

Nuclear Waste Dispute

**Office of the Attorney General
Lawrence G. Wasden**

1995 Batt Agreement

SETTLEMENT AGREEMENT

The State of Idaho, through the Attorney General, and Governor Philip E. Batt in his official capacity; the Department of Energy, through the General Counsel and Assistant Secretary for Environmental Management; and the Department of the Navy, through the General Counsel and Director, Naval Nuclear Propulsion Program, hereby agree on this 16th day of October, 1995, to the following terms and conditions to fully resolve all issues in the actions Public Service Co. of Colorado v. Batt, No. CV 91-0035-S-EJL (D. Id.) and United States v. Batt, No. CV-91-0054-S-EJL (D. Id.):

1. The "State" shall mean the State of Idaho and shall include the Governor of the State of Idaho and the Idaho State Attorney General.

2. The "federal parties" means U.S. Department of Energy (DOE) and the U.S. Department of the Navy (the Navy), including any successor agencies.

render it less hazardous; safer to transport, store, dispose of; or reduce in volume.

4. "Transuranic waste" shall be defined as set forth in the EIS, Volume 2, Appendix E.

5. "One shipment of spent fuel" shall be defined as the transporting of a single shipping container of spent fuel.

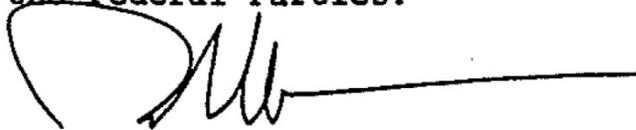
6. "High-level waste" shall be defined as set forth in the EIS, Volume 2, Appendix E.

7. "DOE spent fuel" shall be defined as any spent fuel which DOE has the responsibility for managing with the exception of naval spent fuel and commercial spent fuel which DOE has accepted or will take title to pursuant to the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101 et seq. or comparable statute.

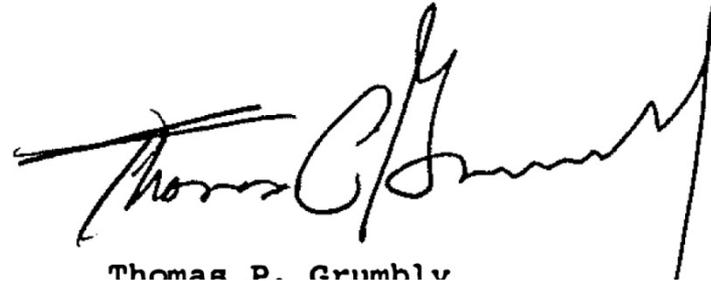
8. "Naval spent fuel" shall be defined as any spent fuel

1995 Batt Agreement Signatures

For the Federal Parties:

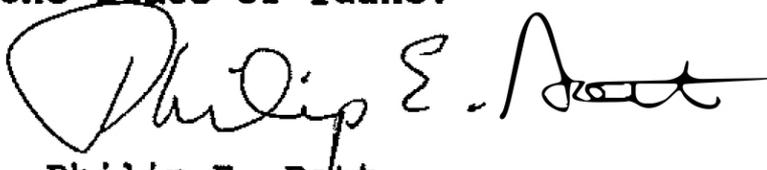


Robert R. Nordhaus



Thomas P. Grumbly

For the State of Idaho:

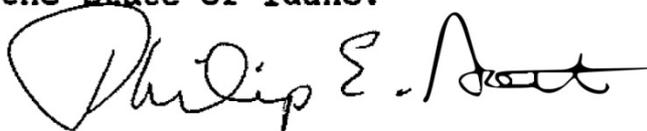


Philip E. Batt
Governor, State
State of Idaho



Alan G. Lance
Attorney General,
State of Idaho

For the State of Idaho:



Philip E. Batt
Governor, State
State of Idaho



Alan G. Lance
Attorney General,
State of Idaho

1995 Batt Agreement

a. The first shipments of transuranic waste from INEL to WIPP or other such facility designated by DOE shall begin by April 30, 1999.

c. After January 1, 2003, a running average of no fewer than 2,000 cubic meters per year shall be shipped out of the State of Idaho.

2. The sole remedy for failure by DOE to meet any of these deadlines or requirements shall be the suspension of DOE spent fuel shipments to INEL as set forth in Section K.1.

January 1, 2035. Spent fuel being maintained for purposes of testing shall be excepted from removal, subject to the limitations of Section F.1 of this Agreement.

2. Until all of the aluminum-clad spent fuel then stored at INEL has been shipped to the Savannah River Site, the cumulative number of shipments of spent fuel from the Savannah River Site to INEL under Section D as of the end of any calendar year shall not exceed the cumulative number of shipments of aluminum-clad spent fuel from INEL to the Savannah River Site for the same period.

3. DOE shall treat all high-level waste currently at INEL so that it is ready to be moved out of Idaho for disposal by a target date of 2035.

D. SHIPMENTS OF SPENT FUEL TO INEL

The federal parties may transport shipments of spent fuel to INEL only in accordance with the following terms and conditions.

1. Shipments of naval spent fuel to INEL shall take place as follows:

a. The Navy may make only those shipments of naval spent fuel to INEL that are necessary to meet national security requirements to defuel or refuel nuclear powered submarines, surface warships, or naval prototype or training reactors, or to ensure examination of naval spent fuel from these sources. The

1995 Batt Agreement

a. **Treatment of Non-INEL Wastes.** Any and all Treatable Waste shipped into the State of Idaho for treatment at the Facility shall be treated within six months of receipt at the Facility, with the exception of two cubic meters of low-level mixed waste from the Mare Island Naval Shipyard which will complete base closure for nuclear work in 1996. DOE may request an exception to the six month time period on a case-by-case basis, considering factors at the shipping site such as health and safety concerns, insufficient permitted storage capacity, and base or site closures. Any transuranic waste received from another site for treatment at the INEL shall be shipped outside of Idaho for storage or disposal within six months following treatment. DOE shall continue to use the Federal Facility Compliance Act process, as facilitated by the National Governors' Association, to determine what locations are suitable for mixed low-level waste treatment and storage.

