

Federal Facility Compliance Agreement on Storage of Polychlorinated Biphenyls, August 8, 1996

NOTE: As of December 16, 1996, for the Oak Ridge Reservation this National Agreement was superseded by the Oak Ridge Reservation Polychlorinated Biphenyl Federal Facilities Compliance Agreement (ORR-PCB-FFCA). The ORR-PCB-FFCA will be available soon.

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I. Introduction

1. The U.S. Environmental Protection Agency (EPA), the U.S. Department of Energy (DOE), and the U.S. Naval Nuclear Propulsion Program (NNPP) are the parties to this Federal Facility Compliance Agreement (FFCA or Agreement), entered into pursuant to Executive Order 12088, October 13, 1978 (43 FR 47707), and the Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 *et seq.* Certain Naval Shipyards identified in Section IV (Statement of Facts and Conclusions of Law), paragraph 3, are included in this Agreement based on the joint DOE/Navy nature of the Naval Nuclear Propulsion Program.

2. This Agreement is entered into by the Parties because DOE and the NNPP are unable at this

time to comply with the regulations in 40 CFR 761.65(a), which require polychlorinated biphenyls (PCBs) stored for disposal to be removed from storage and disposed of within one year of being placed in storage, and the Department of Transportation (DOT) container specifications in 40 CFR 761.65(c)(6), with respect to covered PCB wastes as described in Section III (Covered Materials).

3. DOE and the NNPP recognize their obligation to comply with TSCA and its implementing regulations set forth in 40 CFR Part 761, and Executive Order 12088, Sections 1-3, which authorize EPA to monitor Federal compliance with applicable pollution control standards.

4. This Agreement does not address any legal or regulatory obligation other than those expressly provided herein.

5. DOE and the NNPP consent to jurisdiction for purposes of entry and enforcement of this Agreement by EPA subject to requirements set forth in Section XII (Access/Data/Document Availability), provided however, that DOE and the NNPP do not admit, accept, concede or acknowledge the determinations, allegations, findings of fact, and conclusions of laws set forth in this Agreement and specifically reserve the right to contest any such determinations, allegations, findings of fact, and conclusions of law in any proceeding other than actions brought by EPA to enforce this Agreement. By entering into this Agreement, DOE and the NNPP do not waive any claim of sovereign immunity they may have under Federal law that is not expressly waived by statute; nor do they waive any immunity from payment of fines or penalties or any claim of jurisdiction on matters reserved under the Atomic Energy Act.

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II. Definitions

Except as provided below or otherwise explicitly stated herein, the definitions provided in TSCA shall control the meaning of the terms used in this Agreement.

1. "Agreement" means this Federal Facility Compliance Agreement.
2. "Atomic Energy Act (AEA)" shall mean the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 et seq.
3. "Days" shall mean calendar days, unless otherwise specified. Any notice, deliverable, or other requirement under the terms of this Agreement that would be due on a Saturday, Sunday or holiday shall be due on the first work day following the Saturday, Sunday or holiday.
4. "DOE" shall mean the United States Department of Energy and its authorized representatives.
5. "EPA" shall mean the United States Environmental Protection Agency and its authorized representatives.
6. "Fissionable Radioactive Waste" shall mean radioactive waste which contains nuclides (e.g., plutonium) capable of sustaining a neutron induced fission chain reaction (criticality), requiring accountability per DOE Orders.

7. "Low-Level Radioactive Waste Policy Act" shall mean the Low-Level Radioactive Waste Policy Act of 1980, 42 U.S.C. §2021, *et seq.*, as amended by Pub. L. 99-240 (Jan. 25, 1986).

8. "NNPP" shall mean the Naval Nuclear Propulsion Program, executed by both the Department of Energy and the Department of the Navy, and its authorized representatives.

9. "Radioactive Waste" shall mean radioactive waste that is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined in Section 11e.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

10. "Resource Conservation and Recovery Act" 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, Pub. L. 98-616, and the Federal Facility Compliance Act of 1992, Pub. L. 102-386.

