

# Idaho National Engineering Laboratory ("INEL") Federal Facility Agreement and Consent Order, December 9, 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"), )  
) Administrative Docket Number:  
) 1088-06-120  
Idaho Falls, Idaho )

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

## I. Jurisdiction

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

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

1.2 The State of Idaho, Department of Health and Welfare ("IDHW"), by and through its Director, enters into this Agreement pursuant to Sections 107, 120, and 121 of CERCLA, 42 U.S.C. § 9607, 9620 and 9621. Sections 3004 (u) and (v), 3006, and 6001 of RCRA, 42 U.S.C. § 6924 (u) and (v), 6926, and 6961; the Environmental Protection and Health Act ("EPHA"), Idaho Code ("I.C.") § 39-1 0 1, et seq.; and the Hazardous Waste Management Act ("HWMA"), I.C. § 39-4401 et seq.

1.3 The United States Department of Energy ("U.S. DOE") enters into this Agreement pursuant to Section 120 (e) of CERCLA, 42 U.S.C. § 9620 (e); Sections 3004 (u) and (v), 3008 (h), and 6001 of RCRA, 42 U.S.C. § 6924 (u) and (v), 6928, and 6961; Executive Orders 12580 (January 8, 1987) and 12088 (October 1978); the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq.; and the Atomic Energy Act of 1954 ("AEA"), as amended, 42 U.S.C. § 2011 et seq.

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

1.5 As provided in 55 Fed. Reg. 11.015-11.018 (March 26, 1990), U.S. EPA authorized the State of Idaho to operate its hazardous waste program in lieu of the federal hazardous waste program. U.S. EPA retains oversight authority pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. 271.19.

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## II. Definitions

2.1 The terms used in this Agreement shall have the same meaning as defined in Section 101 of CERCLA, 42 U.S.C. § 9601; the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300; Section 1004 of RCRA, 42 U.S.C. § 6903; and HWMA, I.C. § 39-4403. In addition:

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

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

- (c) "Agreement" shall mean this document and shall include all attachments, modifications, and final primary documents which shall be in writing are hereby fully incorporated herein and are fully enforceable;
- (d) "ARARS" shall mean all Applicable or Relevant and Appropriate Requirements for response actions as required by Section 121 (d) of CERCLA, 42 U.S.C. § 9621 (d);
- (e) "Authorized representative" shall include any person, including a Party's contractors, who is specifically designated by a Party to have a defined capacity, including an advisory capacity;
- (f) "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499, and any regulations promulgated pursuant thereto;
- (g) "Consent Order" shall mean an Agreement which in no way constitutes or shall be construed as a unilateral order of any kind;
- (h) "Days" shall mean calendar days, unless otherwise specified. Any submittal under the terms of this Agreement that would be due on a Saturday, Sunday, or a state or federal holiday shall be due on the following business day;
- (i) "Deadline" shall mean an enforceable date which is also subject to stipulated penalties;
- (j) "Document" shall mean every document, report, schedule, deliverable, work plan, or other item to be submitted to U.S. EPA and/or IDHW pursuant to this Agreement;
- (k) "Hazardous substances" shall mean all hazardous wastes, pollutants, contaminants, or constituents regulated under CERCLA, RCRA, or HWMA;
- (l) "HWMA" shall mean the Idaho Hazardous Waste Management Act of 1983, I.C. § 394401 et seq., as amended, and any regulations promulgated pursuant thereto;
- (m) "IDHW" shall mean the State of Idaho Department of Health and Welfare or any of its successor agencies, employees, and authorized representatives;
- (n) "INEL" shall mean the Idaho National Engineering Laboratory located near Idaho Falls, Idaho, as described at 54 Fed. Reg. 48,184 (November 21, 1989);
- (o) "Interim Action" ("IA") shall mean any early action taken in an operable unit to achieve significant risk reduction quickly, or to expedite completion of total site cleanup, and which should not be inconsistent with nor preclude the implementation of the final remedy;
- (p) "Lead Agency" shall mean the regulatory agency (U.S. EPA or IDHW) which is designated primary administrative technical oversight responsibility with respect to implementing this Agreement at a particular Waste Area Group pursuant to the Action Plan;
- (q) "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, as amended;
- (r) "Paragraph" shall mean a numbered Paragraph of this Agreement;
- (s) "Pan" shall mean one of the subdivisions of this Agreement which is designated by a Roman Numeral;
- (t) "Parties" shall mean U.S. DOE, U.S. EPA, and IDHW;
- (u) "Project Manager" shall mean each Party's primary lead for all INEL-related contacts under this Agreement;
- (v) "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), Pub. L. 98-616, and any regulations promulgated pursuant thereto
- (w) "Response Action" includes all activities taken pursuant to the Action Plan of this Agreement, subject to Paragraph 5.3, to satisfy the requirements of CERCLA and the corrective action requirements of HWMA.
- (x) "RI/FS Work Plan" is a plan which contains five (5) distinct components. These are: (1) a Work Plan; (2) a Sampling and Analysis Plan which consists of a Field Sampling Plan and a Quality Assurance Project Plan; (3) a Data Management Plan Supplement; (4) a Health and Safety Plan; and (5) a Community Relations Plan Supplement;
- (y) "State" shall refer to the State of Idaho, Department of Health and Welfare, its employees, and authorized representatives;
- (z) "Support Agency" shall mean the regulatory agency (U.S. EPA or IDHW) which has not been assigned as Lead Agency. The Support Agency provides review, comments, and consultation as resources permit;
- (aa) "Target date" shall not mean an enforceable date and shall not be subject to stipulated penalties;
- (bb) "United States Department of Energy" ("U.S. DOE") shall mean the United States Department of Energy, and any of its successor agencies, employees, and authorized representatives;
- (cc) "United States Environmental Protection Agency" ("U.S. EPA") shall mean the United States Environmental Protection Agency, including Region 10, and any of its successor agencies, employees, and authorized representatives;
- (dd) "WAG Manager" shall mean each Party's lead for implementing WAG-specific Action Plan requirements; and

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

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### III. Parties

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

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

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

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

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

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

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### IV. Statement of Purpose

4.1 The general purposes of this Agreement are to:

- (a) Ensure that the environmental impacts associated with releases or threatened releases of hazardous substances at INEL are thoroughly investigated and that appropriate response actions are undertaken and completed as necessary to protect the public health, welfare, and the environment.;
- (b) Establish a procedural framework and schedule for developing, prioritizing, implementing, and monitoring appropriate response actions at INEL in accordance with CERCLA, RCRA, and HWMA;
- (c) Facilitate cooperation, exchange of information, and participation of the Parties in such actions;
- (d) Minimize the duplication of analysis and documentation;
- (e) Expedite the cleanup process to the maximum extent practicable consistent with protection of human health and the environment: and
- (f) Supersede the Consent Order and Compliance Agreement ("COCA"), Docket No. 1086-05-16-3008/3013, issued pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and executed on July 10, 1987.

4.2 Specifically, the purposes of this Agreement are to:

- (a) Identify IA alternatives which are appropriate at INEL prior to the implementation of final actions at INEL. IA alternatives shall be identified and informally proposed by the Parties as early as possible and prior to formal proposal. This process is designed to promote cooperation among the Parties in promptly identifying IA alternatives;
- (b) Establish requirements for the performance of investigations to determine fully the nature and extent of any threat to the public health or welfare or the environment caused by any release or threatened release of hazardous substances at INEL, and to establish requirements for the performance of studies for U.S. DOE to identify, evaluate, and select alternatives for the appropriate action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances at INEL;
- (c) Implement the selected response actions in accordance with the Action Plan; and
- (d) Assure compliance with applicable federal and state hazardous waste laws and regulations for matters covered herein.

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## V. Statutory Compliance

5.1 This Agreement integrates U.S. DOE's CERCLA response obligations and RCRA and HWMA corrective action obligations at INEL which relate to the release(s) of hazardous substances covered by this Agreement. Compliance with activities required by this Agreement will be deemed to: achieve compliance with CERCLA, 42 U.S.C. § 9601, et seq.; satisfy the corrective action requirements of Sections 3004 (u) and (v) of RCRA, 42 U.S.C. § 6924(u) and (v), for a RCRA permit, and Section 3008 (h). 42 U.S.C. § 6928 (h), for interim status facilities; satisfy the corrective action requirements of HWMA; and meet or exceed all applicable or relevant and appropriate federal and state laws and regulations to the extent required by Section 121 of CERCLA, 42 U.S.C. § 9621.

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

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

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## VI. Regulatory Determinations

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

6.2 INEL is a facility as defined in Section 101 (9) of CERCLA, 42 U.S.C. § 9601(9) and was listed by U.S. EPA on the National Priorities List ("NPL") on November 21, 1989, 54 Fed. Reg. 44,184 (November 21, 1989).

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

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

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

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

6.7 There have been releases and there may continue to be releases and threatened releases of hazardous substances into the environment within the meaning of Sections 101 (22), 104, 106, and 107 of CERCLA, 42 U.S.C. § 9601(22), 9604, 9606, and 9607; Section 3004 (u) of RCRA, 42 U.S.C. § 6924 (u); and HWMA, I.C. 39M08, at or from INEL. With respect to those releases or threatened releases, U.S. DOE is a responsible person within the meaning of Section 107 of CERCLA, 42 U.S.C. § 9707, and HWMA, I.C. 394403.

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

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## VII. Regulatory Approach

### A. Project Management

7.1 As provided in the Action Plan, each Party shall designate a Project Manager for the purpose of overseeing the implementation of this Agreement. Any Party may change its designated Project Manager by written notification to the other Parties ten (10) days before the change, to the extent possible. To the maximum extent possible, communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Manager. Each Project Manager shall be responsible for assuring

that all communications from the other Parties are appropriately disseminated to that responsible Project Manager's organization. Any Party may also provide written notification of an alternate Project Manager.

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

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

## **B. Response Actions**

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

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

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

## **C. Permitting**

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

- (a) Identification of each permit which would otherwise be required;
- (b) Identification of the standards, requirements, criteria, or limitations which would have had to have been met to obtain each permit; and
- (c) Explanation of how the response action proposed will meet the standards, requirements, criteria, or limitations of this Part.

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

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## **VIII. Consultation with U.S. EPA and IDHW**

### **A. Applicability**

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

through 8.24 below.