3. **Operation of High-Level Waste Evaporator.** DOE shall commence operation of the high-level waste evaporator by October 31, 1996, and operate the evaporator in such a manner as to reduce the tank farm liquid waste volume by no fewer than 330,000 gallons by December 31, 1997. Efforts will continue to reduce the remaining volume of the tank farm liquid waste by operation of the high-level waste evaporator.

4. **Calcination of Sodium-Bearing Wastes.**

5. Calcination of Sodium-Bearing Wastes. DOE shall commence calcination of sodium-bearing liquid high-level wastes by June 1, 2001. DOE shall complete calcination of sodium-bearing liquid high-level wastes by December 31, 2012.

efforts to evaluate alternatives for the treatment of calcined waste so as to put it into a form suitable for transport to a permanent repository or interim storage facility outside Idaho. To support this effort, DOE shall solicit proposals for feasibility studies by July 1, 1997. By December 31, 1999, DOE shall commence negotiating a plan and schedule with the State of Idaho for calcined waste treatment. The plan and schedule shall provide for completion of the treatment of all calcined waste located at INEL by a date established by the Record of Decision for the Environmental Impact Statement that analyzes the alternatives for treatment of such waste. Such Record of Decision shall be issued not later than December 31, 2009. It is presently contemplated by DOE that the plan and schedule shall provide for the completion of the treatment of all calcined waste located at INEL by a target date of December 31, 2035. The State

1995 Batt Agreement

expressly reserves its right to seek appropriate relief from the Court in the event that the date established in the Record of Decision for the Environmental Impact Statement that analyzes the alternatives for treatment of such waste is significantly later than DOE's target date. In support of the effort to treat such waste, DOE shall submit to the State of Idaho its application for a RCRA (or statutory equivalent) Part B permit by December 1, 2012.

F. SPENT FUEL PROGRAM

1. Establishment of INEL as DOE Spent Fuel Lead

9. The sole remedy for DOE's failure to meet any of the deadlines or requirements set forth in this section shall be the suspension of DOE spent fuel shipment to INEL as set forth in Section K.1.

shall be coordinated and integrated under the direction of the Manager, DOE-Idaho Operations Office. Such designation shall not permit the shipment to INEL of any spent fuel beyond that permitted by this Agreement with the exception that quantities of spent fuel brought to INEL for testing in excess of those

F. SPENT FUEL PROGRAM

1. Establishment of INEL as DOE Spent Fuel Lead Laboratory. DOE shall, within thirty days of entry of this Agreement as a court order, designate INEL as the Department's lead laboratory for spent fuel. DOE shall direct the research, development and testing of treatment, shipment and disposal technologies for all DOE spent fuel, and all such DOE activities shall be coordinated and integrated under the direction of the Manager, DOE-Idaho Operations Office. Such designation shall not permit the shipment to INEL of any spent fuel beyond that permitted by this Agreement with the exception that quantities of spent fuel brought to INEL for testing in excess of those

1995 Batt Agreement

2. **Acoustic Research Funding.** The Navy shall include in its appropriation request to the Executive Office of the President for federal fiscal year 1997 no less than \$7 million for the Navy to construct a Ships Model Engineering and Support Facility at the Naval Surface Warfare Center, Carderock Division, Acoustic Research Detachment at Bayview, Idaho.

J. GOOD FAITH COMPLIANCE & AFFIRMATIVE SUPPORT

1. The federal parties and Idaho agree that the activities to be performed under this Agreement and the subsequent Consent Order are in the public interest. The federal parties and Idaho acknowledge the complexity of this Agreement and have agreed to act in good faith to effectuate its fulfillment. The federal parties and Idaho shall affirmatively support this Agreement and its terms, conditions, rights and obligations in any administrative or judicial proceeding. The federal parties and Idaho intend to seek a sense of the Congress resolution expressing support for the terms, conditions, rights and obligations contained in this Agreement and the subsequent

Idaho shall support the adequacy of the EIS and ROD against any challenges by third parties. Idaho shall have the ability, in its sole discretion, to waive performance by the federal parties of any terms, conditions and obligations contained in this Agreement.

~~request by the DOE, the Navy, or the Naval Surface Warfare Center~~
Program for the performance of any of their respective obligations set forth in this Agreement.

3. No provision of this Agreement shall compel any party to act without due legal authority. Performance by every party under this Agreement shall be subject to and comply with all applicable federal statutes, regulations and orders, including the Anti-Deficiency Act. The inability of any party to comply with the provisions of this Agreement, or a delay in such compliance, as a result of any applicable federal statute, regulation or order shall not subject that party to judicial enforcement under Section K.2.a, but shall not preclude the application of Sections K.1.a. or K.1.b.

4. In the event any required NEPA analysis results in the selection after October 16, 1995, of an action which conflicts with any action identified in this Agreement, DOE or the Navy may request a modification of this Agreement to conform the action in

3 Basic Points of 1995 Agreement

- Idaho would not become a nuclear waste dump
- There were clean-up milestones that the DOE agreed to meet
- INL would be designated lead Spent Nuclear Fuel Lab

Judge Lodge Order

UNITED STATES COURTS
DISTRICT OF IDAHO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

OCT 17 1995

PUBLIC SERVICE COMPANY)
OF COLORADO,)
)
Plaintiff,)
)
v.)
)
PHILIP E. BATT, individually)
and as Governor of the State)
of Idaho,)
)
Defendant.)
)
-----)
UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
PHILIP E. BATT, in his official)
capacity as Governor of the)
State of Idaho; STATE OF IDAHO,)
)
Defendants.)
)
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8:34 A.M. REC'D
LODGED _____ FILED 

Civil No. 91-0035-S-EJL
(Lead Case)

Civil No. 91-0054-S-EJL

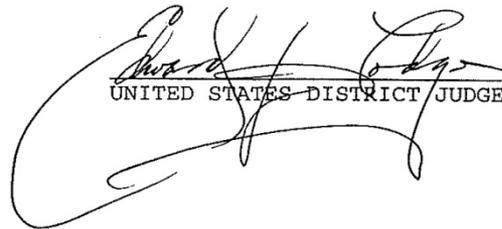
CONSENT ORDER

Upon consideration of the parties' Joint Motion For Entry of Consent Order Based on Settlement Agreement, it is hereby ORDERED That the Motion is GRANTED,
That the terms of the appended Settlement Agreement are hereby incorporated in this Consent Order,
That all prior injunctions entered in this action are hereby VACATED except paragraph 4 of the Order entered December 23, 1993 and entitled Amended Order Modifying Order of June 28, 1993, and

Judge Lodge Order

That this case is hereby ADMINISTRATIVELY TERMINATED,
subject to continuing jurisdiction of the Court and the right of
the parties to reopen the action for good cause.