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III. Covered Materials

1. Except as specifically set forth elsewhere in the Agreement, this Agreement shall apply only to the TSCA one year storage for disposal requirements as set forth in 40 CFR 761.65(a), and container storage requirements set forth in 40 CFR 761.65(c)(6), pertaining to past, on-going and future accumulations and storage at DOE facilities and the Naval Shipyards, specified in Section IV (Statement of Facts and Conclusion of Law), paragraph 3 of the PCB waste component of:

(a) articles or containers of wastes which are managed by or for DOE or the NNPP as radioactive wastes under the AEA and accepted as a DOE responsibility under the Low-Level Radioactive Waste Policy Amendments Act of 1985, which also contain PCBs subject to TSCA; and

(b) articles or containers of wastes which are managed by or for DOE or the NNPP as radioactive wastes under the AEA and accepted as a DOE responsibility under the Low-Level Radioactive Waste Policy Amendments Act of 1985, which also contain PCBs subject to TSCA and hazardous waste subject to RCRA.

2. This Agreement applies to the PCB component of the radioactive PCB waste stored at Naval shipyards managed by the NNPP covered under Executive Order 12344 statutorily prescribed by Public Law 98-525 (42 U.S.C. 7158 note), and accepted as a DOE responsibility under the Low-Level Radioactive Waste Policy Amendments Act of 1985.

3. The parties acknowledge that this Agreement does not address TSCA PCB compliance issues other than those compliance issues specifically addressed herein. Except for the one year storage for disposal and the container requirements, DOE and NNPP agree to store wastes in Section III (Covered Materials), 1(a) and (b) and 2 above, hereafter referred to as "covered PCB wastes", in accordance with the requirements of 40 CFR 761.65, unless alternative storage practices have been agreed to between an affected site and the cognizant EPA Regional office.

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IV. Statement of Facts & Conclusions of Law

1. The DOE and the NNPP are departments, agencies or instrumentalities of the Executive Branch of the Federal Government and must comply with the requirements of TSCA, 15 U.S.C. §2605 (e)(1)(A).
2. Facilities covered by this Agreement for which DOE is responsible include the Los Alamos National Laboratory, Mound Plant, Sandia National Laboratory (NM), Argonne National Laboratory East, Battelle Columbus Laboratory, Brookhaven National Laboratory, Idaho National Engineering Laboratory, West Valley Demonstration Project, Nevada Test Site, Fernald, Formerly Utilized Site Remedial Action Program Sites (Weldon Springs, Santa Suzanna), Grand Junction Projects Office, Hanford Site, Rocky Flats Environmental Technology Site, Lawrence Berkeley Laboratory, Lawrence Livermore National Laboratory, Energy Technology Engineering Center, Savannah River Site, Bettis Atomic Power Laboratory, and Knolls Atomic Power Laboratory (Nisknyuns, Windsor and Kesselring sites) and the Oak Ridge Reservation (ORR) with respect to the following facilities: Oak Ridge National Laboratory, Oak Ridge Y-12 Plant, Oak Ridge K-25, to the extent provided in paragraph 4 below.
3. The Naval shipyards covered by this Agreement are Pearl Harbor Naval Shipyard, Puget Sound Naval Shipyard, and Norfolk Naval Shipyard.
4. DOE Oak Ridge is currently negotiating a TSCA agreement with EPA Region IV, which will supplant the requirements of the existing Gaseous Diffusion Plant agreement between DOE and EPA Headquarters executed on February 20, 1992. The EPA Region IV agreement may also include provisions concerning compliance with the one year storage provision of 40 CFR 761.65(a), as well as other TSCA compliance matters at other ORR facilities identified in paragraph 2 above. Pending execution of the EPA Region IV agreement, the ORR facilities not covered by the February 20, 1992 agreement and identified in this national Agreement shall be subject to, and comply with, the requirements of this national Agreement with respect to compliance with 40 CFR 761.65(a) and 761.65(e)(6). Upon execution of the EPA Region IV agreement, all ORR facilities included in the EPA Region IV agreement shall cease to be covered by or subject to the provisions of this national Agreement, unless otherwise provided in the EPA Region IV agreement.
5. EPA has proposed regulations concerning the subject matter of this national Agreement (59 FR 62788, December 6, 1994). This Agreement is intended to serve as a bridge between the current situation and the final regulations that are issued after considering public comment on the proposed regulations. Once a final rule is promulgated, the Parties intend that the new rule will supplant this Agreement.
6. The DOE sites are either owned and operated by the United States and co-operated by contractors, or not owned by DOE but are sites where DOE has accepted contractual responsibility.
7. The Naval shipyards are owned and operated by the United States.