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

### **B. General Process for Submission of Documents**

8.3 Primary documents include those documents that are major, discrete portions of required activities. Primary documents shall be initially issued by U.S. DOE in draft, subject to review and comment by U.S. EPA and IDHW. Following receipt of comments on a particular draft primary document, U.S. DOE shall respond to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document shall become the final primary document either thirty (30) days after submittal of a draft final document if dispute resolution is not invoked unless otherwise agreed as provided in Paragraph 8.18, or as modified by decision of the dispute resolution process. The lead/support agencies shall, within the first fifteen (15) days of this thirty (30) day period for finalization of primary documents, identify to U.S. DOE any issues or comments in order to provide sufficient time for review, discussion, and modification of draft final documents, as necessary, to resolve potential disputes.

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

### **C. Primary Documents**

8.5 As required by the Action Plan, U.S. DOE shall complete and transmit for each OU WAG the applicable primary documents to U.S. EPA and IDHW for review and comment in accordance with the provisions of this part:

- (a) Remedial Investigation ("RI")/Feasibility Study ("FS") Scope of Work ("SOW")
- (b) RI/FS Work Plan
- (c) RI/FS Report
- (d) Record of Decision ("ROD")
- (e) Remedial Design ("RD")
- (f) Remedial Action ("RA") Work Plan
- (g) RA Report
- (h) Operations and Maintenance Report

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

### **D. Secondary Documents**

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

- (a) Scope of Work for Interim Actions
- (b) Preliminary Scoping Track 2 Sampling and Analysis Plan
- (c) Preliminary Scoping Track 2 Summary Report
- (d) RI Report/Baseline Risk Assessment
- (e) Proposed Plan
- (f) Health and Safety Plans submitted with RI/FS Work Plans

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

### **E. Meetings of the Project Managers on Development of Documents**

8.9 The Project Managers shall meet or confer approximately every fourteen (14) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at INEL on the primary and secondary documents. Prior to preparing any

draft document specified in Paragraphs 8.5 and 8.7 above, the Project Managers shall meet to discuss the document in an effort to reach a common understanding. to the maximum extent practicable, with respect to the results to be presented in the draft document.

#### **F. Identification and Determination of Potential ARARs**

8.10 For those primary documents or secondary documents that consist of or include ARAR determinations, the Project Managers shall meet prior to the issuance of a draft document, to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. Draft ARAR determinations shall be prepared by U.S. DOE in accordance with Section 121 (d) (2) of CERCLA, 42 U.S.C. § 9621 (d) (2), the NCP, and pertinent guidance issued by U.S. EPA and IDHW which is not inconsistent with CERCLA and the NCP.

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

#### **G. Review and Comment on Draft Documents**

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

8.13 Unless the Parties mutually agree to another time period, all draft primary documents shall be subject to a forty-five (45) day period for review and comment, and all draft secondary documents shall be subject to a thirty (30) day period for review and comment with the exception of the RI with Baseline Risk Assessment which shall be forty-five (45) days. Review of any document by U.S. EPA or IDHW concerns all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, and any pertinent guidance or policy promulgated by U.S. EPA or IDHW. Comments by U.S. EPA and IDHW shall be provided with adequate specificity so that U.S. DOE may respond to the comments and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of U.S. DOE, U.S. EPA, or IDHW, shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy documents, the Lead Agency may extend the forty-five (45) day comment period for an additional twenty (20) days by written notice to the other Parties prior to the end of the forty-five (45) day period. On or before the close of the comment period, the Lead Agency shall, and the Support Agency may, transmit their written comments to U.S. DOE.

8.14 Representatives of U.S. DOE shall make themselves readily available to U.S. EPA and IDHW during the comment period for purposes of informally responding to questions and comments on draft documents. Oral comments made during such discussions need not be the subject of a written response by U.S. DOE on the close of the comment period.

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

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

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

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

#### **H. Availability of Dispute Resolution for Draft Final Primary Documents**

8.19 Dispute resolution shall be available to the Parties for draft final primary documents as set forth in Part IX. When dispute



resolution is invoked on a draft final primary document, work may be stopped in accordance with the procedures set forth in Part IX.

## **I. Finalization of Draft Final Primary Documents**

8.20 The draft final primary document shall serve as the final primary document if no Party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should U.S. DOE's position be sustained. If U.S. DOE's determination is not sustained in the dispute resolution process, U.S. DOE shall prepare, within not more than thirty-five (35) days, a revision of the draft final document which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Part XIII hereof.

## **J. Subsequent Modifications of Final Primary Documents**

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

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

8.23 In the event that agreement of the Project Managers is reached, the modification shall be incorporated by reference and become fully enforceable under the Agreement pursuant to Part XXX. In the event that consensus is not reached by the Project Managers on a modification, any Party may invoke dispute resolution as provided in Part IX to determine if such modification shall be made. Modification of a document shall be required only upon a showing that: (1) the requested modification is based on significant new information; and (2) the requested modification could be of significant assistance in evaluating, impacts on the public health or welfare or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.

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

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## **IX. Resolution of Disputes**

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

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

(a) Within thirty (30) days after: (1) the submittal of a draft final primary document pursuant to Pan VIII of this Agreement, or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the other Parties a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the information the disputing Party is relying upon to support its position.

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

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

(d) The Dispute Resolution Committee ("DRC") will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. U.S. DOE may designate a different individual and an alternate with respect to matters at the Naval Reactors Facility ("WAG 8") and the Argonne National Laboratory West ("WAG 9"). The individuals designated to serve on the DRC shall be employed at a policy level equivalent to Senior Executive Service ("SES") or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The U.S. EPA's representative on the DRC is the Hazardous Waste Division Director of U.S. EPA's Region 10 ("U.S. EPA Division Director"). The IDHW representative on the DRC is the Chief of the Hazardous Materials Bureau ("Bureau Chief"). U.S. DOE's representative on the DRC is the Assistant Manager for Environmental Restoration and Waste Management. Written notice of any deletion of authority from a Party's designated

representative on the DRC shall be provided to all other Parties pursuant to the procedures of Part XVIII

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

(f) The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The U.S. EPA representative on the SEC is the Regional Administrator of U.S. EPA's Region 10 ("U.S. EPA RA"). The IDHW representative on the SEC is the Administrator of the Division of Environmental Quality ("DEQ Administrator"). U.S. DOE's representative on the SEC is the Manager of the U.S. DOE Idaho Field Office. The SEC members shall, as appropriate, confer, meet, and exert their best efforts to resolve the dispute and issue a written decision signed by all Parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days, the U.S. EPA RA shall issue a written position for disputes arising at U.S. EPA lead WAGs, and the DEQ Administrator shall issue a written position for disputes arising at IDHW lead WAGs. Any Party may, within twenty-one (21) days of the issuance of U.S. EPA's or IDHW's position, issue a written notice elevating the dispute to the Administrator of U.S. EPA for U.S. EPA lead WAGs or the Governor of the State of Idaho for IDHW lead WAGs for resolution in accordance with all applicable laws and procedures. In the event that a Party elects not to elevate the dispute to the Administrator or Governor within the designated twenty-one (21) day escalation period, the Party shall be deemed to have agreed with U.S. EPA RKs or DEQ Administrator's written position with respect to the dispute.

(g) Upon escalation of a dispute to the Administrator of U.S. EPA or Governor of Idaho pursuant to Paragraph 9.2(f), the Administrator or Governor, as appropriate, shall issue a final written decision to the Parties within twenty-one (21) days. Upon request, and prior to issuance of the final written decision, the U.S. EPA Administrator and the Governor of Idaho shall jointly meet and confer with the Secretary of U.S. DOE to discuss the issue(s) in dispute. If there is disagreement between the Administrator and the Governor regarding a final written decision, within twenty-one (21) days of its issuance, the Administrator or the Governor, as appropriate, shall issue a written statement of position. The duties of the Administrator and the Governor of Idaho as set forth in this Part shall not be delegated.

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

(i) When dispute resolution is in progress, work affected by the dispute shall immediately be discontinued if the appropriate Lead Agency DRC representative requests, in writing, that work related to the dispute be stopped because, in its opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or welfare or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. To the extent possible, the Party seeking a work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After stoppage of work, if a Party believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the Party ordering a work stoppage to discuss the work stoppage. Following this meeting, and further consideration of the issues, the appropriate Lead Agency DRC representative will issue, in writing, a final decision with respect to the work stoppage. This final written decision may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

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

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

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## X. Enforceability

### 10.1 The Parties agree that:

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

(b) All timetables or deadlines associated with the development, implementation, and completion of the RI/FS shall be

enforceable by any person pursuant to Section 310 of CERCLA, 42 U.S.C. § 9659, and any violation of such timetables or deadlines will be subject to civil penalties under Sections 310 (c) and 109 of CERCLA, 42 U.S.C. § 9659 (c) and 9609;

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

(d) Any final resolution of a dispute pursuant to Part IX of this Agreement which establishes a term, condition, timetable, deadline, or schedule shall be enforceable by any person pursuant to Section 310 of CERCLA, 42 U.S.C. § 9659, and any violation of such term, condition, timetable, deadline, or schedule will be subject to civil penalties under Sections 310 (c) and 109 of CERCLA, 42 U.S.C. § 9659 (c) and 9609.

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

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

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## **XI. Stipulated Penalties**

11.1 In the event that U.S. DOE fails to submit a primary document pursuant to the appropriate deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an interim or final response action at an EPA-lead OU, U.S. EPA may assess a stipulated penalty against U.S. DOE. If IDHW determines at a state-lead OU that U.S. DOE has failed in a manner as set forth above at an OU, it may identify and recommend stipulated penalties to U.S. EPA and, unless disputed pursuant to Part IX, such penalties may be assessed in accordance with this Part. A stipulated penalty, may be assessed in an amount up to Five Thousand Dollars (\$5,000) for the first week (or part thereof), and up to Ten Thousand Dollars (\$10,000) for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

11.2 Upon determining that U.S. DOE has failed in a manner set forth in Paragraph 111, U.S. EPA shall so notify U.S. DOE in writing. If the failure in question is not or has not already been subject to dispute resolution at the time such notice is received, U.S. DOE shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did, in fact, occur. U.S. DOE shall not be liable for the stipulated penalty assessed if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

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

- (a) The facility responsible for the failure;
- (b) A statement of the facts and circumstances giving rise to the failure;
- (c) A statement of any administrative action taken at the relevant facility, or a statement of why such measures were determined to be inappropriate;
- (d) A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and
- (e) The total dollar amount of the stipulated penalty assessed for the particular failure.

