STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706-1255 • (208) 373-0502

Dirk Kempthorne, Governor
C. Stephen Allred, Director

January 29, 2001

Don Rasch
Department of Energy
850 Energy Dr.
Idaho Falls, ID 83401

Re: Signed Consent Order

Dear Mr. Rasch:

Enclosed is a signed copy of the Consent Order regarding recent violations at the Idaho National Engineering & Environmental Laboratory. We appreciate your cooperation in this matter.

If you have any questions, please contact Michael Gregory of my staff at (208) 373-0502.

Sincerely,

Brian R. Monson
Hazardous Waste Program Manager
Waste Management and Remediation Division

BRM:DMG:tg c:\...\mike\INEEL\01 co signed letter.doc

Enclosure

cc: D. Early, Deputy Attorney General
R. Guymon, BWXT
E. Loerch, DEQ-TS
B. Jewell, DEQ-Idaho Falls
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IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

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OFFICE OF THE CHIEF COUNSEL

IN THE MATTER OF	)	
	)	
United States Department of Energy	)	
Bechtel BWXT Idaho, LLC	)	CONSENT ORDER
Idaho National Engineering & Environmental Laboratory	)	Idaho Code § 39-4413

1. PARTIES

1.1 The Idaho Department of Environmental Quality (Department), the United States Department of Energy (DOE), and Bechtel BWXT Idaho, LLC (BBWI), hereinafter collectively "the Parties," enter into this Consent Order regarding DOE's Idaho National Engineering & Environmental Laboratory (INEEL) located in Butte, Jefferson, Clark, Bonneville, and Bingham Counties near Idaho Falls, Idaho.

2. JURISDICTION

2.1 The Parties enter into this Consent Order pursuant to the Idaho Hazardous Waste Management Act of 1983 (HWMA), as amended, Idaho Code §§ 39-4401, et seq. The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) and the Federal Facility Compliance Act of 1992, require each department, agency and instrumentality of the federal government engaged in the disposal or management of hazardous waste to comply with all federal and state requirements respecting the control and abatement of hazardous waste. 42 U.S.C. § 6961. DOE, a department of the executive branch of the federal government, owns and operates the INEEL, a nuclear research and development facility, with BBWI as the operating contractor.

2.2 The Department administers a hazardous waste management program pursuant to the HWMA and the Idaho Rules and Standards for Hazardous Waste Rules, IDAPA 58.01.05.000 to 05.999. The State of Idaho is authorized, pursuant to RCRA, to administer this hazardous waste management program in lieu of the federal program. 55 Fed. Reg. 11015 (March 26, 1990). DOE and BBWI generate, transport, store, treat, and manage hazardous waste at the INEEL and are therefore subject to and must comply with all federal and state requirements respecting hazardous waste, including the HWMA and the Rules.

2.3 DOE and BBWI agree not to contest the jurisdictional elements of this Consent Order, or to contest the Department's authority to seek enforcement of the terms and conditions of this Consent Order.

3. DEFINITIONS

3.1 Except as otherwise specifically defined herein, the terms used in this Consent Order, including all appendices, shall have the same meaning as used in the HWMA and the Rules.

4. STATEMENT OF FACTS

4.1 On April 24-28, 2000, the Department conducted routine inspections and record reviews of the INEEL to determine compliance with federal and state hazardous waste requirements. The

inspections and reviews uncovered alleged violations of federal and state hazardous waste requirements, including requirements relating to the generation, accumulation, treatment, storage and disposal of hazardous wastes.

4.2 By Notice of Violation (NOV) dated August 7, 2000, the Department notified DOE and BBWI of these alleged violations. DOE and BBWI do not admit to the allegations or other contents of the NOV. The NOV is expressly incorporated by reference into this Consent Order. On September 12, 2000, the Department, DOE, and BBWI conducted a compliance conference to discuss the NOV, DOE's and BBWI's response, and a format for resolving the NOV. DOE, BBWI and the Department agree that the NOV shall be resolved by execution of this Consent Order between DOE, BBWI, and the Department pursuant to the HWMA, Idaho Code § 39-4413.

5. ACTIONS AND REQUIREMENTS

5.1 In order to resolve the alleged violations listed in the NOV, DOE and BBWI agree to the provisions of this Consent Order and the following terms and actions. The requirements below correspond to the alleged violations as listed in the NOV.