8. The addresses of all the facilities covered under this Agreement are listed in Attachment I.

9. According to DOE and the NNPP, they are unable to comply with 40 CFR 761.65(a), at all itemized facilities with respect to covered PCB wastes due to the lack of disposal capacity. Lack of disposal capacity includes insufficient time to complete the disposal process and/or the absence of a disposal technology. 40 CFR 761.65(a) requires that any PCB article or PCB container stored for disposal after January 1, 1983, be removed from storage and disposed of as required by Subpart D within one year from the date that it was first placed in storage.

10. According to DOE and NNPP, the capacity currently available for the disposal of covered PCB wastes is not sufficient to accommodate the DOE and the NNPP current inventory of such wastes. Even when additional treatment facilities are constructed, it will take several years to process the volume of covered PCB wastes being stored.

11. According to DOE and NNPP, they are unable to comply with the DOT container requirements specified in 40 CFR 761.65(c)(6) for some existing and newly generated covered PCB waste. This is because DOT has changed the packaging requirements (see 49 CFR 178) and production of containers meeting the old DOT specifications, such as 178 steel drums, has ceased. EPA proposed an amendment to 40 CFR 761.65(c)(6) (59 FR 62867, December 6, 1994), which will be consistent with the new DOT container performance standards. Until such time as the container requirements found in 40 CFR 761.65(c)(6) are revised, containers outlined in Section V (Compliance Requirements) will be deemed as not presenting an unreasonable risk of injury to human health and the environment, and may be used.

12. DOE also has fissionable radioactive waste that also contain PCBs at some sites, which must be stored in special containers designed to meet Nuclear Criticality Safety requirements specified in American National Standard Institute (ANSI) Standard Number 8.1, American National Standard for Criticality Safety Operations with Fissile Materials Outside Reactors.

13. This Agreement is not to be construed as a justification for relaxing efforts to dispose of PCB waste. DOE and NNPP will apply best efforts to dispose of stored PCB waste as quickly as possible in existing disposal facilities and to develop alternative technologies to hasten disposal. The parties recognize, however, that pursuant to the Federal Facility Compliance Act of 1992, DOE is required to develop capacity and technology for the treatment of mixed (hazardous and radioactive) waste to the Land Disposal Restriction Standards under RCRA including PCBs that are commingled with mixed waste. Nothing in this Agreement affects DOE's or NNPP's obligation to comply with orders or site treatment plans in place, pursuant to the Federal Facility Compliance Act of 1992. To date, no solely radioactive PCB waste has been identified that would require different treatment than mixed (hazardous and radioactive) PCB waste under the Federal Facility Compliance Act of 1992.

14. This Agreement covers PCBs and will not affect the treatment of RCRA hazardous waste under the Federal Facility Compliance Act of 1992.

