



Department of Energy

Idaho Operations Office
850 Energy Drive
Idaho Falls, Idaho 83401-1563

October 10, 2001

Mr. C. Stephen Allred, Director
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255

Mr. John Iani, Administrator
U. S. Environmental Protection Agency
Region 10
1200 Sixth Street
Seattle, WA 98101

SUBJECT: Pit 9 Teleconference Meeting – October 3, 2001 – (EM-ER-01-168)

Dear Mr. Allred and Mr. Iani:

The October 3, 2001, Pit 9 teleconference meeting held jointly by the State of Idaho, EPA Region 10 and DOE resulted in agreement on several revised enforceable milestones for Stage II of the remediation work. This agreement was confirmed in a letter from Jesse Hill Roberson, DOE Assistant Secretary for Environmental Management, October 10, 2001. Enclosed are the proposed revisions to the Federal Facility Agreement and Consent Order, memorializing the aforementioned agreement. Your timely review of the proposed language would be very much appreciated. DOE would like to conclude this dispute resolution by October 12, 2001.

Sincerely,



Warren E. Bergholz, Jr.
Acting Manager

Enclosure

cc: Orville Green, State of Idaho, w/enc.
Ann Williamson, EPA Region 10, w/enc.
Patricia Bubar, DOE-EM, w/o enc.

I. Introduction, Background and Purpose

This Agreement to Resolve a Dispute and Explanation of Significant Differences (Agreement) concerns the implementation of the Interim Record of Decision (ROD) for the Pit 9/Operable Unit (OU) 7-10 Interim Action. The Interim ROD was executed on October 1, 1993, by the Parties to the INEEL Federal Facility Agreement and Consent Order (FFA/CO): the United States Department of Energy (DOE), the United States Environmental Protection Agency (EPA), and the State of Idaho Department of Environmental Quality (IDEQ), formerly the Idaho Department of Health and Welfare. The Interim ROD has been modified and implemented by various documents since that time, including an Explanation of Significant Differences (ESD) issued in January 1995, an Agreement to Resolve Disputes in March 1997, and an ESD issued in September 1998. This Agreement, which includes an ESD, modifies the Interim ROD in conformance with the agreement of the Parties. The ESD is being executed by agreement of all Parties pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 USC 9601 *et seq.*), Executive Order 12580, the National Contingency Plan (NCP, 40 CFR Part 300), and other statutes and regulations as set forth in the FFA/CO.

A. The primary purpose of this ESD is to restructure several milestone deadlines and target dates for the Pit 9 Interim Action (as those terms are defined in the FFA/CO), in connection with a modification to the design of the Stage II method of excavation and retrieval. The modification itself, described below, remains within the scope of Stage II of the OU 7-10 Interim Action, as described in the 1998 ESD, page 4.

The purpose of the design modification and this ESD is to resolve DOE's concerns that the prior version of the Stage II design would require significantly more time to implement than the Parties had anticipated when they established April 2003 as the Stage II RA Report milestone in the October 1997 OU 7-10 Remedial Design/Remedial Action Scope of Work and Remedial Design Work Plan, Appendix A, which was incorporated by reference in the 1998 ESD. DOE's concerns led to its submittal to EPA and DEQ, pursuant to the processes established by the FFA/CO, of a Request for Extension of Deadlines on February 26, 2001. When EPA and IDEQ denied DOE's Request for Extension, DOE submitted a Statement of Dispute to them on March 16, 2001. The Parties agreed to elevate the dispute immediately to the FFA/CO Senior Executive Committee (SEC), consisting of the DOE Idaho Site Manager, the EPA Region 10 Administrator, and the Director of IDEQ. After substantial discussion by the SEC without a unanimous resolution of the dispute, the Director of IDEQ issued on July 23, 2001, a Memorandum Decision and Order (MDO). Pursuant to the FFA/CO, DOE could have appealed the resolution imposed by the MDO by elevating the dispute to the Governor of Idaho. The Parties then renewed their efforts to resolve the dispute and agreed to extend until October 12, 2001, DOE's deadline for elevating the dispute to the Governor. The Parties have now resolved the dispute, and set forth that resolution in this Agreement and ESD.

DRAFT—AGREEMENT TO RESOLVE DISPUTE AND ESD FOR OU 7-10

The Subsurface Disposal Area (SDA) at RWMC, referred to as Waste Area Group (WAG) 7 for CERCLA response purposes, includes some 88 acres of pits and trenches where various radioactively and chemically contaminated solid wastes were disposed of prior to 1970. Based on waste inventory records, it is believed that approximately 10 percent of the SDA contains wastes similar in character to those in the one-acre Pit 9. While this Interim Remedial Action is limited to Pit 9, the data collected may supplement the Remedial Investigation/Feasibility Study (RI/FS) that will be the basis for selecting a final comprehensive Remedial Action for all of WAG 7, designated Operable Unit 7-13/14. DOE's deadline for submitting the RI/FS to EPA and IDEQ is March 2002.

B. A second purpose of this ESD is to facilitate the integration of remedial actions undertaken at Pit 9 into remedial actions undertaken for all of the pits and trenches in WAG 7. The Parties have agreed in previous documents that one of the significant objectives of Stage II of the OU 7-10 Interim Remedial Action is to provide a test of excavation and waste retrieval methods for consideration in the remedial action selection process for all of WAG 7, not just Pit 9. The 1998 ESD states: "Characterization and treatability information obtained from Stage II is expected to support the WAG 7 decision" (page 3); the March 1997 Agreement to Resolve Disputes states that, if available, information developed from the OU 7-10 Interim Remedial Action would be used in the OU 7-13/14 RI/FS (Sections 25-27). When the OU 7-10 Interim ROD was executed in 1993, the RI/FS and final ROD for all of WAG 7 were expected to be a decade in the future. However, issues arising in the implementation of the OU 7-10 Interim ROD have resulted in that schedule being pushed back while the OU 7-13/14 RI/FS process is going forward without comparable delay. The Parties are now faced with the prospect of preparing simultaneously two sets of remedial action documents, one for Stage III of the OU 7-10 Interim Remedial Action, which covers only Pit 9, and the other for the OU 7-13/14 Final Remedial Action, which covers all pits and trenches in WAG 7, including Pit 9.