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

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

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

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

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

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## **XII. Target Dates and Deadlines**

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

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

12.3 The deadlines set forth in this Part may be extended pursuant to Part XIII. The Parties recognize that one possible basis for extension of the deadlines for completion of the RI/FS Reports is the identification of significant new Site conditions during the performance of the RI.

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## **XIII. Extensions**

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

- (a) The timetable and deadline or the schedule that is sought to be extended;
- (b) The length of the extension sought;
- (c) The good cause(s) for the extension; and
- (d) Any related timetable and deadline or schedule that would be affected if the extension were granted.

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

- (a) An event of Force Majeure;
- (b) A delay caused by another Party's failure to meet any requirement of this Agreement;
- (c) A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
- (d) A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; and
- (e) Any other event or series of events mutually agreed to by the Parties as constituting good cause, including delays that result from compliance with other federal laws.

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

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

13.5 If there is consensus among the Parties that the requested extension is warranted, U.S. DOE shall extend the affected timetable and deadline or schedule accordingly. If there is no consensus among the Parties as to whether all or part of the requested extension is warranted, the timetable and deadline or schedule shall not be extended except in accordance with a determination resulting from the dispute resolution process.

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

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

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## **XIV. Recovery of Expenses**

### **A. U.S. EPA Expense**

14.1 U.S. EPA shall take all necessary steps and make efforts to obtain timely funding to meet its obligations under this Agreement. Notwithstanding any other provision of this Agreement, in the event that U.S. EPA, in consultation with U.S. DOE and IDHW, determines that sufficient funds have not been appropriated to meet any post Fiscal Year 1992 commitments established by this Agreement, U.S. EPA may terminate this Agreement by written notice to U.S. DOE and IDHW.

### **B. IDHW Expense**

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

- (a) A separate grant shall be the specific mechanism for transfer of funds between U.S. DOE and IDHW for payment of the costs referred to herein;
- (b) On an annual basis, and in accordance with 10 C.F.R. Parts 600 and 1024: (1) IDHW shall submit, in a timely fashion and in writing, to U.S. DOE a grant application including a proposed Scope of Work and estimates of costs to be incurred relating to CERCLA response actions, as defined herein, to be performed under this Agreement by IDHW for the upcoming year, and (2) subsequent to negotiation between U.S. DOE and IDHW, U.S. DOE shall make a grant award;
- (c) In the event that U.S. DOE contends that any costs incurred were not directly related to the implementation of this Agreement, or were incurred in a manner inconsistent with CERCLA, the NCP or the grant award, U.S. DOE may challenge the costs allowable under the grant to IDHW. If unresolved, IDHW's demand, and U.S. DOE's challenge, may be resolved through the appeals procedures set forth in 10 C.F.R. Part 600 and 10 C.F.R. Part 1024;
- (d) Subject to Paragraph 14.3, U.S. DOE shall not be responsible under the terms of this Agreement for reimbursing IDHW for any costs actually incurred in excess of the maximum U.S. DOE obligation as defined in the grant award; and
- (e) IDHW's performance of its obligations under this Agreement shall be excused if its justifiable response costs as defined herein are not paid as required by this Part.

14.3 IDHW reserves any rights it may have to recover costs for matters not covered by this Agreement, or costs not reimbursed by U.S. DOE pursuant to Paragraph 14.2 after exhaustion of the appeals procedures described in Paragraph 14.2 (c). In any judicial proceeding in which IDHW seeks to recover such costs, nothing in this Agreement shall create an independent right to recover costs, nor create a presumption, nor constitute an admission or agreement by U.S. DOE, that U.S. DOE is liable for costs which are incurred by the State of Idaho or that such costs constitute or do not constitute recoverable costs.

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## **XV. Additional Work**

15.1 In the event that additional work, or modification to work, including remedial investigatory work, engineering evaluation, and changes to operable units is necessary to accomplish the objectives of this Agreement, notification and description of such additional work or modification to work shall be provided to U.S. DOE. U.S. DOE will evaluate the request and notify the requesting Party within thirty (30) days of receipt of such request of its intent and ability to perform such work, including the impact such additional work will have on budgets and schedules. If U.S. DOE does not agree that such additional work is required by this Agreement or if U.S. DOE asserts such additional work is otherwise inappropriate, the matter shall be resolved in accordance with the dispute resolution procedures of this Agreement, as appropriate. Field modifications, as set forth in the Action Plan are not subject to this Part.

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

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

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

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## **XVI. Quality Assurance**

16.1 All response work performed pursuant to this Agreement shall be done under the direction and supervision of, or in consultation with, as necessary, a qualified engineer, hydrogeologist, or other expert, with experience and expertise in hazardous waste management, and hazardous waste site investigation, cleanup, and monitoring.

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

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## **XVII. Reporting**

17.1 U.S. DOE shall submit to IDHW and U.S. EPA monthly written progress reports which describe the actions which U.S. DOE has taken during the previous month to implement the requirements of this Agreement. Progress reports, similar in content to the May 1990 COCA Report, shall also describe the activities scheduled to be taken during the upcoming three (3) months. Progress reports shall be submitted by the twenty-fifth (25th) day of each month following the effective date of this Agreement. The progress reports shall also include a detailed statement of how the requirements and time schedules set out in the attachments to this Agreement are being met, identify any anticipated delays in meeting time schedules, include the reason(s) for the delay, actions taken to prevent or mitigate the delay, and identify any potential problems that may result in a departure from the requirements and time schedules.

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## **XVIII. Notice to the Parties**

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

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

(a) For U.S. DOE:

INEL-IAG Project Manager  
U.S. Department of Energy  
Idaho Field Office  
785 DOE Place  
Idaho Falls, Idaho 83401-1562  
(208) 526-1148

(b) For U.S. EPA:

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

(c) For the State of Idaho:

INEL-IAG Project Manager

Division of Environmental Quality

1410 North Hilton Street

Boise, Idaho 83706

(208) 334-5879

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

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## **XIX. Sampling and Data/Document Availability**

19.1 The Parties intend to make available to each other quality-assured results of sampling, tests, or other data generated by any Party, or on their behalf, with respect to the 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.

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

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

(a) shall not form the basis for agency action; provided, however, that U.S. EPA or IDHW may request that U.S. DOE accelerate completion of quality assurance procedures.

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

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

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

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## **XX. Retention of Records and Administrative Record**

20.1 U.S. DOE will establish and maintain databases for compilation of sitewide validated and quality-assured technical decision-level data that will be considered or relied upon in selection of response actions. The data will be maintained at a U.S. DOE-designated storage location(s) and summarized in the administrative record file, located at the INEL Technical Library in Idaho Falls, Idaho. U.S. DOE will provide U.S. EPA and IDHW with access to the data pursuant to Part XIX of the Agreement. Hard copies of the electronically maintained data will be available to U.S. EPA, IDHW, and members of the public upon request.

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

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

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## **XXI. Access**

21.1 Consistent with applicable security requirements and necessary safety precautions, but without limitation on any authority conferred on either agency by law, U.S. EPA, IDHW, or their authorized representatives, shall have authority to enter INEL at all reasonable time(s) with or without prior notification for the purposes of carrying out the terms of this Agreement.

21.2 U.S. DOE will identify an individual as a point of contact for access to each facility at INEL. With respect to matters concerning access at the Naval Reactors Facility ("NRF"), the Manager, Naval Reactors, Idaho Branch Office of U.S. DOE, will be the point of contact. With respect to matters concerning access at the Argonne National Laboratory West ("ANL-W"), the Director, Argonne Area Office West, will be the point of contact.

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

21.4 To the extent that this Agreement requires access to property not owned and controlled by U.S. DOE, U.S. DOE shall exercise its authorities to obtain written access agreements pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). U.S. DOE shall use its best efforts to obtain signed access agreements for itself, its authorized representatives, and U.S. EPA and IDHW and their authorized representatives, from the present owners or lessees in advance of the date such activities are scheduled to commence. U.S. DOE shall provide U.S. EPA and IDHW with copies of such agreements with respect to non-U.S. DOE property upon which monitoring wells, pumping wells, treatment facilities, or other response actions are to be located, U.S. DOE shall use its best efforts to obtain access agreements that provide that no conveyance of title, easement, or other interest in the property shall be consummated without provisions for the continued operation of such wells, treatment facilities, or other response actions on the property; and provide that the owners of any property where monitoring wells, pumping wells, treatment facilities, or other response actions are located shall notify U.S. DOE, IDHW, and U.S. EPA by certified mail, at least thirty (30) days prior to any conveyance, of the property owner's intent to convey any interest in the property and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement.

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## **XXII. Five-Year Review**

22.1 Consistent with Section 121 (c) of CERCLA, 42 U.S.C. § 9621 (c), and in accordance with this Agreement, U.S. DOE agrees that U.S. EPA may review response action(s) for OUs that allow hazardous substances to remain onsite, no less often than every five (5) years after the initiation of the final response action for such OU to assure that human health and the environment are being protected by the response action being implemented. If upon such review it is the judgment of U.S. EPA, after consultation with IDHW, that additional action or modification of the response action is appropriate in accordance with Sections 104, 106, and 120 of CERCLA, 42 U.S.C. § 9604, 9606, and 9620, U.S. EPA and IDHW may require U.S. DOE to implement such Additional Work pursuant to Part XV.

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## **XXIII. Transfer of Property**

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

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## **XXIV. Public Participation**

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

24.2 U.S. DOE has developed a draft comprehensive Community Relations Plan ("CRP") which responds to the need for an interactive relationship with all interested community elements, both on and off INEL, regarding activities and elements of work undertaken by U.S. DOE at INEL under this Agreement. The final CRP shall be implemented in a manner consistent with Section 117 of CERCLA, 42 U.S.C. § 9617, U.S. EPA guidelines set forth in U.S. EPA's Community Relations Handbook, and any modifications



thereto, and, where appropriate, public participation requirements of HWMA.

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

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## **XXV. Duration/Termination**

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

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

25.3 Upon completion of all remedial action for the INEL Site, U.S. DOE may request, in writing, a determination from U.S. EPA that it is appropriate to delete INEL from the NPL. Upon receipt of this submission from U.S. DOE, U.S. EPA, after consultation with IDHW, shall apply the factors outlined in 40 CFR § 300.425 and determine whether all appropriate response action has been implemented at the Site, and whether any potential threat to public health or the environment remains.