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V. Compliance Requirements

1. Annually, starting six months after the effective date of this Agreement, DOE and the NNPP shall submit a joint Annual Status Report to the EPA's Federal Facility Enforcement Office and the affected EPA Regional Offices, as identified in Attachment II. The Annual Status Report shall contain the following information on the covered PCB wastes:

- (a) an identification and description of covered PCB wastes, including when the covered PCB wastes were placed in storage, contaminants (e.g., radioactive and/or hazardous) and physical form (e.g., solid, liquid, sludge);
- (b) a summary of covered PCB wastes, an identification and description (including quantity and location) of wastes which have exceeded, or are expected to exceed the one year storage limit over the next reporting period;
- (c) a justification of why the one year limit has been or is expected to be exceeded;
- (d) a summary of the TSCA compliance status of covered PCB wastes and steps taken to mitigate any TSCA storage deficiencies identified in any notice of deficiency or notice of violation received while this Agreement is in place, or based on an inspection of the storage facilities required under 761.65(c)(5).
- (e) an identification and description (including quantity and location) of covered PCB wastes being accumulated for shipment to another site(s) for consolidation or disposal;
- (f) an identification and description (including quantity and location) of estimated future generation rates over the next three years for covered waste;
- (g) a description of any current or known projected commercial, DOE or NNPP capacity, that is or will be available to dispose of covered PCB wastes, along with a description of efforts to obtain such disposal capacity; and
- (h) a description of any alternative technologies that are in development to allow removal of covered PCB wastes for disposal and an estimate of when such technologies may be available.

2. For covered PCB wastes which do not contain fissionable radioactive waste, DOE and NNPP will be allowed to use storage containers, other than those specified in 40 CFR 761.65 (c)(6) for covered PCB wastes, as long as the containers meet all applicable DOT specifications and, if applicable, are approved by DOT. However, covered PCB wastes which are currently packaged in the old DOT specified containers currently cited in 40 CFR 761.65(c)(6) will not have to be repackaged for storage to meet new DOT performance specifications until the waste is shipped, and then only if the existing container does not meet DOT requirements in effect at the time of shipment.

3. Containers other than those meeting DOT performance standards referenced in 40 CFR 761.65(c)(6) may be used for covered PCB wastes that contain fissionable radioactive waste provided the following provisions are met:

- a) Containers used for storage of liquid covered PCB waste combined with fissionable

radioactive waste must be non-leaking.

b) Containers used for storage of covered PCB waste combined with fissionable radioactive wastes shall be stored in a manner which provides for protection of the environment from failure of the primary container(s), which meets the Nuclear Criticality Safety requirements specified in ANSI Standard No 8.1, "American National Standard for Criticality Safety in Operations with Fissile Materials Outside Reactors".

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VI. Submittal and Review of Annual Status Report

1. The Annual Status Report shall be submitted by DOE and the NNPP to the EPA's Federal Facilities Enforcement Office and affected EPA Regional offices. The annual report must be postmarked to EPA's Federal Facilities Enforcement Office and the affected EPA Regional offices no later than the date established pursuant to this Agreement.
2. EPA's Federal Facilities Enforcement Office and affected EPA Regional Offices will review the Annual Status Report and will consult with DOE and the NNPP as necessary. EPA's Federal Facilities Enforcement Office will coordinate comments from EPA headquarters and the affected EPA Regions, and will submit one set of consolidated comments to DOE, as EPA's comments. DOE and the NNPP shall consider the deliverable to be adequate unless EPA provides comments and requests revisions of the report within ninety (90) days of receipt or EPA requests an extension.
3. DOE and the NNPP shall, within ninety (90) days of receipt of formal comments, consistent with the nature and extent of EPA's comments, revise and resubmit the report.
4. In the event that a resubmitted report, or portion thereof, is still deemed inadequate by EPA, EPA may again require DOE and the NNPP to correct the deficiencies in accordance with the preceding paragraphs.
5. Information submitted per this Agreement will not be claimed as Confidential Business Information.

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VII. Notification

1. Unless otherwise specified, one copy of the Annual Status Report required by this Agreement, or any notice or notification required to be made or given by any Party under this Agreement shall be in writing and sent to the appropriate Project Manager at the address stated in Attachment II, with copies to the affected EPA Regions. Such documents may be sent by facsimile if followed within 24 hours by mailing via certified mail, return receipt requested or by courier.
2. The documents referred to in Paragraph 1 of this Section will be considered to be timely submitted by DOE if they are postmarked to the EPA's Federal Facilities Enforcement Office and the affected EPA Regions, on or before the applicable due date.