October 17th, 1995


UNITED STATES DISTRICT JUDGE

2004

- Allowed DOE to bring in shipment of Nuclear Spent Fuel for testing

2010

- Written protocol for allowing Nuclear Spent Fuel shipments for testing to come into Idaho
- DOE was required to be in compliance with the 1995 agreement

December 31, 2014



The Honorable
Governor,
State Capitol
P.O. Box 1
Boise, ID

Dear Governor,

I appreciate your
nuclear energy
Department
thoughts on
(INL).

The Department
critical to the
INL as the
evolving as
development
approach to
capabilities
progress through
Undersecretary
strong support
fuel issues.
Commissioner
Idaho's economic

From the beginning
the oversight
has been the
Department
Facility (TF) at
the success
continues to
Materials Center
INL to support

The January
commercial
commitment
underpinning
term. To that

The first desired shipment, proposed for receipt in the June 2015 timeframe, consists of one cask of 25 spent fuel rods, totaling 40-50 kg of heavy metal. INL's unique research capabilities will enable work to be conducted on the technical, economic, and non-proliferation aspects of electrochemical recycling of commercial light water reactor fuels, and for fuel performance studies for the nuclear industry.

The second desired shipment, proposed for the January 2016 timeframe, consists of one cask of 25 spent fuel rods, totaling 40-50 kg of heavy metal for research in support of a High Burn-up Dry Storage Cask R&D project with the Electric Power Research Institute (EPRI). This research with EPRI supports critical on-going work by the commercial nuclear power industry to maintain safe storage of spent nuclear fuel at utility locations around the U.S.

The funding associated with these research projects is expected to be about \$10-20M annually to the INL through approximately the end of this decade.

Although the shipments would not begin for several months, extensive planning and up-front logistics must be made to ensure the safety of those shipments to INL, should they be allowed. Due to our utility partner's plant operations schedule, DOE must take title to the fuel by noon on January 9, 2015. The Department will need an indication of support from the State of Idaho prior to this time to move forward with this important research. DOE stands ready to work closely with the appropriate State officials to provide additional details of these proposed shipments and address any questions. If this commercially-imposed deadline is missed, we will suffer a two year delay in this project.

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we have

examined an about 1.15 acres of targeted buried waste, and anticipate completing this effort at least a year ahead of its completion milestone.



December 31, 2014

As we discussed, operating the Integrated Waste Treatment Unit (IWTU) is a top priority for the Department and we remain focused on treating the sodium bearing waste in a safe and environmentally protective manner. There have been significant issues with IWTU, and DOE has worked hard to address them, including enhancing the startup testing process with additional resources and experts providing their experience on fluidized bed operations.

Starting on December 2nd, the IWTU began processing simulated waste to determine plant readiness for processing of highly radioactive waste. Over 35,000 gallons of simulated waste have been processed, at rates of 1.2 gallons per minute to 2.5 gallons per minute, including over 7,000 gallons of simulated waste with solids added to simulate the worst case conditions anticipated during radioactive operations. To date 73 of the 84 acceptance criteria required by the simulated waste test have been demonstrated. Following the completion of the current simulant test, an inspection and maintenance outage is necessary.

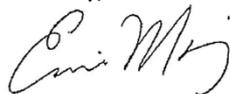
The outage is designed to address necessary maintenance, equipment issues identified during the simulant run, and to conduct equipment safety inspections. Following the outage, we will reinitiate simulant testing in order to verify two critical items before commencing radioactive operations: (1) any necessary equipment upgrades and (2) the plant operational envelope. These two items are sequential: first, to validate the equipment upgrades, followed with the verification of the plant operational envelope. The verification of the plant operational envelope is one of the most critical steps in the start-up process for ensuring that potential transient conditions are identified and overcome during operations. Once these items are completed we can commence radioactive operations.

The IWTU is one of the challenging, first-of-a-kind engineered facilities that DOE must design and run for radioactive operations, and we must be fully confident of safe operations when we "go hot." The Department will continue to work with the Idaho Department of Environmental Quality and keep them apprised of the progress.

I can assure you that I am committed to the start-up and safe operation of the IWTU facility, along with completing the cleanup of the legacy wastes left behind from the Cold War.

If you have any additional questions, please feel free to contact me or Mr. Brad Crowell, Assistant Secretary for Congressional and Intergovernmental Affairs, at (202) 586-5450.

Sincerely,



Ernest J. Moniz

*Happy new year - one in which we can advance
our mutual interests!*

January 8, 2015



C. L. "BUTCH" OTTER
Governor
STATE OF IDAHO

LAWRENCE G. WASDEN
Attorney General
STATE OF IDAHO

January 8, 2015

The Honorable Dr. Ernest J. Moniz, Secretary
United States Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

Dear Secretary Moniz:

This letter responds to your letter dated December 31, 2014, in which you requested an indication of support from the State of Idaho for two research projects involving receipt at the Idaho National Laboratory (INL) of spent nuclear fuel (SNF). You requested that Idaho indicate this support by no later than January 9, 2015. By this letter, the State indicates its support for these projects.