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

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

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## **XXVI. Classified and Confidential Information**

26.1 Notwithstanding any provision of this Agreement, all requirements of the Atomic Energy Act of 1954, as amended, and all Executive Orders concerning the handling of unclassified controlled nuclear information, naval nuclear propulsion information, restricted data, and national security information, including "need to know" requirements, shall be applicable to any access to information or facilities, or public dissemination of information, covered under the provisions of this Agreement. In addition, those data, documents, records, or files which could otherwise be withheld pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, or the Privacy Act of 1972, 5 U.S.C. § 552 (a), unless expressly authorized for release by the originating Party, shall be handled in accordance with those provisions of law and any implementing regulation. Upon submission to IDHW, U.S. DOE shall identify any materials determined by U.S. DOE to be exempt from public disclosure pursuant to FOIA, and, unless expressly authorized by U.S. DOE, such materials shall be exempt from public disclosure by IDHW pursuant to I.C. § 9340 (1). Transmittal of information or data determined by U.S. DOE to be exempt from disclosure shall not be deemed a waiver by U.S. DOE of any rights, benefit, or privilege associated with the information.

26.2 Any Party may assert on its own behalf or on behalf of an authorized representative, a confidentiality claim or privilege covering all or any part of the information requested by this Agreement, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and State law. Analytical data shall not be claimed as confidential. Parties are not required to provide legally privileged information. At the time any information is furnished which is claimed to be confidential, all Parties shall afford it the maximum protection allowed by law. If no claim of confidentiality accompanies the information, it may be made available to the public without further notice.

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## **XXVII. Force Majeure**

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

- (a) acts of God, fire, war, insurrection, civil disturbance, or explosion;
- (b) unanticipated breakage or accident to machinery, equipment, or lines of pipe despite reasonably diligent maintenance;
- (c) adverse weather conditions that could not be reasonably anticipated, or unusual delay in transportation;

- (d) restraint by court order or order of public authority;
- (e) inability to obtain, consistent with statutory requirements and after exercise of reasonable diligence, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority other than U.S. DOE;
- (f) delays caused by compliance with applicable statutes or regulations governing contracting, procurement, or acquisition procedures, despite the exercise of reasonable diligence; and
- (g) insufficient availability of appropriated funds, if U.S. DOE shall have made timely request for such funds as part of the budgetary process as set forth in Part XXVIII of this Agreement.

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

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

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## **XXVIII. Funding**

28.1 It is the expectation of the Parties that all obligations of U.S. DOE arising under this Agreement will be fully funded through Congressional appropriations. Consistent with Congressional limitations on future funding, U.S. DOE shall take all necessary steps and use its best efforts to obtain timely funding to meet its obligations under this Agreement, including, but not limited to, the submission of timely budget requests.

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

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

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

(c) In or about June of each year, U.S. DOE shall provide U.S. EPA and IDHW with current five-year planning cost estimates based upon revision to U.S. DOE's Five-Year Plan. These estimates will be based on the Activity Data Sheets ("ADS") level. This submission shall include a correlation of relevant ADS with activities required under the Agreement.

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

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

28.3 In accordance with Section 120(e)(5)(B) of CERCLA, 42 U.S.C. § 9620(a)(5)(B), U.S. DOE shall include in its annual report to Congress the specific cost estimates and budgetary proposals associated with the implementation of this Agreement.

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

availability of appropriated funds.

28.5 After appropriations have been received from Congress, U.S. DOE, U.S. EPA, and IDHW Project Managers will review the level of available appropriated funds and the most recent estimated cost of conducting activities required under the Agreement. If funding is requested as described in this Part, and if appropriated funds are not available to fulfill U.S. DOE's obligations under this Agreement, the Parties shall attempt to agree upon appropriate adjustments to the dates that require the payment or obligation of such funds. Subject to the terms of this Agreement, if no agreement on appropriate adjustments can be reached, U.S. EPA and IDHW reserve the right to initiate any other action which would be appropriate absent this Agreement. Initiation of any such actions shall not release the Parties from their other obligations under this Agreement. Acceptance of this paragraph, however, does not constitute a waiver by U.S. DOE that its obligations under this Agreement are subject to the provisions of the Anti-Deficiency Act, 31 U.S.C. § 1341. In any action by U.S. EPA or IDHW to enforce any provision of this Agreement, U.S. DOE may raise as a defense that its failure or delay was caused by the unavailability of appropriated funds.

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

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

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## **XXIX. Creation of Danger/Emergency Action**

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

29.2 In the event U.S. DOE determines that activities undertaken in furtherance of this Agreement or any other circumstances or activities at INEL are creating an imminent and substantial endangerment to the health or welfare of people at INEL, or in the surrounding areas, or to the environment, U.S. DOE may stop implementation of this Agreement for such periods of time necessary for the Lead Agency to evaluate the situation and determine whether U.S. DOE should proceed with implementation of the Agreement or whether the work stoppage should be continued until the danger is abated. U.S. DOE shall notify the Project Managers as soon as possible, but not later than twenty-four (24) hours after such stoppage of work, and provide the Lead Agency with documentation of its analysis in reaching this determination. If the Lead Agency disagrees with U.S. DOE's determination, it may require U.S. DOE to resume implementation of this Agreement.

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

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

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## **XXX. Amendment of Agreement**

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

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

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

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## **XXXI. Reservation of Rights**

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

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

- (a) In the event or upon the discovery of a violation of, or noncompliance with, any provision of RCRA or HWMA, including any discharge or release of hazardous waste which is not addressed by this Agreement; or
- (b) Upon discovery of new information regarding hazardous substances, including but not limited to, information regarding releases of hazardous substances to the environment which is not addressed by this Agreement; or
- (c) Upon U.S. EPA's or IDHW's determination, after dispute resolution, that a proposed remedy will not be protective of human health and the environment under CERCLA. If IDHW exercises its rights under this subparagraph, it shall withdraw from the Agreement with respect to the ROD at issue within sixty (60) days following the effective date of the ROD.

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

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

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

31.6 Except as provided herein, U.S. DOE is not released from any liability which may have pursuant to any provisions of state and federal law. U.S. DOE is not released from any claim or liability for destruction or loss of natural resources.

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

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

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

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## **XXXII. Relationship to U.S. DOE's Five-Year Plan**

32.1 U.S. DOE is preparing an Environmental Restoration and Waste Management Five-Year Plan (the "Five-Year Plan") to identify, integrate, and prioritize U.S. DOE's compliance and cleanup activities at all U.S. DOE nuclear facilities and sites. The Five-Year Plan will assist U.S. DOE in addressing environmental requirements at its facilities and sites and in developing and supporting its budget requests. U.S. DOE will update the Five-Year Plan on an annual basis.

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

32.3 U.S. DOE is developing a national prioritization system for inclusion in the Five-Year Plan. U.S. DOE's application of its national prioritization system may indicate to U.S. DOE that amendment or modification of the provisions and/or schedules established by this Agreement is appropriate. In that event, U.S. DOE may request, in writing, amendment or modification of this Agreement, including deadlines established herein. Where the Parties are unable to reach agreement on a requested amendment or modification, U.S. DOE may invoke the dispute resolution provisions of this Agreement. Pending resolution of any such dispute, the provisions and deadlines in effect pursuant to this Agreement shall remain in effect and enforceable in accordance with the terms of this Agreement. Any amendment or modification of this Agreement will be incorporated, as appropriate, in the annual update to U.S. DOE's Five-Year Plan.

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### XXXIII. Severability

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

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### XXXIV. Effective Date

34.1 This Agreement is effective upon signature by all Parties.

Signature sheet for the foregoing Federal Facility Agreement and Consent Order 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 9th day of December, 1991.

FOR THE UNITED STATES DEPARTMENT OF ENERGY:

[s] 12/09/91  
AUGUSTINE A. PITROLO Date  
U.S. Department of Energy  
Idaho Field Office

[s] 12/09/91  
THERON M. BRADLEY Date  
Manager, Naval Reactors Idaho Branch Office  
U.S. Department of Energy

REPRESENTED BY:

Brett Bowhan, Esq.  
Dean Monroe, Esq.  
Debra Wilcox, Esq.

Copied from original

Signature sheet for the foregoing Federal Facility Agreement and Consent Order 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 9th day of December, 1991.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

[s] 12/09/91

DANA A. RASMUSSEN Date Regional Administrator, Region 10 U.S. Environmental Protection Agency REPRESENTED BY: Monica Kirk, Esq. Copied from original Signature sheet for the foregoing Federal Facility Agreement and Consent Order 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 9th day of December, 1991. FOR THE IDAHO DEPARTMENT OF HEALTH AND WELFARE: [s] 12/09/91 CECIL D. ANDRUS Date Governor State of Idaho REPRESENTED BY: Curt Fransen, Esq. Copied from original

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## **Attachment A - Action Plan for Implementation of the Federal Facility Agreement and Consent Order**

### **Appendix A: Enforceable Deadlines, Operable Units and CERCLA Process Tracks, and Schedule**

### **Appendix B: No Further Action Determination**

The U.S. Department of Energy, U.S. Environmental Protection Agency-Region 10 and the State of Idaho have completed a review of the referenced information for (Name) hazardous site, as it pertains to the INEL Federal Facility Agreement of (Date). Based on this review, the Parties have determined that no further action for purposes of investigation or study is justified. This decision is subject to review at the time of issuance of the Record of Decision.