3. All documents submitted to the DOE Project Manager should be sent to U.S. Department of Energy, Office of Environmental Management; Office of Waste Management, Director, Office of Technical Services (EM-37), Washington, DC 20585.

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VIII. Dispute Resolution

1. Except as specifically set forth elsewhere in this Agreement, if a dispute arises among the parties to this Agreement, the procedures of this Section shall apply.
2. Copies of all notices and statements required by this Section shall be furnished to EPA Project Manager, if originated by DOE, and to the DOE Project Manager, if originated by EPA.
3. If a dispute arises, the disputing party shall engage the other party in informal dispute resolution. This informal dispute resolution shall be for a period of thirty days, during which time EPA and DOE shall meet as many times as necessary to discuss and attempt resolution of the dispute. EPA and DOE shall make all reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level.
4. If the informal dispute resolution process is unsuccessful, within ten days after the expiration of the 30-day informal dispute resolution period, the disputing party shall submit to the other party 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 which the disputing party is relying upon to support its position.
5. The disputing party shall forward the written statement of dispute to the Dispute Resolution Committee (DRC) for resolution. Upon submission of a dispute to the DRC, the other party shall, within 14 days, submit a written statement formally establishing its position on the dispute.
6. The DRC shall be composed of EPA's Director of the Federal Facilities Enforcement Office, the DOE's Deputy Assistant Secretary for the Office of Waste Management, and the Associate Director for Regulatory Affairs of the NNPP. If any delegation of this DRC responsibility is made by a designated DRC representative, notification of such delegation shall be supplied by the other party.
7. Following submission of a dispute to the DRC, the DRC shall have 21 days to unanimously resolve the dispute and issue a written position. If the DRC is unable to unanimously resolve the dispute within this 21-day period, the EPA DRC representative shall issue a written position on the dispute by the thirty-fifth day following submittal. Within 14 days after receipt of the EPA DRC representative's written position, DOE may submit a written notice of dispute to the Senior Executive Committee (SEC) for resolution. In the event that the dispute is not submitted to the SEC within the designated 14-day period, DOE shall be deemed to have agreed with the EPA DRC representative's position with respect to the dispute and such position shall constitute the final determination on the dispute.
8. The SEC shall serve as the forum for resolution of disputes which are not resolved by the

DRC and shall be composed of the EPA Assistant Administrator of the Office of Enforcement and Compliance Assurance (OECA) and the DOE Assistant Secretary for Environmental Management. The SEC shall confer and use its best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within 21 days, the Assistant Administrator shall issue a written position on the dispute within 14 days following the 21-day resolution process.

9. The Secretary of Energy, within 14 days of the receipt of the EPA Assistant Administrator's written position, may issue a written notice submitting the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. If DOE does not submit the dispute to the Administrator of EPA within the time frame designated, DOE shall be deemed to have agreed with the Assistant Administrator's written position with respect to the dispute and such position shall constitute the final determination of the dispute.

10. Upon submission of a dispute to the EPA Administrator pursuant to this Section, the EPA Administrator or her designee will review and resolve such dispute within 21 days. Upon request by DOE, and prior to resolving the dispute, the EPA Administrator or her designee shall meet and confer with the Secretary of Energy or her designee regarding the issue(s) in dispute. Upon resolution, the EPA Administrator or her designee shall provide DOE with a written final decision setting for the resolution of the dispute.

11. The pendency of any dispute under this Section shall not affect the parties' timely performance of their respective responsibilities pursuant to this Agreement, except that the time period for completion of the work affected by such dispute shall be extended for a period of time not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. 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. The determination of elements of work, deliverables, notices, or actions affected by the dispute shall be determined by EPA pending final resolution of the dispute.