As your letter noted, Idaho and the Department of Energy (DOE) have worked cooperatively to promote research activities at the INL, including allowing DOE to bring small amounts of commercial SNF to Idaho that are otherwise prohibited by Idaho's 1995 Settlement Agreement with DOE. For example, in 2004, Idaho

The Honorable Dr. Ernest J. Moniz, Secretary
January 8, 2015
Page 2

It is for this reason that Idaho must carefully evaluate, on a case-by-case basis, any conditional waiver of section D.2.e.

We look forward to resolving the current noncompliance issues at INL.

Sincerely,

Handwritten signature of C. L. "Butch" Otter.

C. L. "BUTCH" OTTER
Governor
State of Idaho

Handwritten signature of Lawrence G. Wasden.

LAWRENCE G. WASDEN
Attorney General
State of Idaho

are, the 2011 Memorandum of Agreement is not operative at this
DOE is not in compliance with the 1995 Settlement Agreement.
Idaho remains supportive of the type of research described in your
grant a one-time, conditional waiver to allow receipt of the proposed
at INL if DOE and Idaho are able to agree upon an enforceable
and timeframe for timely resolving the 1995 Settlement Agreement
issues.

February 27, 2015



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WARDEN

February 27, 2015

The Honorable Dr. Ernest J. Moniz, Secretary
United States Department of Energy
1000 Independence Ave., S.W.
Washington, DC 20585

RE: Waiver Request for Research Spent Fuel Projects

Dear Secretary Moniz:

On December 31, 2014, you sent a letter addressed to Governor C.L. "Butch" Ott requesting "an indication of support from the State of Idaho for two research projects involving receipt at the Idaho National Laboratory (INL) of spent nuclear fuel (SNF). This request was necessitated by the fact that paragraph D.2.e of the 1995 Settlement Agreement expressly prohibits the Department of Energy (DOE) from shipping commercial spent fuel to INL.

On January 8, 2015, Governor Otter and I sent you a letter expressing our support for commercial spent fuel research at INL. That letter, however, noted that the 2011 Memorandum of Agreement, providing a limited waiver for receipt of commercial spent fuel at INL, was not operative because of DOE's noncompliance with the 1995 Settlement Agreement. The letter made clear that "any conditional waiver of section D.2.e" would be determined on a case-by-case basis. The letter further stated that any conditional waiver would be contingent upon reaching agreement "upon an enforceable commitment and timeframe for timely resolving the 1995 Settlement Agreement noncompliance issues."

The support I expressed in the January 8, 2015 letter arose in the context of a January 6, 2015 meeting I had with Dr. Pete Lyons, Assistant Secretary of Nuclear Energy; Mark Whitney, Principal Deputy Assistant Secretary for Environment and Management; and other DOE staff. In that meeting, I advised your representatives I would not agree to the granting of a conditional waiver of paragraph D.2.e for the receipt of any commercial spent fuel at INL, until such time as the Integrated Waste Treatment Unit is operational and DOE has entered into an enforceable commitment to resolve the 1995 Settlement Agreement noncompliance issues. Further, I told your representatives that if DOE took title to the commercial spent fuel rods described in your letter, it did so at its own risk.

The Honorable Dr. Ernest J. Moniz, Secretary
February 27, 2015
Page 2

I was informed by your representatives that they anticipated the Integrated Waste Treatment Unit could be operational before December 31, 2015. Based upon that representation, I indicated that I would consider granting a conditional waiver for the proposed shipment from the North Anna Power Plant, provided the Integrated Waste Treatment Unit was operational before December 31, 2015 and DOE had entered into an enforceable agreement to resolve the 1995 Settlement Agreement noncompliance issues. I also advised your representatives that, based upon the information provided, I was not inclined to support a conditional waiver for the Byron Nuclear Generating Station or Three Mile Island project.

I have taken the time to memorialize these discussions because I recently learned from the Idaho Department of Environmental Quality that DOE representatives have indicated the Integrated Waste Treatment Unit may not be operational prior to the end of 2015. Indeed, my understanding is that DOE has represented that the deadline to be

By this letter I am again advising DOE that I will waive for the North Anna Power Plant spent fuel. The Integrated Waste Treatment Unit is operational and DOE has entered into an enforceable commitment to resolve the 1995 Settlement Agreement noncompliance issues. Further, by this letter, I am again notifying DOE that I will not accept spent fuel rods from either the Byron Nuclear Generating Station or Three Mile Island if DOE does so at its own risk. Again, I am not willing to grant a conditional waiver of section D.2.e for Byron Nuclear Generating Station spent fuel until the commercial spent fuel shipments to INL, until such time as the Integrated Waste Treatment Unit is operational and DOE has entered into an enforceable commitment to resolve the 1995 Settlement Agreement noncompliance issues.

Dr. Peter Lyons, DOE
Mark Whitney, DOE

August 14, 2015



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

Mr. John Kotek
August 14, 2015
Page 2

August 14, 2015

Mr. John Kotek
Acting Assistant Secretary
Office of Nuclear Energy
U.S. Department of Energy
1000 Independence Avenue, SW

have an obligation to ensure that DOE complies with the terms and conditions of Governor Phil Batt's 1995 Settlement Agreement. The 1995 Settlement Agreement links the INL research mission to DOE's compliance with the cleanup milestones. Thus, any request to waive the prohibitions in the 1995 Settlement Agreement must address both matters. I propose the enclosed Supplemental Agreement as a pathway forward to fulfilling both missions.

Under the proposed Supplemental Agreement, Idaho would grant DOE a waiver for the receipt of not more than 25 fuel rods each from the North Anna Power Plant and the Byron Nuclear Generating Station for spent fuel research purposes subject to the following conditions:

First, DOE would have to demonstrate sustained operation of the Integrated Waste Treatment Unit (IWTU) prior to receiving the North Anna and Byron fuels. As stated in the Supplemental Agreement, "sustained operation" would be defined as successful treatment of sodium bearing high level liquid waste resulting in at least 100 casks of dry solid high level waste.