5.2 Based on information submitted during the September 12, 2000 compliance conference by DOE and BBWI, the Department agrees to dismiss alleged Violation Nos. 8 and 9 listed in the NOV.

5.3 DOE and BBWI do not dispute the following alleged violations listed in the NOV: Violation Nos. 1, 2, 3, 4, and 10. The requirements for resolving these violations are described in sections 5.5 through 5.9 of this Consent Order.

5.4 DOE and BBWI dispute whether the remaining alleged Violation Nos. 5-7 were either factually correct or actual violations of the HWMA and the Rules. However, in order to resolve the NOV with regard to these alleged violations without litigation, DOE and BBWI agree to the provisions of this Consent Order and agree to take the actions as described in section 5.10 of this Consent Order.

5.5 DOE and BBWI have resolved Violation No. 1 by:

a. On April 28, 2000, CAM WCS-01 was disassembled, cleaned, and a new pump was installed. The CAM was returned to service. The CAM is currently in operation.

5.6 DOE and BBWI shall resolve Violation No. 2 by:

a. Within one hundred twenty (120) days of the effective date of this Consent Order, conducting training with INTEC High Level Waste personnel emphasizing the importance of complete and compliant RCRA inspection log entries as well as proper management notification.

b. Within thirty (30) days of the completion of the training required by Section 5.6.a, submit to the Department documentation showing the required training has been completed.

c. Within one hundred twenty (120) days of the effective date of this Consent Order, review the INTEC RCRA inspection forms and checklists and modify them to include only RCRA required items. This review shall encompass the fire protection system which includes MIP No. 10.

d. Within thirty (30) days of the completion of the requirements of Section 5.6.c, submit to the Department copies of any modified RCRA inspection forms and checklists.

5.7 DOE and BBWI shall resolve Violation No. 3 by:

a. Within one hundred twenty (120) days of the effective date of this Consent Order, conduct

training with High Level Waste personnel, emphasizing the importance of complete and compliant RCRA inspection log entries as well as proper management notifications.

b. Within thirty (30) days of completion of the training required by Section 5.7.a, submit documentation to the Department showing the requirements of Section 5.7.a have been met.

5.8 DOE and BBWI have partially resolved Violation No. 4 by:

a. Submitting to the Department an annual report for calendar year 1999, detailing the condition and integrity of the concrete temporary equivalent device.

b. For each subsequent calendar year of operation, agreeing to submit to the Department, an annual report by April 30th for the previous calendar year which summarizes the condition and the integrity of the temporary equivalent devices.

c. DOE and BBWI shall further resolve Violation No. 4 by, within one hundred twenty (120) days of the effective date of this Consent Order, submit to the Department a complete list of lines within INTEC which are currently covered under the temporary equivalent device demonstration.

5.9 DOE and BBWI have partially resolved Violation No. 10 by:

a. Agreeing to implement, maintain, and continue to use a documented process at WERF/WROC to ensure that all deficiencies found on RCRA inspections are properly recorded, tracked and resolved.

b. DOE and BBWI shall further resolve Violation No. 10 by, within one hundred twenty (120) days of the effective date of this Consent Order submit documentation to the Department which demonstrates the procedures implemented to ensure all deficiencies found on RCRA inspections are adequately resolved, and the resolution to the deficiency is recorded at WERF/WROC.

5.10 DOE and BBWI shall resolve Violation Nos. 5-7 by:

a. Within ninety (90) days of the effective date of this Consent Order, removing all waste from the Calciner secondary containment for the locations specified in the August 7, 2000 NOV which has resulted from leaks within the New Waste Calciner system.

b. As any new leaks are discovered during operation, storage or transfer of waste in the New Waste Calcine facility, the leaked waste shall be cleaned up and leaking equipment repaired pursuant to IDAPA 58.01.05.009 [40 CFR Part 265.196.(b)].

6. PENALTY

6.1 In the NOV, the Department assessed DOE and BBWI a civil penalty of Fifty Five Thousand Three Hundred Dollars ($55,300). This penalty has been reduced because of the dismissal of Violation Nos. 8 and 9 to Forty Two Thousand Seven Hundred Dollars ($42,700). Further, the Department has agreed to address penalty mitigation of the remaining violations, via a Supplemental Environmental Project (SEP).