12. Upon resolution of a dispute pursuant to this Section, the resolution and final determination will be appropriately incorporated into this Agreement. DOE will implement this Agreement accordingly.

13. The parties shall abide by all terms and conditions of any final determination of a dispute made pursuant to this Section.

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IX. Extensions

1. DOE and the NNPP agree to implement this Agreement in accordance with the schedules set forth herein. DOE and the NNPP further agree to adopt all reasonable measures to avoid or minimize any delays in implementation of this Agreement.

2. A scheduled date shall be extended upon receipt of a timely request for extension where good cause exists for the requested extension. Any request for an extension shall be made in writing and received by EPA at least 30 days prior to the scheduled date, except an extension request for *force majeure*. EPA will render its decision within 21 days of receipt of the

extension request. If an oral decision is issued, it shall be confirmed in writing within 24 hours.

3. Any request for an extension shall be provided to EPA in accordance with Section VII (Notification). The request shall specify:

- (a) The scheduled date 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 scheduled dates that will be affected if the extension is or is not granted.

4. Good cause for an extension includes, but is not limited to, a *force majeure* event. *Force majeure* is defined as any event or circumstance arising from causes beyond the control of DOE or the NNPP or entities controlled by DOE or the NNPP including, but not limited to, contractors and subcontractors which could not have been overcome by due diligence of DOE or the NNPP or entities controlled by DOE or the NNPP. DOE or the NNPP shall bear the burden of proof that a particular event constitutes an event of *force majeure*; that any delay is due to an event of *force majeure* and the length of any delay caused by such an event.

5. If EPA determines DOE or the NNPP has not demonstrated that good cause exists for all or part of a requested extension, EPA may grant an extension for a lesser time or may deny the request subject to a determination resulting from the dispute resolution process. DOE and NNPP may seek a determination pursuant to the provisions of Section VIII (Dispute Resolution) within 14 days of EPA's decision on the extension request. If DOE or NNPP fail to invoke dispute resolution within the 14-day period, DOE and NNPP are deemed to accept EPA's position or decision and the existing schedule.

6. If EPA determines that the requested extension is warranted, the parties shall extend the affected schedule(s) accordingly, and EPA may take enforcement action only to compel compliance with the schedule as most recently extended.

7. When a timely request for an extension is made and EPA fails to render a decision on the request by the affected schedule due date, EPA shall refrain from taking any enforcement action against DOE or NNPP regarding the affected schedule until a decision is reached on whether the requested extension will be approved.

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X. Modification

1. This Agreement may be modified by mutual consent of the Parties at any time prior to its termination. The Parties agree, subject to relevant considerations, including the facts, circumstances, and status of DOE and the NNPP compliance with this Agreement, to meet and negotiate in good faith any proposed modification of any provision of this Agreement. Any such modification shall be in writing, be effective when signed by all the Parties, and be incorporated into this Agreement by reference. EPA shall be the last signatory on any modification to this Agreement.

2. The discovery of covered PCB waste at DOE or NNPP sites other than those sites covered under Section IV (Statement of Facts and Conclusion of Law), shall be proper cause to consider modifications of this Agreement.

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XI. Termination

1. This Agreement shall terminate upon written notice of any party or on the effective date of any final rule promulgated by EPA which modifies the one year limit on storing radioactive PCB waste identified under Section III (Covered Materials) and addresses the compliance issues covered in this Agreement.

2. In the event that DOE and NNPP fail to comply with the schedules set forth herein subject to Funding, Modification, Extensions and Dispute Resolution Sections of this Agreement the parties agree that EPA shall have the right to terminate this Agreement by written notice to the parties.

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XII. Access/Data/Document Availability

1. EPA will be permitted to enter all areas of DOE and NNPP facilities covered by this Agreement that store covered PCB wastes or that contain information referred to in this Section. During such inspection, EPA will be permitted to inspect records, logs, and other documents relevant to implementation of this Agreement other than attorney work-product or other attorney-client privileged material to verify compliance by DOE and the NNPP with this Agreement; to review the progress of DOE and the NNPP in carrying out the activities under this Agreement; to conduct tests which EPA deems necessary; and to verify data submitted to EPA by DOE and the NNPP. DOE and the NNPP shall honor all requests for access to DOE and NNPP facilities made by EPA to fulfill the provision of this Section.