First, DOE would have to demonstrate sustained operation of the Integrated Waste Treatment Unit (IWTU) prior to receiving the North Anna and Byron fuels. As stated in the Supplemental Agreement, "sustained operation" would be defined as successful treatment of sodium bearing high level liquid waste resulting in at least 100 casks of dry solid high level waste.

Second, the Supplemental Agreement incorporates DOE's proposal to ship TRIGA SNF and EBR-2 heavy metal out of Idaho to ensure there is not only no net increase in the amount of spent fuel at INL, but a net decrease.

Third, the Supplemental Agreement addresses DOE's failure to comply with the Transuranic (TRU) waste shipment provisions of the 1995 Settlement Agreement. While I appreciate that the shutdown of WIPP was an unforeseen circumstance, DOE's obligations relating to TRU waste remain of great concern to Idaho. Assuring that DOE promptly returns to compliance with its obligations under the 1995 Settlement Agreement once WIPP reopens also needs to be addressed. Thus, I propose that DOE commit to retrieval and packaging for shipment of above-ground TRU waste located at INL by December 31, 2018 – the deadline in the 1995 Settlement Agreement. Further, that DOE commit to retrieval and packaging of buried transuranic waste by December 31, 2019, and that DOE place Idaho's TRU waste on a priority shipment schedule once WIPP is reopened.

Finally, to assure compliance with the proposed terms of the Supplemental Agreement, I propose DOE be subject to a \$60,000 penalty for each day that it fails to meet the terms of the Supplemental Agreement. This is the same penalty provided for in the 1995 Settlement Agreement for failure to remove SNF from Idaho.

The proposed Supplemental Agreement seeks to maintain the balance struck in the 1995 Settlement Agreement between the INL research mission and DOE's commitment to the cleanup of INL. I look forward to discussing this proposal.

Sincerely,

Handwritten signature of Lawrence G. Wasden.

LAWRENCE G. WASDEN
Attorney General

LGW:jc

enclosure

September 22, 2015

Department of Energy
Washington, DC 20585

September 22, 2015

CONFIDENTIAL

By electronic mail and USPS

The Honorable Lawrence G. Wasden
Attorney General
State of Idaho
700 W. Jefferson Street, Suite 210
Boise, ID 83720-8071

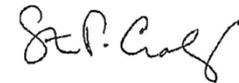
Dear Attorney General Wasden:

I am in receipt of your letter of August 14, 2015 to John Kotek, Acting Assistant Secretary for Nuclear Energy. As you note, you and representatives of the Department of Energy have been engaged in communications over a period of months regarding proposed shipments of small quantities of commercial spent nuclear fuel to the Idaho National Lab (INL). As you know, these shipments would consist of one shipment of approximately 50 kilograms of heavy metal from the North Anna Nuclear Power Station, and another of the same quantity from the Byron Nuclear Power Station, for research purposes at INL. Mr. Kotek has on a number of occasions offered to explore the

a waiver by that date. I am hopeful that such an agreement can be reached between the Department and the State of Idaho, and I would welcome further discussion if there is an opportunity for agreement.

If you have any questions or wish to discuss this matter further, please do not hesitate to contact me at (202) 586-5281.

Sincerely,



Steven P. Croley
General Counsel

of August 14 proposes to grant a waiver of the suspension of spent fuel at INL—which the Department had understood from the letter of January 8, 2015, that you and Governor Otter would be allowed—only if the Department meets a number of additional conditions, including among others the sustained operation of the Waste Treatment Unit. Some of these conditions would subject the State of Idaho to daily monetary penalties, and some fail to acknowledge constraints

As we have previously indicated, the Department must make alternative plans for the first spent fuel shipment this fall. While we continue to prefer to utilize the assets at INL and for the laboratory to benefit from this important research, we must begin the process of shipping it elsewhere on October 9, 2015, unless we can reach final written agreement on

September 25, 2015

In the second paragraph of your September 22 letter, you state:

As Mr. Kotek has previously indicated, additional conditions cannot form the basis of a reasonable accommodation.

I find this assertion curious. DOE has specifically requested and sought a waiver. It is reasonable for Idaho to request compliance with the direct terms of the 1995 Settlement Agreement as a pre-condition to DOE's request to waive another provision of the same Agreement. This is particularly so when one considers that the 1995 Settlement Agreement contains the terms to which DOE voluntarily agreed. Those terms are contained in an Order issued by the Federal District Court and the Settlement Agreement was subjected to, and passed, a referendum by the citizens of the State of Idaho.

addressed to John Kotek, Acting Assistant Secretary for the Office of Nuclear Energy, DOE. Based upon your assertions of exigency to make a decision, may I respectfully suggest that face-to-face negotiations will be more efficient and productive. I will make myself available for negotiations. In the spirit of advancing discussion, however, I provide

Nor are additional conditions consistent with the expectations of representatives of the Department following meetings with Idaho's Department of Environmental Quality that lead [sic] to the March signing of the Notice of Non-Compliance Consent Order.

There is no basis for DOE to have expected that the IDEQ Consent Order would substitute for compliance with the Settlement Agreement. As you recall, I sent a letter to Dr. Ernest J. Moniz dated February 27, 2015 reaffirming my position that DOE must "enter into an enforceable agreement to resolve the 1995 Settlement Agreement noncompliance issues." This letter was sent and received well before DOE signed the Consent Order with IDEQ and again put DOE on notice that signing the Consent Order was not going to fully resolve DOE's noncompliance with the 1995 Settlement Agreement. With some redundancy, I specifically noted in the letter my expectation that DOE have the Integrated

ted calcination of sodium bearing tlement Agreement paragraph E. ns of sodium bearing high level River Plain Aquifer. As you are the 1995 Settlement Agreement pments of SNF to Idaho (1995 remedy has been in place since IE satisfactorily addresses its

state:

conditions cannot form the basis

waiver. It is Settlement the same Settlement terms are Agreement of the State of Idaho. ssertion that these terms are i are simply measures to be ant Agreement.

ectations of representatives of Department of Environmental he Notice of Non-Compliance

IDEQ Consent Order would As you recall, I sent a letter to position that DOE must "enter ent Agreement noncompliance signed the Consent Order with nt Order was not going to fully nt Agreement. With some that DOE have the Integrated

September 25, 2015

Via e-mail to steve and U.S. P.