6.2 In full settlement of the matters included in the NOV, DOE and BBWI agree to implement a SEP pursuant to Idaho Code § 39-4414(1). The SEP is a project which DOE and BBWI are not otherwise required to perform and will contribute to environmental enhancement. The SEP shall consist of DOE and BBWI providing McCoy and Associates, RCRA training for up to fifty (50) individuals on a single occasion to the Department at a Department facility in Boise.

a. DOE and BBWI shall submit a written SEP proposal to the Department within thirty (30) days of the effective date of this Consent Order, describing the content, extent, length, number of participants, and timing of the McCoy training. To the extent possible, samples of course materials will be described or provided. DOE and BBWI shall certify in the written SEP proposal that they are not otherwise required, by virtue of any local, state, or federal statute, regulation, order, decree, permit, or other law or agreement, to develop or implement the SEP described therein. DOE and BBWI will further certify that neither DOE nor BBWI has received, nor will receive, and are not presently negotiating to receive a credit for the SEP as part of any other enforcement action or any grant from the state, EPA, or any other entity.

b. Within fifteen (15) days after receipt of the SEP proposal, the Department shall notify DOE and BBWI of its acceptance, rejection, or suggested modification of the SEP proposal. If the Department accepts the written SEP proposal, or the Department, DOE and BBWI reach agreement on the modifications to the SEP proposal which are agreed to in writing, the SEP proposal shall become incorporated by reference herein and become an enforceable part of this Consent Order.

c. In the event the Department rejects the SEP proposal, and the Department, DOE and BBWI are unable to reach agreement on a modified SEP proposal as provided in Paragraph 6.2.a. of this Consent Order, the Department shall notify DOE and BBWI in writing of its rejection of the SEP proposal. Thereafter DOE and BBWI shall within sixty (60) days of receipt of written rejection, pay to the Department the sum of Forty Two Thousand Seven Hundred Dollars ($42,700). Payment under the terms of this paragraph shall satisfy DOE's and BBWI's obligation to complete the SEP.

d. If the Department accepts the SEP proposal, the terms of the SEP proposal shall be performed and the training provided to the Department within one (1) year of the effective date of this Consent Order unless a later time is mutually agreed to by the Parties in writing.

e. In the event DOE and BBWI fail to timely and completely implement the SEP, as provided herein to the reasonable satisfaction of the Department, the Department will provide written notice to DOE and BBWI of the nature of the deficiency and DOE and BBWI will have sixty (60) days from the receipt of the notice to correct the deficiency. In the event the deficiency is not timely corrected, DOE and BBWI shall be in violation of this Consent Order and shall be required to pay to the Department the dollars associated with the deficient SEP up to a maximum of Forty Two Thousand Seven Hundred Dollars ($42,700). Payment under the terms of this paragraph shall satisfy DOE's and BBWI's obligation to complete the SEP.

f. DOE and BBWI agree that any public statement, oral or written, making reference to the SEP shall include the following language: "This Supplemental Environmental Project was undertaken in connection with the settlement of an enforcement action taken by the Idaho Department of Environmental Quality for violations of the requirements of the Idaho Hazardous Waste Management Act."

7. TIME FRAMES FOR ACHIEVING COMPLIANCE

7.1 If any event occurs that causes, or may cause, delay in the achievement of any compliance deadline or other requirement of this Consent Order or any plan approved pursuant to this Consent Order, DOE and BBWI shall notify the Department in writing within fourteen (14) days of the date DOE or BBWI knew, or reasonably should have known, of the event. Any notice under this paragraph should describe in detail the anticipated length of the delay, the precise cause or

causes of the delay, all the anticipated consequences of the delay, measures taken by DOE and BBWI to prevent or minimize the delay, and a timetable by which those measures will be implemented. DOE and BBWI shall utilize all reasonable measures to avoid or minimize any such delay. If the Department determines that the delay, or anticipated delay, in achieving any of the requirements of this Consent Order has been, or will be, caused by circumstances beyond the reasonable control of DOE or BBWI, the Department will grant an extension for a period equal to the length of the delay caused by such circumstances. The Department shall notify DOE and BBWI of its determination within twenty (20) days of the date of receipt of DOE and BBWI's notification. The burden of proving that any delay is caused by circumstances beyond the reasonable control of DOE or BBWI shall rest wholly with DOE and BBWI.