2. Notwithstanding any provisions of the Agreement, all requirements of the AEA, as amended, and all Executive Orders and regulations 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 covered under the provision of this Agreement. Access to facilities is subject to applicable health and safety requirements.

3. EPA reserves its rights to seek access to any information or facilities in accordance with applicable law. Nothing herein shall limit the existing legal authorities of EPA to seek information, gather data or take samples.

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XIII. Funding

It is the expectation of the parties that all obligations and commitments established by this

Agreement will be fully funded by DOE and NNPP. DOE and NNPP shall take all necessary steps and use its best efforts to obtain timely and sufficient funding to meet its obligations and commitments under this Agreement, including but not limited to the submission of timely budget requests. Nothing herein shall affect DOE's and NNPP's authority over its budget and funding level submissions. Section 1-5 of Executive Order 12088 states that "the head of each agency shall ensure that sufficient funds for compliance with applicable pollution control standards are requested in the Agency budget". Any requirement for the payment or obligation of funds by DOE or the NNPP established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act 31 U.S.C. §1341, as amended. 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 and this Agreement shall be modified pursuant to Section X (Modifications).

Failure to obtain adequate funds or appropriations from Congress does not in any way release DOE and NNPP from its ultimate obligation to comply with TSCA. Subject to the terms of this Agreement, if appropriated funds are not available to fulfill DOE and NNPP's obligations under this Agreement, EPA may exercise any or all of its applicable statutory and regulatory authority.

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XIV. Enforcement Actions and Reservation of Rights

1. EPA recognizes that DOE and NNPP are currently storing and will continue to generate and store the covered PCB wastes which are described in Section III (Covered Materials) in excess of the one year limitation and that DOE and the NNPP have agreed to address the continued storage of covered PCB wastes as set forth in this Agreement. Based upon the aforementioned facts and circumstances and upon other facts and circumstances known to EPA and set forth in this Agreement, EPA agrees not to initiate any civil administrative enforcement action or to refer a civil judicial enforcement action to the Department of Justice for violations of 40 CFR 761.65(a) and (c)(6) of TSCA arising from the storage of covered PCB waste described in Section III (Covered Materials) at specified DOE facilities and specified NNPP shipyards so long as this Agreement is in effect and DOE and NNPP are in compliance with the provisions contained in Section V through XII of this Agreement.
2. Nothing herein shall preclude any actions by EPA to enforce the terms of this Agreement or to address or bring any available legal or equitable claims for:
 - (a) any preexisting, current, or future violations or conditions at any DOE or NNPP facility included in this Agreement which are not specifically covered by this Agreement;
 - (b) any emergency condition or imminent hazard which may exist or arise at any such DOE or NNPP facility; or
 - (c) any cleanup action pursuant to any available authority.
3. The provisions of this Agreement shall constitute requirements which are enforceable in

accordance with the applicable citizen suit provisions of TSCA section 20, 15 U.S.C. §2619.

4. Except as otherwise set forth in this Agreement, each party expressly reserves all other rights and defenses each may have, whether procedural or substantive, in law or in equity, with respect to any other party to this Agreement and with respect to any person not a party to this Agreement.

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XV. Severability

If any provision or authority of this Agreement or the application of this Agreement to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provisions to other Parties or circumstances and the remainder of the Agreement shall remain in force and shall not be affected thereby.

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XVI. Effective Date

The effective date of this Agreement shall be the date on which it is signed by the last signatory, which shall be EPA.