Mr. Steven P. Croll
General Counsel
U.S. I
1000
Wash

Dear I

Thank address:

DOE. Based upon suggest that face-to myself available for the following respon

Your letter acknow addressed to DOE request to allow SN the Secretary's der follows:

As you are i time becaus Nonetheless, letter and w proposed SN enforceable Agreement n

You are no doubt aw with the 1995 Settle 2014 DOE has fail Transuranic (TRU) v

¹ I have personally viewed DOE's cleanup activity at INL and sincerely applaud DOE's successful efforts to continue cleanup and prepare TRU waste for shipment to WIPP or some other facility. I have also personally visited WIPP and recognize the challenges DOE faces in reopening that facility.

September 25, 2015

Mr. Steven P. Croley
September 25, 2015
Page 3

Waste Treatment Unit (IWTU) operational as a pre-condition to importing SNF shipments into Idaho.²

Compliance Consent Order. The 1995 Settlement Agreement is the resolution of a separate lawsuit by the State of Idaho against DOE. The IDEQ Notice of Non-Compliance Consent Order is issued in an enforcement action by IDEQ for a variety of DOE RCRA violations. Although addressing similar issues, the two proceedings are not the same.

While the Consent Order signed in March addresses DOE's noncompliance with the RCRA Consent Order, DOE has yet to address its noncompliance with the 1995 Settlement Agreement and has not yet suggested a pathway forward to bring DOE into compliance. This was made clear in both the January 8 and February 27 letters, which directly stated that the condition precedent for DOE receiving a waiver is for DOE to resolve "the 1995 Settlement Agreement noncompliance issues." (Emphasis added.) DOE entering into the IDEQ Notice of Non-Compliance Consent Order and agreeing to pay penalties, did not, in any way, resolve the 1995 Settlement Agreement noncompliance issues. The path forward to resolve the 1995 Settlement Agreement noncompliance issues is for DOE to perform. I continue to wait for any proposal DOE wants to make or discussion DOE may wish to have on these issues.

DOE has repeatedly assured me that the IWTU will be operational. I take DOE at its word. If DOE believes the IWTU will be operational³, it should have no difficulty agreeing

² The redundancy to which I refer is the fact that the January 8 letter refers to the "1995 Settlement Agreement noncompliance issues." As I have previously pointed out in this letter, there are two such issues: 1) failure to ship TRU Waste; and 2) failure to process 900,000 gallons of sodium bearing high level liquid waste. As you are aware, the machine designed to process the liquid waste is called the Integrated Waste Treatment Unit (IWTU). The startup of the IWTU was the subject of direct discussions between me and DOE Representatives Pete Lyons, Liz Ramsey and Mark Whitney in my office on January 6, 2015. The DOE representatives indicated that (although they did not promise) they were confident the IWTU would be operational in September 2015. I took them at their word. As a consequence, my decision to agree to negotiate a one-time conditional waiver was itself conditioned on the DOE representation that the IWTU would be operational in September 2015. Therefore, the issue concerning the IWTU was included in the January 8 letter as one of the two "1995 Settlement Agreement noncompliance issues."

However, as my February 27 letter pointed out, DOE representatives negotiating with the IDEQ repudiated the prior DOE representations that the IWTU would be operational in September 2015. When DOE representatives changed their position during the negotiations with IDEQ, it became apparent that I needed to reiterate the condition precedent to DOE obtaining a waiver. As a consequence, I sent the February 27 letter that restated the condition that DOE "enter into an enforceable agreement to resolve the 1995 Settlement Agreement noncompliance issues" and for emphasis and clarity, redundantly stated that I would negotiate a conditional waiver, "provided the Integrated Waste Treatment Unit was operational before December 31, 2015."

³ Please note that my definition of "operational" comes from Bill Lloyd, the lead engineer on the IWTU. Mr. Lloyd told me that he would deem the IWTU operational after it has generated 100 casks of dry waste.

Mr. Steven P. Croley
September 25, 2015

that included an attached draft conditional waiver with a number of terms for further discussion and explanation. In order to allay any of your concerns, I stand ready to discuss that proposal. Although Mr. Kotek has proposed these alternatives continue to neglect my condition that a waiver be contingent on DOE noncompliance with the 1995 Settlement Agreement.

For example, terms relating to TRIGA waste and EBR-2 waste were suggested by Mr. Kotek as an alternative to having the IWTU operational. While I told Mr. Kotek that his proposal did not suffice as an alternative, I indicated a willingness to consider EBR-2 as one element of the waiver agreement. Thus, I included this proposal in the conditional waiver. I await any discussion you may wish to have with regard to the conditional waiver.

Finally, I note that your September 22, 2015 letter creates a self-imposed deadline for reaching a "final written agreement on a waiver." That is certainly not what DOE engages in meaningful, good faith negotiations. I have not imposed a deadline in this matter and I have been available to discuss all issues with DOE on an ongoing basis since DOE contacted me on December 31, 2014. For DOE to dictate terms to Idaho without addressing the 1995 Agreement with me is unacceptable.

Please note that I have responded within three days. In contrast, DOE took a week to respond to my last letter. As you know, negotiations involve give and take. I suggest that face-to-face negotiations with persons from DOE authorized to discuss these issues would be more productive.

C: The Honorable C. L. "Butch" Otter

October 13, 2015



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

October 13, 2015

Via e-mail to steven_croley@hq.doe.gov and john.kotek@ne.doe.gov
and U.S. Postal Service

Mr. Steven P. Croley
General Counsel
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, DC 20585

Mr. John Kotek
Acting Assistant Secretary
Office of Nuclear Energy
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, DC 20585

RE: Request for a Waiver of the 1995 Settlement Agreement

Dear Messrs. Croley and Kotek:

I appreciated the opportunity to meet with you last Wednesday, October 7. Also, thank you for your follow-up call last Friday, October 9, in which you conveyed the Department of Energy's (DOE) offer that, in exchange for allowing two shipments of Commercial Spent Nuclear Fuel (SNF) to come to Idaho, DOE would remove two times that amount of heavy metal from Idaho, and that Secretary Moniz was willing to come to Idaho for a press conference to help explain the benefit of these shipments.