Brief Summary of the basis for no further action:

References:

DOE Project Manager date

EPA Project Manager date

Idaho Project Manager date

### **Appendix C: Preliminary Scoping Track 2 Summary Report Outline**

Preliminary Scoping Track 2  
Recommended Summary Report Outline

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- 2.0 Site Background
- 3.0 Description of Hazardous Substances
- 4.0 Groundwater Concerns (if applicable)
- 5.0 Surface Water Concerns (if applicable)
- 6.0 Air Concerns (if applicable)
- 7.0 Health and Environmental Concerns
- 8.0 Quality Assurance/Quality Control
- 9.0 Recommendations for Remedial Action
- 10.0 References

Appendices

## **Appendix D: Project Manager Designations**

Mr. Jerry Lyle, Acting Deputy Director  
Environmental Restoration and Waste Management  
U.S. Department of Energy  
Field Office, Idaho  
785 DOE Place, MS 1115  
Idaho Falls, ID 83401-1562

Mr. Wayne Pierre, Chief  
Federal Facility Section  
U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue  
Seattle, WA 98101

Mr. Dean Nygard, Superfund Project Supervisor  
Hazardous Materials Bureau  
Idaho Department of Health and Welfare  
1410 N. Hilton  
Boise, ID 83706

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## **Attachment B - Mutual Cooperative Funding Agreement**

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##### Appendix A

Enforceable Deadlines, Operable Units and CERCLA Process Tracks, and Schedule

##### Appendix B

No Further Action Determination

##### Appendix C

Preliminary Scoping Track 2 Summary Report Outline

##### Appendix D

Project Manager Designations

#### **Acronyms**

AEA - Atomic Energy Act

ANLW - Argonne National Laboratory West

ANP - Aircraft Nuclear Propulsion

ARA - Auxiliary Reactor Area

ATR - Advanced Test Reactor

BORAX - Boiling Water Reactor Experiment

BRA - Baseline Risk Assessment

CERCLA - Comprehensive Environmental Response, Compensation and Liability Act

CFA - Central Facilities Area

COCA - Consent Order and Compliance Agreement

CSM - Conceptual Site Model

D&D - Decontamination and Decommissioning

DOD - Department of Defense

DQO - Data Quality Objective

EBR-I - Experimental Breeder Reactor-I

EBR-II - Experimental Breeder Reactor-II



H&SP - Health and Safety Plan

HWMA - Hazardous Waste Management Act

IA - Interim Action

ICPP - Idaho Chemical Processing Plant

IDHW - Idaho Department of Health and Welfare

IET - Initial Engineering Test Facility

INEL - Idaho National Engineering Laboratory

LCCDA - Liquid Corrosive Chemical Disposal Area

LDU - Land Disposal Unit

LOFT - Loss of Fluid Test Facility

NCP - National Oil and Hazardous Substances Pollution Contingency Plan

NEPA - National Environmental Policy Act

NODA - Naval Ordnance Disposal Area

NRF - Naval Reactor Facility

O&M Plan - Operation and Maintenance Plan

OU - Operable Unit

PBF - Power Burst Facility

PREPP - Process Experimental Pilot Plant

QAPjP - Quality Assurance Project Plan

QAPP - Quality Assurance Program Plan

RCRA - Resource Conservation and Recovery Act

RD/RA - Remedial Design/Remedial Action

RI/FS - Remedial Investigation/Feasibility Study

ROD - Record of Decision

RWMC - Radioactive Waste Management Complex

SAP - Sampling and Analysis Plan

SDA - Subsurface Disposal Area

SMC - Specific Manufacturing Capability

SOW - Statement of Work

SPERT - Special Power Excursion Reactor Test

SRPA - Snake River Plain Aquifer

SWEPP - Stored Waste Examination Pilot Plant

SWMU - Solid Waste Management Unit

TAN - Test Area North

TRA Test Reactor Area

TSA - Transuranic Storage Area

TSF - Test Support Facility

U.S. DOE - United States Department of Energy

U.S. EPA - United States Environmental Protection Agency

WAG - Waste Area Group

WAG 1 - Waste Area Group 1 - Test Area North (TAN)

WAG 2 - Waste Area Group 2 - Test Reactor Area (TRA)

WAG 3 - Waste Area Group 3 - Idaho Chemical Processing Plant (ICPP)

WAG 4 - Waste Area Group 4 - Central Facilities Area (CFA)

WAG 5 - Waste Area Group 5 - Power Burst Facility (PBF)/Auxiliary Reactor Area (ARA)

WAG 6 - Waste Area Group 6 - Experimental Breeder Reactor No. I (EBRI)

WAG 7 - Waste Area Group 7 - Radioactive Waste Management Complex (RWMC)

WAG 8 - Waste Area Group 8 - Naval Reactor Facility (NRF)

WAG 9 - Waste Area Group 9 - Argonne National Laboratory West (ANLW)

WAG 10 - Waste Area Group 10 - Miscellaneous surface sites and liquid disposal areas throughout the INEL that are not included within other WAGs

WRRTF - Water Reactor Research Test Facility

## 1.0 Introduction

This Action Plan implements the Idaho National Engineering Laboratory (INEL) Federal Facility Agreement and Consent Order (FFA/CO), hereafter referred to as "the Agreement."

### 1.1 Action Plan Goal

U.S. Department of Energy (U.S. DOE), U.S. Environmental Protection Agency (U.S. EPA), and Idaho Department of Health and Welfare (IDHW) have a common goal to ensure that releases or threatened releases of hazardous substances at the INEL are thoroughly investigated in accordance with the National Contingency Plan (NCP) and that appropriate response actions are undertaken and completed as necessary to protect human health and the environment.

The purposes of the Agreement are to:

- Establish a procedural framework and schedule for developing, prioritizing, implementing, and monitoring appropriate response actions at the INEL in accordance with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Resource Conservation and Recovery Act (RCRA), and Idaho Hazardous Waste Management Act (HWMA)
  - Facilitate cooperation, exchange of information, and participation of the Parties in such actions
  - Minimize duplication of analyses and documentation
  - Expedite the cleanup process to the maximum extent possible consistent with protection of human health and the environment and
- Supersede the existing RCRA 3008(h) Consent Order and Compliance Agreement (COCA) executed on July 10, 1987

### 1.2 CERCLA Philosophy/Strategy

CERCLA's implementing regulation, the NCP, has a "bias for action." A fundamental goal of cooperative efforts by U.S. DOE, U.S. EPA, and IDHW in implementing this Agreement is that remedial action be emphasized. This goal recognizes that no reasonable amount of investigation can resolve all uncertainty and that once remedial actions are initiated they must be able to accommodate deviations from original hypotheses. This approach encourages timely remedy selection, flexibility for remedial action, and contingencies to respond to new information discovered during investigations.

The Parties support this "bias for action" position and the environmental restoration program for the INEL will proceed based on the following:

Interim actions under the NCP will be used to proceed quickly with cleanup.

Site characterization will be planned on the basis of optimizing field sampling and maximizing use of available data.

Treatability studies will proceed promptly to establish technologies that are appropriate for restoration of complex units.

### 1.3 CERCLA Integration with Other Programs

#### 1.3.1 Transition from RCRA to CERCLA

The Agreement to which this Action Plan is attached supersedes the INEL COCA. This effectively moves the investigation and cleanup of releases at the INEL from a RCRA to a CERCLA process. Although data gathered and planning accomplished to date are of future value in the CERCLA process, requirements pursuant to the COCA cease at the time of the Agreement's execution.

All waste management units identified for consideration under the COCA are accounted for in the transition to the Agreement. In some instances, this is accomplished by simply identifying those COCA units that will receive no further consideration under the new Agreement. Evaluation of existing data does not indicate a basis for potential risk for these units. Consensus was reached by the Parties to the Agreement regarding the No Action designation. Many of these units were already approved under terms of the COCA for deletion from further consideration. Descriptions of units in this category, including the rationale for the No Action determinations, will be in the INEL Administrative Record and will support the appropriate Record of Decision (ROD) for each Waste Area Group (WAG). All units not in this category were assigned to operable units (OUs) within the CERCLA process described in this Action Plan.

Thirty, Land Disposal Units (LDUs) were identified under the COCA. All 30 of these LDUs will be evaluated under this Agreement. Units retaining the RCRA LDU designation will be remediated under the CERCLA process in accordance with the applicable substantive requirements of RCRA/HWMA, if an unacceptable risk to human health or the environment is demonstrated.

#### 1.3.2 Integration with Other Programs

Releases or threatened releases of hazardous substances under regulatory programs that require investigation and study for cleanup are addressed under this Action Plan.

## 2.0 CERCLA Process

This section describes the process that will be followed in implementing this Action Plan and applying the CERCLA process, as defined in the NCP, to the remedial effort at the INEL. The process is presented in a series of flow charts with associated generic time lines (Figures 2.1 through 2.3) and the brief narrative descriptions below. Each flow chart identifies the primary and secondary documents associated with the process or "track" shown in the flow chart. Schedules, including enforceable deadlines, based on application of this process are shown in Appendix A as Figure A. Deadlines for primary documents derived from those schedules are in Table A. 1, Appendix A. Specific target dates for the completion of secondary documents will be established during the development of Scopes of Work. Schedules and deadlines may be extended for good cause pursuant to Part XIII of the Agreement.

### 2.1 CERCLA Process Overview

Figure 2.1 presents a general overview of the process that will be used to achieve appropriate remedial action decisions for the various operable units at the INEL. Consistent with the "bias for action" philosophy, the Action Plan encourages and provides the necessary flexibility to reach an early determination on an OU when there is sufficient information. The determination may be that no further action is necessary, that an interim action is appropriate, or that the OU should proceed through the Remedial Investigation/Feasibility Study (RI/FS) process to a final action. This flexibility is supported by establishing generic "tracks" allowing consistency between the scope and duration of investigations and complexity of associated documentation, and between the scope and complexity of the problems being addressed. The process to reach expeditious decisions is depicted in Figure 2.1 by showing that an interim action OU can be broken off from any track and proceed directly to the Interim Action track and then to the Decision or ROD process at any time during the process when there is adequate information to support such a decision. The process also provides Project Managers with the flexibility to prioritize work and organize OUs in a manner which will achieve the most benefit with available funds.

Under this process, each potential source area at the INEL is categorized into an Operable Unit group and for investigation or remedial activities. Actions are performed as necessary to abate health or environmental concerns in accordance with the NCP. Those Operable Units which are determined to pose a significant but acceptable risk and have the potential to contribute to the overall cumulative risk are designated for further evaluation. The consideration of a source area's contribution to the cumulative risk will be evaluated under an appropriate RI/FS risk assessment.

The following subsections describe the individual generic tracks.

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### 2.2 Initial Operable Unit Screening

The initial OU screening activity was conducted before the Agreement approval and, therefore, does not include a time line. The screening process is depicted in Figure 2.2. During this activity, individual Solid Waste Management Units (SWMUs) or potentially hazardous sites were identified for each WAG.

The extent of existing information and information gaps was identified sufficiently to assign the unit to the appropriate track. A No Further Action Determination was made only if there was no justification to further address the unit. Justification was based on the determination that no hazardous substances were released, or that an approved summary assessment existed under the COCA and there was no evidence of radiological contamination. If a clear No Further Action Determination could not be made, the unit was assigned to an interim action track or designated for further investigation. All No Further Action Determinations are subject to review at the time of issuance of the next appropriate ROD.