7.2 DOE or BBWI may request, for good cause, an extension of the compliance deadlines established pursuant to this Consent Order.

7.3 Within thirty (30) days after receipt of a document submitted pursuant to this Consent Order, the Department shall review the document and notify DOE and BBWI in writing whether the submitted document is approved or whether its revision is required. If revision is required by the Department, DOE and BBWI shall submit the revised document to the Department within thirty (30) days of receipt of the Department's written response. DOE and BBWI shall continue to revise the document and the above described process shall be repeated until the document is approved. The Department will not unreasonably withhold approval of a document. If the Department does not receive an approvable document within two hundred ten (210) days after its initial submittal date, DOE and BBWI shall be in violation of the Consent Order, unless the Department notifies DOE and BBWI otherwise in writing.

8. COMMUNICATIONS

Except as later modified by written agreement of the Parties:

8.1 All communications required of DOE by this Consent Order shall be addressed to:

D. Michael Gregory, Hazardous Waste Enforcement Coordinator
Waste Management and Remediation Program Division
Idaho Department of Environmental Quality
1410 N. Hilton St.
Boise, Idaho 83706-1255

8.2 All communications required of the Department by this Consent Order shall be addressed to:

Ron Guymon
Bechtel BWXT Idaho, LLC
P. O. Box 1625
Idaho Falls, Idaho 83415-3428

Donald N. Rasch, Environmental Compliance Manager
Environmental Technical Support Division
United States Department of Energy Idaho Operations Office
850 Energy Drive
Idaho Falls, Idaho 83401-1561

9. ENFORCEABILITY

9.1 DOE and BBWI expressly recognize that failure to comply with the terms of this Consent Order may result in an enforcement action for any relief available under the HWMA. In any such civil or administrative proceeding by the Department to enforce this Consent Order, DOE and BBWI agree not to contest the validity of the provisions of this Consent Order or the Department's authority to enforce this Consent Order.

9.2 DOE and BBWI acknowledge that this Consent Order is enforceable pursuant to the citizen suit provisions of RCRA, 42 U.S.C. § 6972, including actions or suits by the State and its agencies. DOE and BBWI agree that the State and its agencies are a "person" within the meaning of Section 7002(a) of RCRA, 42 U.S.C. § 6972(a).

9.3 DOE and BBWI agree that this Consent Order shall be admissible as evidence in any proceeding to enforce this Consent Order.

10. AMENDMENT, MODIFICATION AND TERMINATION

10.1 This Consent Order may only be amended or modified by mutual agreement of the Department, DOE and BBWI. Any amendment or modification of this Consent Order shall be in writing, shall have as the effective date the date of signature by the Director of the Idaho Department of Environmental Quality and shall be incorporated into this Consent Order and be enforceable in the same manner as any other requirement of this Consent Order.

10.2 In the event there is a change in applicable state or federal law or regulation, this Consent Order may be amended or modified to incorporate such change. During the pendency of any such amendment or modification, this Consent Order shall remain in effect unless an exemption is provided in writing by the Department.

10.3 This Consent Order shall bind DOE, BBWI, their employees, officers, directors, officials, trustees, contractors, subcontractors, consultants, tenants, agents, successors and assigns until such time as the terms of this Consent Order are met and this Consent Order is terminated in writing by the Department. Such written termination shall not be unreasonably withheld.

10.4 Except as specifically set forth in this Consent Order, this Consent Order shall not relieve DOE or BBWI from their obligation to comply with any of the applicable provisions of the HWMA, or the Rules, including any permit, closure, post-closure, public notice and comment, or other hazardous waste requirement. This Consent Order shall not relieve DOE or BBWI from their obligation to comply with any other applicable federal, state, or local law, or any interagency or other agreements between the Department, DOE and BBWI.

11. FUNDING

11.1 DOE shall take all necessary steps to obtain sufficient funding to comply with the provisions of this Consent Order and, once obtained, shall obligate those funds for the purpose of compliance with this Consent Order.