While I appreciate DOE's offer, it does not address the underlying problem – DOE is not in compliance with the 1995 Settlement Agreement (1995 Agreement). As I hope I have

objectives of the 1995 Agreement – the clean-up of INL and the research mission of the Laboratory. Through open and candid conversation, I am hopeful that we can find a pathway for reaching a resolution that fulfills both the research and cleanup objectives of the 1995 Agreement. Thus, enclosed is a counter proposal that, in combination with your proposal, would address both DOE's request for a waiver and provide for a cure of DOE's breach of the 1995 Agreement.

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October 13, 2015
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I have long been a supporter of the research mission of the INL and fully appreciate and understand the importance of the INL research mission. I demonstrated my support by agreeing to the 2011 Memorandum of Agreement ("2011 MOA") that would have provided a waiver for limited quantities of commercial fuel, such as those DOE currently desires to ship INL. Unfortunately, the 2011 MOA is inoperative because of DOE's breach of the 1995 Agreement.

in my February 27, 2015 letter, I have no objection to the shipment of the two research quantities of spent fuel coming to Idaho, so long as there is an enforceable agreement in place to resolve DOE's breach of the 1995 Agreement. Our recent discussions have illuminated the issues for me, and I hope that the attached proposal will provide a pathway to cure DOE's breach of the 1995 Agreement so that INL can conduct this research consistent with the 2011 MOA.

One thing that has become clear in our recent discussions is, that while DOE remains committed to the Integrated Waste Treatment Unit (IWTU) project and hopes it will prove successful, there is growing concern among DOE staff as to whether this technology will ever be deemed safe enough to begin treatment of radioactive waste. If that proves to be true, it will be many years before DOE will be able to meet the

requirements of Section 2.10 of the Settlement Agreement and the impeding other provisions of the 1995 Agreement (e.g. E.6 and C.3). Even if DOE concludes the IWTU is able to treat waste, it is apparent that both DOE and Idaho must reach an agreement on how to cure DOE's noncompliance with the deadlines of the 1995 Agreement. Likewise, with respect to DOE's breach relating to Transuranic Waste, I have come to realize that DOE may not have any options available to meet its obligation under the 1995 Agreement to remove the Transuranic Waste by 2018. I realize I cannot ask DOE to do the impossible as a condition of reaching an agreement on a waiver. At the same time, I cannot, consistent with my duty as Attorney General, agree to grant a waiver to allow DOE to bring fuel to Idaho (Idaho's only remedy under the 1995 Agreement) without addressing how DOE intends to cure its breach of the 1995 Agreement.

Therefore, we must agree on a new course and timeline so that DOE meets its ultimate obligation to treat the High Level Waste in Idaho so that it is ready for shipment to a disposal site by the end of 2035, and to remove the Transuranic Waste from Idaho as soon as practicable, once there is a location to which it can be shipped. The attached proposal represents an amendment to the 1995 Agreement that charts such a course

October 13, 2015

Mr. Steven P. Croley
Mr. John Kotek
October 13, 2015
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and asks that DOE renew its commitment to Idaho by agreeing to pursue alternatives, make decisions, and commit to milestones designed to meet these ultimate objectives. Those interim milestones and agreements are modeled after terms to which DOE already agreed in the 1995 Agreement (e.g. E.6) or to which DOE has already agreed in other contexts (e.g. Fifth Modification to NON-CO). If we can reach an agreement on how to cure DOE's noncompliance with the 1995 Agreement, I can in good conscience

proposal addresses three areas of concern. First, it asks DOE to cure its breach of the Sodium Bearing High Level Waste, by making decisions regarding the selection of a new alternative, if necessary, and committing to implement that alternative in a time certain.¹ Second, it asks DOE to continue work that is required to calcine so that it is likewise completed in a time certain. Delays associated with WIPP/WTU have resulted in delays relating to this work, so Idaho is asking that DOE commit itself to assuring the waste is treated and "road ready." Finally, the proposal asks DOE to cure its breach relating to Transuranic Waste shipments by pursuing alternatives to cure its breach (such as shipment to Texas) and if that cannot occur, then Idaho's waste for shipment to WIPP once it reopens.

If we can reach general consensus on the pathway for curing DOE's breach of the 1995 Agreement, I am prepared to offer DOE the assurance it needs to move forward with the two proposed shipments of research quantities of spent fuel. Even if we cannot reach such agreement prior to your deadline for deciding where to ship the North Anna spent fuel, I am hopeful we can continue the discussion as it relates to the shipment from the Byron Generating Station, since the window relating to this shipment has more flexibility. Such an agreement, coupled with DOE's commitment that any commercial SNF brought to Idaho will be offset by two times that amount of heavy metal being shipped from Idaho, will allow both Idaho and DOE to move forward toward the future.

¹ In the attached amendment, I have left this and certain other dates blank so that we can have a candid discussion regarding time frames for DOE to meet the obligations. I must emphasize, however, that while the interim dates are open to discussion, the end-date of 2035 in the 1995 Agreement is not negotiable. The interim dates must be such that they will ensure that DOE complies with the 2035 end-date.

Mr. Steven P. Croley
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Again, I thank you for the time and attention you have dedicated to this matter, and I look forward to discussing this with you.