Interim action OUs were established only on the basis that the action would prevent exposure, would control risk, would be consistent with the expected final remedy, and was of sufficient priority to justify an immediate commitment of resources.

Following assignment to the appropriate track, potentially hazardous sites were combined on a WAG basis into OUs in keeping with the NCP definition of an OU as a discrete action that constitutes an incremental step toward comprehensively addressing site problems. Table A.2, Appendix A, identifies the OUs and presents the tracks on which each OU will be managed. Table A.2 also shows the units that received a No Further Action Determination during initial OU screening. On the basis of new information developed during the CERCLA process, the Project Managers may move potentially hazardous sites between OUs and may add or reorganize OUs to create new ones.

### 2.3 Preliminary Scoping Track 1

The Preliminary Scoping Track 1 process is appropriate for OUs that probably will not require further characterization as a basis for a decision for no further action. Track 1 studies are by definition envisioned to be evaluations of existing data. If the data evaluation requires more than minimal field characterization, the OU site should be in a Track 2 study (see Section 2.4).

As shown in Figure 2.3, the potential outcomes of a Track 1 study are proceeding to a No Further Action Determination, a Track 2 study, an interim action, or the RI/FS scoping process. These latter three tracks would be recommended if the data and qualitative risk evaluations identify unanticipated contamination or unacceptable risk potential.

Track 1 investigations supporting No Further Action Determinations are presented to the Project Managers on a quarterly basis during Project Managers' meetings. The Project Managers sign the No Further Action Determination and it is placed in the OU Administrative Record. An example of a No Further Action Determination is shown in Appendix B. The Project Managers evaluate the recommendations to proceed to Track 2, interim action, or RI/FS scoping and the Agreement is modified as appropriate under Part XXX to reflect the recommendations.

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### 2.4 Preliminary Scoping Track 2

Preliminary Scoping Track 2, shown in Figure 2.4, is appropriate for OUs that require field data collection before a decision can be made for No Further Action or interim action of the unit. Because the Track 2 is designed for field data collection, sufficient time (18 months) is allowed to develop the needed planning documentation and to conduct the field investigation and laboratory analyses (Figure 2.5). Track 2 begins with the development of a Scope of Work (SOW) that summarizes scope, schedule, and deliverables. Track 2 studies end with the development of a Scoping Summary Report. A generic outline of this report is included as Appendix C.

Track 2 investigations could result in the OU proceeding to RI/FS scoping if a No Further Action or interim action decision is not justified by the data collected during Track 2 investigations.

Track 2 may also consist of the integrated demonstration of innovative technologies that represent potential INEL remediation processes. In this case, a Work Plan in lieu of a Sampling and Analysis Plan (SAP) would be developed. A summary report on the evaluation of the demonstration will be prepared. Both the Work Plan and the summary report would have secondary document status. The information generated in this type of Track 2 would support future interim action decisions or the evaluation of the technology, during RI/FS implementation.

### 2.5 Interim Action Planning

An interim action is undertaken to eliminate, reduce, or control hazards posed by a site or to expedite completion of total site cleanup. The interim action planning process may be initiated any time the data will provide sufficient Justification and when the Project Managers agree that immediate action is appropriate.

An SOW initiates the interim action process (see Figure 2.6). Data are compiled, qualitative risk findings are established, and appropriate technologies are reviewed during a 5-month period (see Figure 2.7). This information is used to develop a proposed plan

that initiates the decision process.

## 2.6 RI/FS Scoping Process

The RI/FS scoping process, as described in the NCP and in the CERCLA RI/FS Guidance (October 1988, Interim Final), is basically the planning process for the RI/FS, beginning with development and approval of an SOW and culminating in the preparation and approval of the RI/FS Work Plan and other associated planning documents (see Figure 2.8). A 10-month time period is provided for this effort. Figure 2.9 provides a general time line for the tasks involved.

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The SOW referenced in Figure 2.8 contains a general description of the activities that will occur during the implementation of the RI/FS. It also provides adequate information about the scope of the investigation to allow Project Managers to estimate costs and amend established deadlines as necessary.

## 2.7 RI/FS Implementation

Figures 2.10 and 2.11 show a generic flow chart and time line for RI/FS implementation. The process follows the standard CERCLA RI/FS process and is estimated to take 20 months for completion. Treatability studies should be included in the RI/FS process as needed.

## 2.8 Decision Process

The decision process, shown in Figure 2.12 with a generic time line in Figure 2.13, is initiated when there is adequate information to select an interim or final remedy for an OU. The decision process is initiated with the submittal by U.S. DOE of the draft proposed plan for review. The OU Administrative Record is updated as necessary throughout the process to ensure that it includes all documentation pertinent to the remedial action decision. All public review and comment periods, responsiveness summaries, and other mechanics of the decision process follow the NCP, U.S. EPA guidance, and the INEL Community Relations Plan. Within 6 months of submittal of the proposed plan for lead and support agency review, the U.S. DOE should submit the draft ROD for lead and support agency review. The draft ROD then proceeds through the normal review and comment incorporation cycle of a primary document. When the ROD is signed, the decision process is complete. If the ROD requires remedial action, the Remedial Design and Remedial Action Work Plan are developed after ROD completion to define the schedules for completion of remedial design and remedial action.

Interim actions are preliminary by nature. All interim actions must be followed by a final decision and supported by, a risk assessment to evaluate the residual risks to human health and the environment. In most cases, the comprehensive RI/FS for each WAG will provide the vehicle for the decision.

## 2.9 ROD Schedule

Figure A and Table A.1 (Appendix A) provide the schedules for all INEL OU RODs. These schedules will be refined through prioritization occurring during Project Manager meetings (see Section 4.0, Project Management) and will be based on new technical information and budget availability. Enforceable deadlines are included in the schedules. The critical-path schedule is based on the following conditions:

Submittal of the last RI/FS report for all facility-specific WAGs (WAGs 19) will be prior to submittal of the draft RI/FS Work Plan for the last "blanketing" RI/FS for WAG 10.

Submittal of the last Track 2 Summary Report for each WAG will be prior to submittal of the last RI/FS SOW for that WAG.

All Track 1 reviews for each WAG will be completed prior to the submittal of the last Track 2 SAP for that WAG.

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## 2.10 Post-ROD Process

A general process and documentation are necessary to implement RODs at the INEL. Post-ROD activities include the Remedial Design (RD) and Remedial Action (RA) phases. The RD/RA process will be streamlined, to the extent possible, to meet the CERCLA requirement to commence substantial continuous physical onsite remedial action within 15 months of issuance of a ROD.

## 2.11 RD/RA Scoping Process

Part 12.2 of the Agreement states that U.S. DOE will, within 21 days of issuance of the ROD, propose target dates and deadlines for completion of post-ROD documents. This requirement will be met for the RD phase through the submittal of an RD/RA SOW. The RD/RA SOW will establish deadlines for submittal of two primary documents required by Part VIII of the Agreement, the Remedial Design and the RA Work Plan. The RD/RA SOW establishes the overall strategy for managing the RD/RA and, therefore, applies to all phases and remedial work elements. The RD/RA SOW will include, at a minimum, the following:

Strategy for RD/RA and rationale for remedial work element breakout

Recommended RD/RA approach including:

- critical path schedule for the RD/RA process through RA work element commencement
- funding needs and funding availability for RD/RA
- brief description of the scope of each remedial work element
- plans to expedite RD/RA

Description of issues that remain to be resolved or that require further analysis

Identification of elements of the Community Relations Plan that will be implemented during RD/RA

Because it is not possible to define a single set of secondary documents that will be useful in all cases, the RD/RA SOW will establish the secondary documents associated with the RD phase and the target submittal dates for each ROD. Comments received on secondary RD documents will be incorporated into the following primary remedial design document, recognizing that RD secondary documents represent incremental steps toward completing the Remedial Design.

For complex remedies, the Project Managers may determine that RD/RA will be best accomplished by dividing the RD and the RA processes into smaller, more manageable remedial work elements. A remedial work element is a portion of a project that has been broken out through phasing. The criteria for phasing may be the availability of existing information, type of waste, type of media involved, technology requirements, and/or funding availability. Although the Agreement identifies the Remedial Design and the RA Work Plan as separate primary documents, the Project Managers may choose to combine these documents into a single primary document. In this instance, elements of the RA Work Plan will be incorporated into the Remedial Design.

To streamline the RD/RA process, the RD/RA SOW is not defined as a primary or secondary document in the Agreement. The lead and support agencies will have 30 days after submittal to invoke dispute resolution regarding its content. However, all three Project Managers intend to participate in the development of the RD/RA SOW. Given the 21-day time-frame for submittal of the RD/RA SOW, it will be a brief document (10 to 15 pages, mostly figures and tables).

## 2.12 Remedial Design Process

In most cases, the Remedial Design phase will be initiated with the development of the RD Work Plan, a secondary document. For simple remedies, a separate RD Work Plan may not be necessary and the typical elements of the RD Work Plan could be incorporated into the RD/RA SOW. For complex remedies, a separate RD Work Plan may be developed for each identified work element. The RD Work Plan will include:

Scope of preliminary and/or draft design documents

Cost estimate for the RD phase

Requirements for correlations between plans and specifications

Identification of substantive permit requirements (see Part VII C of the Agreement)

Identification and schedules for the preparation of other design elements (e.g., Additional Required Studies, Operation and Maintenance (O&M) Plan, Quality Assurance Project Plan (QAPjP), Site Health and Safety (H&S) Plan)

Design approval procedures and requirements.

Given the critical nature of the RD, it will be necessary to provide the agencies with early design documents to ensure that consensus is maintained. This will be accomplished through the submittal of secondary design documents. In general, at least one secondary design document, the Preliminary Design, will be submitted. The Preliminary Design will typically represent 30% completion of plans and specifications. If available, preliminary results of any additional required studies may be included.

The Remedial Design will include:

Plans and specifications for remedial action including design analysis and construction drawings and specifications

Cost estimate for remedial action

O&M Plan

QAPjP

Site H&S Plan

Results of additional required studies, if any.

The Draft RD (Prefinal Design) will include all aspects of the design and be essentially complete. It will be considered representative of approximately 90% design completion. The final 10% of the design will include the resolution of comments on the Draft RD and preparation of reproducible construction drawings and specifications ready for bid advertisement. These changes and additions will be

included in the Draft Final RD, which is the 100% design.