11.2 DOE maintains that any requirement for the payment or obligation of funds by DOE under this Consent Order is subject to the provisions of the Anti-Deficiency Act, 31 U.S.C. § 1341. DOE also maintains that any requirement for the payment or obligation of funds under this Consent Order is subject to the availability of appropriated funds and that the unavailability of such funds may constitute a valid defense to any administrative or judicial action that may be brought to enforce the terms of this Consent Order. The Department recognizes the provisions of the Anti-Deficiency Act but does not agree that failure to obtain adequate funds or appropriations to comply with this Consent Order shall constitute a circumstance beyond the reasonable control of DOE or shall constitute a release from or defense to any administrative or judicial action which

may be brought to enforce this Consent Order. DOE and the Department agree that it is premature to raise the validity of such a defense at this time. If, at any time, adequate funds or appropriations are not available to comply with this Consent Order, DOE shall notify the Department in writing and the Department shall determine whether or not it is appropriate to adjust the deadlines set forth in this Consent Order. DOE reserves the right to raise the Anti-Deficiency Act as a defense to any action brought to enforce this Consent Order.

11.3 The provisions of Paragraphs 11.1 and 11.2 apply exclusively to DOE and are not applicable to BBWI. BBWI expressly recognizes that it is independently responsible for performance of paragraphs 6.1-6.2.f of this Consent Order and DOE's ability or inability to obtain funding for the performance of these paragraphs shall not constitute a defense, by BBWI to the terms, conditions, and obligations of those provisions of this Consent Order.

12. COVENANTS AND RESERVATIONS

12.1 This Consent Order shall stand in lieu of any administrative, legal and equitable remedies which are available to the Department against DOE or BBWI and all parties bound by this Consent Order with respect to the matters addressed by this Consent Order, so long as DOE, BBWI and all parties bound by this Consent Order are in compliance with this Consent Order as determined by the Department or a court of competent jurisdiction.

12.2 The Department expressly reserves all of its statutory and regulatory powers, authorities, rights, remedies, and defenses, both legal and equitable, which relate to the failure of DOE or BBWI to comply with any of the requirements of this Consent Order. The Department reserves the right to disapprove of work performed by DOE and BBWI and to ensure compliance with this Consent Order. Except as set forth in Section 12.1, this Consent Order shall not be construed as a covenant not to sue, a release, a waiver or a limitation of any rights, remedies, powers or authorities, civil or criminal, which the Department has under the HWMA or any other statutory, regulatory, or common law.

12.3 Except as specifically set forth herein, DOE and BBWI reserve and do not waive any rights, authority, claims or defenses, including sovereign immunity, that they may have or wish to pursue in any administrative, judicial or other proceeding with respect to any person; nor do DOE or BBWI waive any claim of jurisdiction over matters which may be reserved to DOE or BBWI by law, including the Atomic Energy Act. Nothing in this Consent Order shall constitute an admission on the part of DOE or BBWI, in whole or in part, in any proceeding except in a proceeding to enforce this Consent Order. DOE and BBWI specifically reserve all rights they may have by law to seek and obtain administrative or judicial review or appeal according to law of any determination made by the Department during DOE's or BBWI's performance of its obligations under this Consent Order. During the pendency of any such administrative review or appeal, DOE and BBWI shall continue to comply with the requirements of this Consent Order. DOE and BBWI also specifically reserve all rights they may have by law to seek and obtain administrative or judicial review or appeal of permit requirements.

12.4 Except as specifically set forth herein, this Consent Order in no way restricts the State of Idaho or the Department from taking action available under law to address past, present or future violations of the HWMA, the Rules, or other applicable law.

13. STATE LIABILITY

13.1 Nothing in this Consent Order shall be deemed to extend to the Department or the State of Idaho any liability under any federal, state, or local law.

14. ACCESS

14.1 Nothing in this Consent Order limits or otherwise affects the Department's right of access and entry pursuant to applicable federal, state, or local law.

15. EFFECTIVE DATE

15.1 The effective date of this Consent Order shall be the date of signature by the Director of the Idaho Department of Environmental Quality. Each of the undersigned representatives of the Parties warrants that he or she is fully authorized to and does hereby enter into and legally bind his or her agency or company to this Consent Order.

SO AGREED:

SIGNED: Beverly Cook DATE 1/18/01
BEVERLY COOK
MANAGER
U.S. DEPARTMENT OF ENERGY
IDAHO OPERATIONS OFFICE

SIGNED: DATE 1/18/01
PAUL DIVJAK
VICE PRESIDENT AND MANAGER OF OPERATIONS
BECHTEL BWXT IDAHO, LLC

SIGNED: DATE 1/25/01
G. STEPHEN ALLRED
DIRECTOR
IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF IDAHO