Sincerely,



LAWRENCE G. WASDEN
Attorney General

LGW:jc

Attachment

C: The Honorable C. L. "Butch" Otter

October 20, 2015

CONFIDENTIAL

Department of Energy
Washington, DC 20585

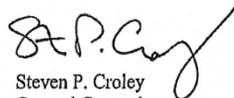
October 20, 2015

The Honorable Lawrence G. Wasden
Attorney General
State of Idaho
P.O. Box 83720
Boise, ID 83720-8071

Dear Attorney General Wasden,

Thank you for your October 13, 2015, letter, and for the time you have taken to meet and speak with John Kotek and me by phone concerning the Department of Energy's proposal to make two shipments of commercial spent nuclear fuel, totaling approximately one hundred kilograms, to the Idaho National Laboratory (INL) for research purposes. I consider the time that you, I, and others have invested in our meetings and conversations to have laid an important foundation for future amicable and candid discussions regarding the Department's work in Idaho. I also appreciate acknowledgment by you and others representing the State of Idaho of the significant progress the Department has made in its efforts to clean-up the legacy wastes at the INL, and the important processes and efficiencies adopted over the years to prevent any adverse environmental impacts resulting from INL's on-going research and development work.

While the Department shares your commitment to the cleanup of the INL and to the resolution of the current issues regarding IWTU and transuranic waste, it is not realistic for us to establish the additional conditions you propose in exchange for allowing small amount of spent fuel for research work at INL. Accordingly, the Department will begin to make preparations to ship the research fuel from the North Anna Power Station that we have discussed to another Department of Energy laboratory.


Steven P. Croley
General Counsel

October 21, 2015



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

October 21, 2015

Via e-mail to steven.croley@hq.doe.gov
and U.S. Postal Service

Mr. Steven D. Croley

Thank you for your letter of October 20, 2015. I want to clarify one statement in your letter. My October 13, 2015 letter did not propose additional conditions; rather, I only requested that the Department of Energy (DOE) agree to a process for curing its violations of the 1995 Settlement Agreement. While DOE has negotiated a Noncompliance Consent Order with the Idaho Department of Environmental Quality (IDEQ), as I have repeatedly made clear, the Noncompliance Consent Order does not cure DOE's defaults under the 1995 Settlement Agreement. The IDEQ Consent Order only resolves DOE's violations of RCRA.

unwilling to engage in negotiations to resolve these defaults. I do not think it is "unrealistic" to ask DOE to comply with a voter and federal court-approved agreement. I am asking for nothing more than what the federal government expects of private business.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence G. Wasden".

LAWRENCE G. WASDEN
Attorney General

LGW:jc

C: The Honorable C. L. "Butch" Otter

March 11, 2016



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WARDEN

March 11, 2016

Sent via e-mail Frank.Marcinowski@em.doe.gov
and via U.S. postal service

Frank Marcinowski
Deputy Assistant Secretary for Waste Management
United States Department of Energy
Office of Environmental Management
1000 Independence Ave. S.W.
Washington, D.C. 20585

RE: Settlement Offer for Curing Breach of 1995 Settlement Agreement Subject to IRE 408

Dear Mr. Marcinowski:

Thank you for your e-mail of March 10, 2016 containing the following proposal:

A conditional waiver is approved to allow 25 spent fuel rods from the Byron Nuclear Generating to be shipped to the Idaho National Laboratory. The fuel rods will be kept intact until treatment of radioactive liquid waste stored in the Idaho tank farm facility commences. After treatment of this radioactive liquid waste has commenced, the provisions of the 2011 MOA will then be in effect. If treatment of the radioactive liquid waste stored in the Idaho tank farm facility does not begin by December 31, 2018, the 25 spent fuel rods will be removed

encouraged to learn from your proposal that DOE is capable of removing the spent fuel from the Byron reactor and storing it for an interim period prior to beginning the research. This indicates flexibility on the part of DOE with regard to this. However, your offer falls far short of giving Idaho assurance that if DOE fails to get the Integrated Waste Treatment Unit operational, the Byron SNF will leave Idaho.

Deputy Assistant Secretary Marcinowski

Your proposed remedy only gives Idaho the power to stop future shipments, compel the Byron fuel's removal.

As my staff has previously communicated to you, I am willing to support granting a waiver to the 1995 Settlement Agreement prohibition on commercial Spent Nuclear as follows:

A conditional waiver to allow 25 spent fuel rods from the Byron Nuclear Generating to be shipped to the Idaho National Laboratory for reprocessing purposes, subject to two conditions precedent. First, the fuel may not arrive in Idaho until such time as the IWTU has achieved "hot operations" and processing Sodium Bearing Liquid High Level Waste (SBLHLW). Second, the fuel may not arrive in Idaho until such time as Idaho and DOE have agreed to an enforceable shipment schedule of TRU waste from INL to WIPP (upon resumption of WIPP operations) that provides a path to cure DOE's breach of Section B.1.c and impending breach of section B.1.

doing so reassures Idaho of DOE's legal duty to comply with the 1995 Settlement Agreement. I am confident that we can reach an agreement on the TRU waste shipments during the period in which DOE works to attain hot operations of the IWTU; thus, the second condition should not add any additional time to this process.

My proposal provides certainty to DOE, while protecting the integrity of the 1995 Settlement Agreement, and I look forward to continuing this discussion with you.

Sincerely,

Handwritten signature of Lawrence G. Warden in black ink.

LAWRENCE G. WARDEN
Idaho Attorney General

LGW/tjn

cc: Governor C.L. "Butch" Otter
Raymond Furstenau
Director John Tippetts
Jack Zimmerman
Peggy Hinman

March 15, 2016



Department of Energy
Washington, DC 20585

March 15, 2016

The Honorable Lawrence G. Wasden
Attorney General
State of Idaho
700 W. Jefferson Street, Suite 210
P.O. Box 83720
Boise, ID 83720-8071

Dear Attorney General Wasden,

spent nuclear fuel in PWR operations were not achieved, and the Department's commitment to the research and development mission at Idaho National Laboratory. In light of the conditions outlined in your response and the time constraints associated with movement of the Byron spent nuclear fuel, we must evaluate other options for this research and development program work. We appreciate your prompt response to our proposal.

A handwritten signature in black ink, appearing to read "John F. Kotek".

John F. Kotek
Acting Assistant Secretary
for Nuclear Energy

cc: Governor C.L. "Butch" Otter
Monica Regalbuto
Steven Croley
Kedric Payne
Frank Marcinowski
Richard Provencher