### 2.13 Remedial Action Process

The RA Work Plan will incorporate, by reference, pertinent aspects of the RD Work Plan. It will

- Specify any relevant changes in the content of the RD Work Plan arising from the design effort
- Update and expand upon schedules in the RD Work Plan by including dates for the submittal of primary and secondary documents for that remedial work element
- Update and expand upon the cost estimate for RA in the RD and
- Identify additional RA secondary documents

The remedial action process includes the preparation of at least one primary and one secondary document. The Prefinal Inspection Report will be a secondary document that will include:

- Outstanding construction requirements
- Actions required to resolve items
- Completion date and
- Date of final inspection

The prefinal inspection will be conducted by the Project Managers, at a minimum, and possibly by an independent fourth party. DOE will prepare the Prefinal Inspection Report. Although DOE will respond to comments received, the Prefinal Inspection Report will not be revised but, rather, will be finalized in the context of the primary RA Report. To the extent possible, RA Reports for individual work elements will be consolidated into a single RA Report.

The RA Report will be prepared at the completion of remedial action and will include:

- A brief description of outstanding items from the Prefinal Inspection Report
- Synopsis of work defined in RA Work Plan and certification that this work was performed
- Explanation of any modifications to the RA Work Plan
- Certification that the remedy is operational and functional; and
- Documentation necessary to support deletion of the site from the NPL, as discussed in Part XXV of the Agreement.

### 2.14 Operation and Maintenance

At the completion of O&M activities, the DOE will prepare and submit an O&M Report to the EPA and IDHW. To the extent possible, O&M Reports for individual work elements will be consolidated into a single O&M Report. This primary document will include the following elements:

- Description of O&M activities performed
- Results of site monitoring, verifying that the remedy meets the performance criteria and
- Explanation of additional O&M (including monitoring) to be undertaken at the site

## 3.0 WAG Concept and Descriptions

The INEL is divided into WAGs to facilitate environmental remediation efforts. WAGs 1 through 9 generally correspond to U.S. DOE-INEL operational facilities, while WAG 10 corresponds to overall concerns associated with the Snake River Plain Aquifer (SRPA) and those surface and subsurface areas not included in the bounds of the facility-specific WAGs.

Groundwater quality of the SRPA is a significant concern. The SRPA is a dynamic system that is common to the entire INEL and is not controlled by institutional boundaries. Therefore, treating the regional concerns of the SRPA beneath the INEL as an independent OU within WAG 10 is logical from an environmental restoration viewpoint.

Individual WAGs (1-9), in addition to including all SWMUs and other potentially hazardous units associated with the WAG and the surface area encompassed by them, address subsurface concerns including the vadose zone, perched aquifers, and the SRPA to the extent those concerns are specific to the WAG and its sources of contamination. WAG 10 addresses all regional SRPA concerns related to the INEL that cannot be adequately addressed on a WAG-specific basis. In addition, WAG 10 includes those surface and subsurface areas not included in the bounds of the facility-specific WAGs. Only under certain circumstances, as agreed by the Project Managers, are regional aquifer concerns addressed in a specific WAG (19).

In addressing WAG-specific aquifer concerns, the individual WAG investigations are not intended to characterize the aquifer or extent of aquifer contamination to great distances beyond the WAG boundary but are intended to obtain adequate information to make WAG-specific remedial action decisions.

As a general rule, WAG (1-9) investigations are intended to be conducted within approximately 1,000 feet of WAG facility fence lines or other recognized administrative boundaries.

Validated data compiled from all WAGs are routinely evaluated by U.S. DOE to determine if potential regional (non or multiple WAG-specific) problems have become evident. This activity involves more than one WAG and is considered to be part of the general administrative management function of the INEL Environmental Restoration Program. As such, it does not have a lead/support agency associated with it. Status of this activity is, however, a subject of Project Managers' meetings. If a problem or potential problem is identified, the situation could be considered as a candidate for interim action, remedial action under a facility specific WAG, or remedial action under WAG 10, as determined by the Project Managers.

Ten WAGs are located at the INEL. A separate section describes each WAG; the WAG locations at the INEL are presented in Figure 3.1. The facility-specific WAGs are separated from one another and do not present boundary overlap problems.

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### 3.1 WAG 1

WAG 1 is Test Area North (TAN) of the INEL. TAN compasses several subareas:

- Technical Support Facility (TSF)
- Initial Engine Test (IET) Facility
- Loss of Fluid Test (LOFT) Facility
- Specific Manufacturing Capabilities (SMC) Facility and
- Water Reactor Research Test Facility (WRRTF)

In general, TSF consists of facilities for handling, storage, examination, and research and development of spent nuclear fuel. The Process Experimental Pilot Plant (PREPP), a facility originally built to determine the capabilities of processing transuranic waste destined for WIPP, is also located here. Potential release sites addressed under this Agreement include tanks, spills, disposal sites, and wastewater disposal systems (e.g., sumps, tanks, injection well, ponds, and lagoons).

The IET is an abandoned facility north of TSF that has numerous historical uses. IET was designed as a testing location for the nuclear jet engines developed under the Aircraft Nuclear Propulsion (ANP) Program in the 1950s and early 1960s. The few IET sites being investigated under this Agreement are tanks still in place, an old injection well, and rubble disposal sites.

LOFT and SMC are contiguous facilities west of TSF that consist of structures built for those two operations and old buildings from the ANP Program. LOFT is a facility constructed for nuclear reactor tests that has been decommissioned. SMC is an active facility manufacturing components for a U.S. Department of Defense (DOD) non-nuclear weapons system. The sites being investigated include pits, tanks, a wastewater disposal pond, and two small historic spill sites.

WRRTF primarily consists of two buildings southeast of TSF that have housed several non-nuclear tests, mostly for simulating and testing water systems used in reactors. The WRRTF sites being investigated include tanks, wastewater ponds, an injection well, a burn pit, and a sewage lagoon.

The boundary of the TAN WAG includes the TSF, IET, LOFT, SMC, and WRRTF fenced areas. It also includes the immediate areas outside of the fences where operations associated with these areas may have taken place. The WAG includes all surface and subsurface areas.

### 3.2 WAG 2

WAG 2 is the Test Reactor Area (TRA) that houses extensive facilities for studying the effects of radiation on materials, fuels, and equipment. The Advanced Test Reactor (ATR) is currently the only large operational reactor within TRA and is designed to produce a neutron flux that allows simulation of long-duration radiation effects on materials and fuels. It produces isotopes used in medicine, research, and industry.

TRA sites being investigated under the Agreement include pits, tanks, rubble piles, ponds, cooling towers, wells, trench drains, and spills. One of the higher priority sites within TRA is a percolation pond that has been used for the disposal of radioactively contaminated wastewater.

The boundary of WAG 2 includes the area within the TRA fence and the areas immediately outside the fence where waste operations have taken place. The WAG includes all surface and subsurface areas.

### 3.3 WAG 3

WAG 3 is the Idaho Chemical Processing Plant (ICPP) that houses reprocessing facilities for Government defense and research spent



fuel. Facilities at ICPP include spent fuel storage and reprocessing areas, a waste solidification facility and related waste bins, remote analytical laboratories, and a coal-fired steam generating plant.

ICPP sites investigated under the Agreement include facilities associated with wastewater disposal systems (e.g., sumps, ponds, and an injection well), spills, and tank farm storage of hazardous substances.

The boundary of WAG 3 includes the area within the ICPP fence and those immediately adjacent areas where waste activities have taken place; it includes all surface and subsurface areas.

### 3.4 WAG 4

WAG 4 is the Central Facilities Area (CFA) where services for the entire site are headquartered. These services include environmental laboratories, security, fire protection, medical facilities, communications systems, warehouses, a cafeteria, vehicle and equipment pools, bus system, and laundry. The U.S. DOE Radiological and Environmental Sciences Laboratory and U.S. Geological Survey offices are also located here.

CFA sites investigated under the Agreement include historical spills, tanks, landfills, ponds, leach fields, and leach pits.

The boundary of WAG 4 is loosely defined as CFA does not have an enclosing fence. However, many CFA sites investigated under the Agreement are adjacent to buildings (e.g., tanks and dry wells). Others, including landfills and a gravel pit adjacent to one of the landfills, are located on the outskirts of CFA. The WAG includes all surface and subsurface areas.

### 3.5 WAG 5

WAG 5 consists of the Power Burst Facility (PBF) and Auxiliary Reactor Area (ARA). PBF is located in an area originally constructed for the Special Power Excursion Reactor Tests (SPERT). Four SPERT reactors were built beginning in the late 1950s in a radial array around what is now the PBF control/personnel building complex. All of the SPERT reactors were removed and the SPERT facilities have undergone partial or complete decontamination and decommissioning (D&D). The PBF reactor is still operational but is in a standby mode. The ARA consists of four separate groupings of buildings in which various activities have occurred, including the operation of test reactors. All of the ARA reactors were removed from the facility and have undergone partial or complete D&D.

PBF/ARA sites investigated under the Agreement include tanks and components of wastewater disposal systems (e.g., evaporation ponds, percolation ponds, leach fields, pits, and dry wells).

The boundary of WAG 5 encompasses the facility locations presently or historically used within the PBF and ARA areas and those immediately adjacent areas where waste activities may have taken place. The WAG includes all surface and subsurface areas.

### 3.6 WAG 6

WAG 6 consists of the Experimental Breeder Reactor No. I (EBR1) and Boiling Water Reactor Experiment (BORAX) areas. Both the EBR1 and BORAX areas were originally constructed to house test reactors and were decommissioned. EBR1 is now a National Historic Landmark, open to the public. Historically, the BORAX area housed five different reactors, but many of the facilities were dismantled or moved and no operations (other than monitoring) take place in the area.

EBR1/BORAX sites investigated under the Agreement are primarily old tanks, but also include a small spill area and several liquid and solid waste disposal locations.

The boundary of WAG 6 is directly related to the EBR1/BORAX facility locations and areas immediately adjacent to them; it includes all surface and subsurface areas.

### 3.7 WAG 7

WAG 7 is the Radioactive Waste Management Complex (RWMC) that was established in 1952 and is a controlled area for disposal of solid radioactive wastes generated in INEL operations. The Stored Waste Examination Pilot Plant (SWEPP) is also located at the RWMC and is used for certifying waste destined for shipment to WIPP.