IT IS SO AGREED AND ORDERED:

6/28/96
Date

Stephen P. Cowan
Deputy Assistant Secretary
for Waste Management
Environmental Management
U.S. Department of Energy

7/19/96
Date

Bruce DeMars, ADM
U.S. Navy
Director, Naval Nuclear Propulsion

8/8/96
Date

Michael M. Stahl
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

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Attachment I - Names and Addresses of DOE and NNPP Sites Covered Under the Federal Facility Compliance Agreement on the Storage of Polychlorinated Biphenyls

EPA Region I

1. Knolls Atomic Power Laboratory

Windsor Site
400 Prospect Hill Road
Windsor, CT 06095

EPA Region II

1. Brookhaven National Laboratory
P.O. Box 5000
Upton, NY 11973-5000
2. West Valley Demonstration Project
10282 Rocksprings Road
West Valley, NY 14171
3. Knolls Atomic Power Laboratory
 - a) Niskayuna Site
2401 River Road
Schenectady, NY 12301-1072
 - b) Kesselring Site
Atomic Power Road
Ballston Spa, NY 12020-2817

EPA Region III

1. Bettis Atomic Power Laboratory
814 Pittsburg McKeesport Blvd.
West Mifflin, PA 15122
2. Norfolk Naval Shipyard
Portsmouth, VA 23709-5000

EPA Region IV

1. Oak Ridge National Laboratory
P.O. Box 2008
Oak Ridge, TN 37831
2. Oak Ridge (K-25)
P.O. Box 2008
Oak Ridge, TN 37831
3. Oak Ridge, Y-12 Plant
P.O. Box 2008
Oak Ridge, TN 37831
4. Savannah River Site
P.O. Box A

Aiken, SC 29801

EPA Region V

1. Mound
1 Mound Ave.
Miamisburg, OH 45343
2. Argonne National Laboratory - East
9700 S. Cass Avenue
Argonne, IL 60439
3. Battelle Columbus Laboratory
505 King Ave
Columbus, OH 43201-2693
4. Fernald
7400 Willey Road
Cincinnati, OH 45030

EPA Region VI

1. Los Alamos National Laboratory
P.O. Box 1663
Los Alamos, NM 87545
2. Sandia National Laboratory (NM)
2301 Buena Vista SE
Albuquerque, NM 87106

EPA Region VII

1. Formerly Utilized Remedial Action Program Sites
Weldon Springs
Saint Charles County Missouri

EPA Region VIII

1. Grand Junction
P.O. Box 2567
Grand Junction, CO 81502-2567
2. Rocky Flats Environmental Technology Site
P.O. Box 928
Golden, CO 80402-0928

EPA Region IX

1. Nevada Test Site

P.O. Box 435
Mercury, NV 89023

2. Formerly Utilized Remedial Action Program Sites
Santa Suzanna Field Laboratory
Santa Suzanna, CA
3. Lawrence Berkeley Laboratory
1 Cyclotron Road
Berkeley, CA 94720
4. Lawrence Livermore National Laboratory
7000 East Ave.
P.O. Box 808, L-1
Livermore, CA 94550
5. Energy Technology Engineering Center
6633 Canoga Avenue, T038
Canoga Park, CA 91309
6. Pearl Harbor Naval Shipyard
401 Avenue E
Suite 124
Pearl Harbor, Hawaii 96860

EPA Region X

1. Idaho National Engineering Laboratory
P.O. Box 1625
Idaho Falls, ID 83401
2. Hanford Site
825 Jadwin Ave
Richland, WA 99352
3. Puget Sound Naval Shipyard
1400 Farragut Ave.
Bremerton, WA 98314

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Attachment II - EPA Regional Points of Contact for the Federal Facility Compliance Agreement on the Storage of Polychlorinated Biphenyls

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Dallas, TX 75202-2733
Phone (214) 665-7579
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726 Minnesota Avenue
Kansas City, Kansas 66101
Phone (913) 551-7395

9. Dan Bench
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U.S. EPA Region VIII
999 18th Street, Suite 500
Denver, CO 80202-2466
Phone (303) 312-6027

10. Charles Berrey
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U.S. EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105
Phone (415) 744-1117

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