions.
26

27 **2.9 Disputes**

28

29 **2.9.1** Except as specifically set forth elsewhere in the STP, any action which leads to or generates a
30 dispute regarding the STP or its revision is subject to resolution under this section. The dispute
31 resolution procedures of this section shall be followed and exhausted before pursuing any other legal
32 remedy in any other forum.
33

1 **2.9.2** DOE and the DEQ shall make reasonable efforts to informally resolve disputes as expeditiously
2 as possible at the project manager level. If resolution cannot be achieved informally, either Party may
3 elevate the dispute for resolution by requesting in writing to the other Party that the dispute be elevated
4 pursuant to this section. If resolution appears imminent, upon agreement of both Parties in writing, the
5 informal resolution period may be extended.

6
7 **2.9.3** When formal dispute resolution is initiated, the disputing Party shall submit to the other Party a
8 written Notice of Dispute specifying:

- 9
- 10 (a) the nature of the dispute;
 - 11
 - 12 (b) the work affected by the dispute;
 - 13
 - 14 (c) the disputing Party's position with respect to the dispute; and
 - 15
 - 16 (d) the information the disputing Party is relying upon to support its position.
 - 17

18 The written Statement of Dispute shall be forwarded to both members of the Dispute Resolution
19 Committee (DRC).

20
21 **2.9.3.1** The DRC will serve as a forum for resolution of disputes for which agreement has not
22 been reached through the informal dispute resolution process. The DEQ representative on the DRC is the
23 Chief, DEQ's Operating Permits Bureau. The DOE representative of the DRC is the appropriate DOE-ID
24 Program Manager with responsibility for waste management.

25
26 **2.9.3.2** Following elevation of a dispute to the DRC, the DRC shall have thirty (30) days to
27 unanimously resolve the dispute and issue a written decision. If the DRC is unable to unanimously
28 resolve the dispute within this thirty (30) day period, the written Statement of Dispute from the disputing
29 Party (as described in Section 2.9.3) and a written formal position from the other Party shall be forwarded
30 within ten (10) days to the Administrator of DEQ for resolution.

31
32 **2.9.3.3** If either Party at the DRC level identifies issues at any time during the dispute resolution
33 process that are deemed pertinent to national policies or to the policies of the State of Idaho, either Party
34 may refer the dispute to the Administrator of DEQ for resolution pursuant to Section 2.9.3.4. Upon

1 agreement of the Parties at any point in the dispute process that resolution of a dispute is immediately
2 necessary to avoid, prevent, or respond to the emergency conditions, the dispute may be escalated to the
3 Administrator of DEQ for resolution pursuant to Section 2.9.3.4.

4
5 **2.9.3.4** Upon escalation of the dispute to the Administrator pursuant to this section, the
6 Administrator will review and resolve the dispute within thirty (30) days. Disputes escalated based on
7 emergency conditions, as set forth in Subsection 2.9.3.3 above, shall be resolved by the Administrator as
8 soon as reasonably possible. Before resolving the dispute, the Administrator shall meet and confer with
9 the DOE-ID Manager to discuss the issue(s) under dispute. Upon resolution, the Administrator shall
10 provide DOE with a written decision setting forth resolution of the dispute. The duties of the
11 Administrator set forth in this Subsection shall not be delegated.

12
13
14 **2.9.3.5** The DOE reserves the right to either accept the decision of the Administrator or to seek
15 administrative or judicial review of the decision under the Idaho Administrative Procedure Act.

16
17 **2.9.3.6** The thirty (30) day review periods mentioned above in Sections 2.9.3.2, and 2.9.3.4 may
18 be extended by the mutual agreement of the Parties, as necessary, to complete the resolution of a dispute.

19
20 **2.9.4** The pendency of any dispute under this section shall not affect DOE's responsibility for timely
21 performance of the work required pursuant to this STP, except that the time period for completion of
22 work affected by such dispute shall be extended for a period of time not to exceed the actual time taken to
23 resolve any good faith dispute in accordance with the procedures specified herein. All elements of work
24 required by the STP that are not affected by the dispute shall continue and be completed in accordance
25 with the applicable schedule.