The primary RWMC site being investigated under the Agreement is the Subsurface Disposal Area (SDA) within the RWMC. It includes numerous pits, trenches, and vaults where radioactive and organic wastes were placed, as well as a large pad where waste was placed above grade and covered.

The Transuranic Storage Area (TSA) within the RWMC has been used since the early 1970s for retrievable storage of transuranic waste on earthen-covered pads and in facilities.

The boundary of WAG 7 is clearly defined as the RWMC fence, with the SDA as a fenced portion within the RWMC. It includes all

surface and subsurface areas.

### 3.8 WAG 8

WAG 8 is the Naval Reactors Facility (NRF) where prototype reactors are operated for reactor plant development and in training of naval officers and enlisted personnel. NRF also supports research and development efforts on reactor materials by preparation and examination of irradiation test specimens, and by examination of expended fuel from naval reactors.

NRF sites investigated under the Agreement include landfills, old spills, wastewater disposal systems (e.g., ponds, ditches, basins, drains, and drain fields) and storage areas.

WAG 9 is primarily the developed area of the NRF site. However, it also includes waste operations that extended or extend outside the NRF developed area, such as the wastewater ditch. All of WAG 8 is within the overall 7-square mile NRF site and includes surface and subsurface areas.

### 3.9 WAG 9

WAG 9 is the Argonne National Laboratory West (ANL-W) that is primarily devoted to the testing of breeder-reactor technology. It houses the Experimental Breeder Reactor 11 (EBR-11), the first pool-type liquid-metal reactor. In addition to EBR-11, the ANL-W complex has four other reactors and two fuel examination facilities.

ANL-W sites being investigated under the Agreement include tanks and wastewater handling/disposal systems such as ditches, ponds, pits, drains, etc.

The boundary of WAG 9 is basically the ANL-W fence; however, operations that extended or extend outside of the fence, such as the wastewater ditch, are included. WAG 9 includes all surface and subsurface areas described above.

### 3.10 WAG 10

WAG 10 includes miscellaneous surface sites and liquid disposal areas throughout the INEL that are not included within other WAGs. WAG 10 also includes regional Snake River Plain Aquifer concerns related to INEL that cannot be addressed on a WAG-specific basis. Specific sites currently recognized as part of WAG 10 include:

- Liquid Corrosive Chemical Disposal Area (LCCDA) located between WAGs 6 and 7

- Organic Moderated Reactor Experiment located between WAGs 4 and 5

- Former ordnance areas, including the Naval Ordnance Disposal Area (NODA) located at numerous sites within the INEL

The boundary of WAG 10 is the INEL boundary, or beyond as necessary to encompass real or potential impact from INEL activities, and any areas within the INEL not covered by other WAGs.

### 3.11 Drinking Water Actions

U.S. DOE presently monitors drinking-water wells in and around the INEL in accordance with applicable Federal and State regulations. U.S. DOE will routinely make available the resulting data to Project Managers. In addition, within 90 days of the effective date of the Agreement, U.S. DOE will provide to the Project Managers historical monitoring data for INEL drinking-water systems for which there are potential impacts to drinking-water quality from hazardous substances released at the INEL. The Project Managers will review the data and, at their earliest opportunity, identify and agree upon additional monitoring requirements for these systems.

In cases where drinking water monitoring results exceed promulgated standards, the Project Managers will determine if an alternate source of water is needed and U.S. DOE will provide an alternate source of water for the affected system(s) as agreed upon under this activity. Any additional actions agreed upon (i.e., interim actions) would be carried out under other applicable provisions of the Agreement and Action Plan.

## 4.0 Project Management

The purpose of this section is to identify and describe key project management activities and responsibilities that are important in carrying out the terms of the Agreement and Action Plan.

### 4.1 Project Manager Roles and Responsibilities

As provided in Part VII of the Agreement, each Party to the Agreement is represented by a Project Manager (see Appendix D). The Project Manager shall:

- Manage INEL remedial activities for their respective agencies pursuant to the Agreement and Action Plan

- Serve as primary contacts and coordinators for their respective agencies for purposes of implementing the Agreement and

#### Action Plan

Prioritize work

Coordinate activities of WAG Managers (WMs), who are identified by the Project Managers, as necessary

Approve and sign No Further Action Determinations

Evaluate and approve changes to OUs based on investigation findings, and

Prepare monthly progress reports

The roles and responsibilities of the WMs are:

Manage remedial activities under the Action Plan at an assigned WAG(s) under the direction of respective Project Manager

Serve as agency contact for the Project Manager for assigned WAG(s)

Participate in project management meetings as requested by respective Project Managers

#### 4.2 Lead Agency Concept

Although U.S. DOE is the lead agency with respect to implementation of the Agreement, the Parties have agreed to a lead agency approach to minimize duplication of effort and maximize oversight productivity. The lead agency for a specific WAG is responsible for overseeing and coordinating the activities conducted under this Agreement.

The agency that is not the lead agency is designated as the support agency. The support agency will also provide comments to U.S. DOE and will lend support to the lead agency as resources permit.

Designation of lead agency is a joint determination by U.S. EPA and IDHW. The decision on lead designation is based primarily on the resources available to undertake lead responsibilities at that WAG. At the time of execution of this Agreement, IDHW's the lead agency at WAG 7 (RWMC) and U.S. EPA is the lead agency at all other WAGs.

#### 4.3 Project Managers' Meeting

Project Managers' meetings are held as described in Part 8.9 of the Agreement, or more frequently as needed. These meetings are used to conduct the business necessary to implement the Action Plan. Any agreements or commitments resulting from Project Managers' meetings are to be signed by all Project Managers as soon as possible after the meeting.

#### 4.4 Recommended Training and Qualifications

To effectively and efficiently implement this Action Plan, appropriate training and qualifications for all Parties' Project Managers and WMs are necessary. While the following list of training and qualifications is not required or subject to review and approval by any Party, it is recommended that all Project Managers and WMs have expertise or obtain training on a timely basis in the following subject areas:

- Agreement and Action Plan
- Project management
- CERCLA, NCP RCRA, NEPA, HWMA, and the Atomic Energy Act (AEA) as they pertain to this Agreement and Action Plan
- Remedial action process
- Available remedial action technologies
- OSHA Hazardous Waste Operations, per 29 CFR 1910.120
- Basic radiation protection
- Risk assessment
- Public participation

#### 5.0 Data Quality Objectives and Risk Assessment

The collection and use of appropriate quantities and quality of data to make remedial action decisions are a major consideration in conducting CERCLA investigations. Existing data are used whenever they meet the Data Quality Objectives (DQOs) for the decision being made, or can be validated with minimal additional supporting data of higher quality. DQOs are defined as qualitative and quantitative statements that specify the quality of data required to support decisions during the remedial response process. Because decisions under CERCLA are risk- or health-based, DQOs should be developed under the framework of a conceptual site model relating contaminant release to potential exposure routes, contaminant toxicity, and receptors.

The development of DQOs and risk assessment procedures for the RI/FS process at INEL will follow the guidance found in CERCLA and the NCP, as well as in U.S. EPA guidance documents. Reasonable future-use scenarios will be developed for evaluation purposes

in accordance with the latest CERCLA risk assessment guidance. DQOs and risk assessment for the Preliminary Scoping Track 2 defined in this Action Plan require more detailed discussion because they are not specifically covered in the U.S. EPA guidance documents.

For a Track 2, the following DQO/risk assessment process is applied:

Develop a statement of the problem at the OU.

Identify the possible outcomes of the Track 2 (No Further Action, interim action, RI/FS scoping).

Determine the level of acceptable risk for the OU. This is defined in the NCP as in the range of 104 to 106 for individual lifetime cancer risk. For noncarcinogens, a hazard index of less than 1 represents acceptable risk.

Develop a conceptual model of the OU that identifies probable exposure pathways.

Evaluate attenuation/dilution effects expected between the source and postulated receptor.

Develop rough estimates on risk drivers by evaluating the concentration and toxicity (CiTi) for hazardous substances present (where Ti = slope factor or the inverse of the reference dose [1/RfD]).

Determine the approximate concentration of the major contaminants that, if present, would pose unacceptable risk for a pathway. This requires assumptions regarding the population at risk and their activities, leading to an assumed exposure scenario. Based on the level of acceptable risk, the exposure scenario, attenuation/dilution effects, and the toxicity of the contaminant, a concentration of the contaminant at the source is calculated for carcinogens and separately for noncarcinogens.

If risk (R) for a given pathway is  $R =$  (formula)

where  $C_r$  = concentration at the receptor, and  $C_r = C_i A_i$ ,

where  $A_i$  reflects the multiple factors that affect the change in concentration from the source to the receptor,

then (formula) (2)

Design the sampling program to include special emphasis on the calculated concentrations of contaminants (formula)

Based on the concentrations of the contaminants determined as a result of the sampling program, estimate the total risk for major contaminants over the significant pathway(s). This is calculated separately for carcinogens and noncarcinogens.

Risk ( $R_t$ ) = (formula) (3)

where  $P_o$  to  $P_n$  are the pathways and

$R_t$  = total risk posed by, the OU

If the risk estimate of the assumed exposure scenario is less than the level of acceptable risk for the OU, no further action is required.

This discussion of DQOs for the Track 2 process will be expanded and presented in a supplemental document that, with the approval of the Project Managers, will be applied as sitewide generic guidance. This supplemental document, "Guidance for Assessing Low Probability Hazard Sites at the INEL," should be issued by September 1991.

The development of DQOs is different for the Preliminary Scoping Track 1 or the Interim Action Planning Process because neither of these tracks requires data collection. For these two tracks, DQOs should address the criteria for the acceptance of existing data for the decision to be made, which may include validation through additional supporting data of higher quality. The risk assessment process for Track 1 will be informal and will qualitatively assess potential exposure routes, pathways for contaminant migration, toxicity of known or suspected contaminants, and receptor populations. The risk assessment for an interim action or a Track 2 will also be qualitative.

At the conclusion of an interim action for which No Further Response action is anticipated, data of sufficient quality will be collected to support a quantitative risk assessment. DQOs will be established for this activity according to the U.S. EPA guidance. The risk assessment will be completed prior to entering the final decision process for the WAG. The purpose of the risk assessment is to show that the interim action resulted in acceptable risk levels at the site.

As with DQOs, risk assessment guidance for the INEL will be expanded and presented in a supplemental document.

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