26
27 **2.9.5** For issues involving areas under the responsibility or authority of the Argonne Group - West or
28 the Idaho Branch Office - Naval Reactors, representatives for those offices of comparable authority and
29 rank to the DOE-ID representatives shall be added or substituted in the dispute resolution process.

30
31 **2.9.6** In the event of organizational changes, representatives of comparable authority and rank shall be
32 substituted in the above procedures.

2.10 Project Manager

1
2
3 **2.10.1** Within ten (10) days of the effective date of the STP, DOE and the DEQ shall designate a Project
4 Manager. DOE and the DEQ shall each notify the other in writing of the Project Manager they have
5 selected. DOE shall also designate the DOE Project Manager's designee for ARG-W and IBO. The
6 DOE's Project Managers designees shall have authority and responsibility for addressing matters within
7 the cognizance of their respective offices, in coordination with the DOE Project Manager. Each Project
8 Manager shall be responsible for overseeing the implementation of the STP. Either the DOE or DEQ may
9 change its designated Project Manager by notifying the other in writing , ten (10) days before the change,
10 to the extent possible. To the extent possible, communications between the DOE and DEQ concerning
11 the terms and conditions of the STP shall be directed through the Project Managers. Each Project
12 Manager shall be responsible for assuring that all communications from the other Project Manager are
13 disseminated appropriately to that responsible Project Manager's organization.
14

15 **2.10.2** The Project Managers shall have authority or obtain the appropriate level of authority to act for
16 their respective agency to agree to changes to schedules and requirements, subject to the provisions of the
17 STP on Disputes and Revisions. The Project Managers shall meet quarterly (see Section 2.3.2) to discuss
18 progress and problems relating to all work under the STP. As a requirement of the agenda for each
19 meeting, the DEQ shall notify DOE of all potential issues or problems regarding compliance with the
20 STP. Additionally, the status of the curing of any previously identified problems or issues of compliance
21 shall be provided and discussed. Additional meetings may be requested by either Project Manager to
22 discuss issues, problems, or activities associated with this STP.
23

24 **2.10.3** Draft meeting minutes shall be prepared by DOE and provided to the DEQ within ten (10) days
25 of the meeting. DEQ approvals of deliverables under this STP and Consent Order may be documented in
26 the meeting minutes. Any changes to the minutes shall be provided to DOE in writing within fourteen
27 (14) days of receipt of the draft minutes for incorporation into the final minutes. Failure to provide timely
28 changes to the minutes shall constitute agreement. The final Project Manager's Quarterly Meeting
29 Minutes shall be prepared by DOE and submitted to DEQ.

30 **2.10.4** It is the intent of the DEQ and DOE that this notification and curing process shall be used to
31 avoid disputes to the extent possible.
32

2.11 Notification

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

2.11.1 Unless otherwise specified, any report or submittal provided by DOE pursuant to the STP shall be sent by first class mail, express mail, facsimile or hand delivered, with a certification of mailing or confirmation of delivery, to the address of the DEQ Project Manager.

2.11.2 Unless otherwise agreed in writing, one copy of all documents to be submitted pursuant to this STP shall be sent to the Project Manager at the address stated below. Either DEQ or DOE may request additional copies of any document submitted pursuant to this STP.

Project Manager
Idaho Department of Health and Welfare
Division of Environmental Quality
1410 N. Hilton
Boise, ID 83706

Project Manager
Department of Energy
Idaho Operations Office
850 Energy Drive
Idaho Falls, ID 83401-1563

2.12 DOE's NEPA Review and FFC Act Implementation

Changes in the schedules or other requirements of this STP may be required or warranted by the public's comments upon or the analysis of environmental effects set forth in an Environmental Assessment or an Environmental Impact Statement prepared by DOE pursuant to the National Environmental Policy Act (NEPA) and its implementing regulations. The DEQ and DOE agree to negotiate in good faith any resulting appropriate or necessary changes in this STP.

2.13 Submittal and Review of Deliverables

2.13.1 DOE shall submit to the DEQ deliverables required by this Consent Order under this section 2.13. Deliverables or specific portions thereof are subject to either review and comment or approval. Deliverables subject to review and comment under this subsection, as required or permitted under this

1 STP and Consent Order, include notification of new wastes, changes in volume of covered waste, changes
2 in planning dates up to one year, the Annual Updates to the STP and the Annual STP Report. Where
3 DEQ approval of a deliverable is expressly required in this Consent Order, the approval provisions in this
4 section apply. Deliverables which require approval include proposed Revisions, extensions to milestones,
5 extensions to planning dates greater than one year, treatment plans for new waste streams, notices of
6 completion of milestones, notices of satisfaction under section 2.7, and other deliverables as specifically
7 required by the terms of this STP. Requests or proposals which require approval may be submitted as
8 part of, or along with, the Annual STP Report and Quarterly Meetings. Permit applications and NEPA
9 documents shall not be subject to the procedures of this Section. Permit applications shall be submitted
10 and reviewed under applicable regulations and NEPA documents shall be submitted and reviewed under
11 the DOE regulations implementing NEPA. Each submittal of a deliverable shall specify the milestone or
12 other provision of this Consent Order requiring submittal of that deliverable.

13
14 **2.13.2** Unless otherwise noted, each deliverable shall be transmitted directly to the DEQ Project
15 Manager.

16
17 **2.13.3** The DEQ will promptly review each deliverable submitted by DOE required to be approved
18 pursuant to this Consent Order, within the time-frames established in this section unless specifically
19 scheduled otherwise in the Consent Order. In the course of their review, the DEQ will consult with DOE
20 regarding the adequacy of each deliverable. Oral comments made during these discussions shall not
21 require a written response by the Parties.

22
23 **2.13.4** Deliverables which do not require DEQ approval under this Consent Order, shall be provided to
24 the DEQ for review and comment. In the event that DOE disagrees with the DEQ's comments, DOE
25 shall respond to the DEQ's comments in writing explaining the DOE's position. If DOE has not received
26 comments from the DEQ within 30 days of submittal of the deliverable, it will be deemed that the DEQ
27 has no comments. Disagreements concerning comments to deliverables that are not required to be
28 approved under this Consent Order will not constitute a dispute under Section 2.9 unless otherwise agreed
29 by the Parties.

30
31 **2.13.5** For any deliverable that requires DEQ approval under the provisions of this Consent Order, the
32 following procedures shall apply:

INEEL Site Treatment Plan

1 The STP schedules, covered wastes, and other provisions of Sections 3 through 6 may be
2 amended or modified by mutual agreement of the DEQ and DOE Project Managers, or may be made by
3 approval of the DEQ of a proposal submitted by DOE pursuant to Section 2.13, "Submittal and Review of
4 Deliverables". Any such amendment or modification of this STP shall be in writing and shall be
5 incorporated into the STP and be enforceable in the same manner as any other requirement of the STP.
6 Agreement or approval of such modifications may be documented in the Quarterly Meeting Minutes. If
7 an amendment or modification constitutes a Revision it shall be subject to the procedures applicable to a
8 conditionally approved Revision set forth in section 2.5.

9
10
11

12 Notwithstanding any other provision of this STP, DOE and DEQ agree to immediately modify
13 the schedules in the STP to be consistent with the schedules in the Settlement Agreement and Consent
14 Order issued by the Court on October 17, 1995, in the actions Public Service Co. of Colorado v. Batt, No.
15 CV 91-0035-S-EJL (D.Id.) and United States v. Batt, No. CV-91-0054-S-EJL (D.Id.), and to reissue this
16 STP accordingly, by a target date of November 30, 1995.

17