The Parties have therefore decided that it is appropriate to reintegrate the Interim Remedial Action for Pit 9 into the Final Remedial Action for all of the pits and trenches, so that the OU 7-13/14 Final ROD will, using information derived through completion of Stage II of the Pit 9 Interim Remedial Action, select a remedial action process for all of the RWMC, including the other 99 percent of Pit 9 that is not addressed by Stage II of the Interim ROD. Milestones for the former Stage III of the Interim ROD, as modified, will be integrated into the milestones for the OU 7-13/14 Final ROD.

C. The Parties agree that this Agreement constitutes an Amendment to the FFA/CO in accordance with Part XXX, and is incorporated in and enforceable under the FFA/CO as defined in paragraph 2.1(c).

II. Site History and Contamination Problems

The following is excerpted from the 1998 ESD:

The INEEL is located 32 miles west of Idaho Falls in southeastern Idaho and encompasses approximately 890 square miles of semi-arid desert overlying the Snake River Plain Aquifer. The Subsurface Disposal Area [SDA] is located at the Radioactive Waste Management Complex [RWMC], which is located in the southwest portion of INEEL. The area of focus is Pit 9, which is located in the northeast corner of the Subsurface Disposal Area. Pit 9 is designated as Operable Unit 7-10 and is scheduled as an interim action in the Action Plan of the Federal Facility Agreement and Consent Order [FFA/CO].

Pit 9 was operated as a waste disposal pit from November 1967 to June 1969. It was used to dispose of approximately 110,000 cubic feet (3,115 cubic meters) of transuranic waste (as defined in 1969, > 10 nCi/g) from the Rocky Flats Plant and additional low-level wastes (as defined in 1969, < 10 nCi/g) from waste generators located at the INEEL, for a total estimated waste volume of 150,000 cubic feet (4,248 cubic meters). The estimated volume of overburden is approximately 250,000 cubic feet (7,079 cubic meters). The estimated volume of soil between and below the buried waste is approximately 350,000 cubic feet (9,911 cubic meters). Most of the transuranic waste consists of drums of sludges (contaminated with a mixture of transuranic waste and organic solvents), drums of assorted solid waste, and cardboard boxes containing empty contaminated drums.

III. Description of Significant Differences and Basis for Differences

A. OU 7-10 Stage II

1. The Parties find that, because the previous design for a retrieval method for Stage II entailed a potential for additional substantial delay and increased cost, they have agreed that the Glovebox Excavator Method (GEM) described below shall be substituted for the previous design. Because the GEM meets all the requirements for Stage II of the OU 7-10 Interim Remedial Action as described in the 1998 ESD at page 4, this substitution does not constitute a significant change to the ROD, as previously modified. A ROD amendment is therefore not required in order to implement this decision.

2. The GEM is described at Section 4.3, pages 4-19 to 4-25, in the INEEL document "Waste Area Group 7 Analysis of OU 7-10 Stage II Modifications," dated October 1, 2001. This document compares the previous design for performance of Stage II with several alternative designs. The Parties have examined this document in full and taken it into consideration before agreeing to make the substitution of GEM for the prior design. The document is hereby incorporated by reference into this ESD.

DRAFT—AGREEMENT TO RESOLVE DISPUTE AND ESD FOR OU 7-10

The GEM uses a standard swing boom commercial excavator operated manually, with the excavator arm as the only component that is located inside the contaminated confinement area, sealed off with a flexible boot at the root of the boom. The excavator cab and operator are located outside the steel confinement structure, and within a larger fabric weather enclosure. Excavated waste will be placed in three transfer carts moving within three material packaging glove boxes, where the waste will be inspected, categorized and sampled, and then packaged by type. The interior of the confinement structure and contiguous gloveboxes will have controlled airflow into a series of HEPA filters. The GEM has substantial cost and time advantages over the alternative methods, including the previous design.

3. The Parties agree that the following target dates and specified enforceable deadlines, in accordance with the FFA/CO, shall be substituted for and supersede any previously agreed upon milestones and deadlines for Stage II of the OU 7-10 Interim Remedial Action:

a. Submit Stage II Remedial Design (completed project design) by October 31, 2002 (enforceable deadline), with no submittal of a draft document. EPA and IDEQ may provide comments within 15 days, in accordance with the FFA/CO procedure for draft final primary documents at Paragraph 8.3, and the document with any adjustments will become final at 30 days after submittal.

b. Submit Stage II Notification of Commencement of Construction by November 30, 2002 (enforceable deadline). This is intended to document the start of construction, and is not a primary document for purposes of comment and revision, but the Parties agree that this will be an enforceable milestone.

c. The Parties agree that they shall meet no later than July 19, 2002 (target date), for the purpose of agreeing upon specific enforceable deadlines for the Notification of Commencement of Stage II Excavation and the Notification of Completion of Stage II Excavation.

(1) The Parties agree that until they reach an agreement on an enforceable deadline, DOE shall work toward a target date of November 30, 2003, for submission of the Notification of Commencement of Stage II Excavation.

(2) The Parties agree that until they reach an agreement on an enforceable deadline, DOE shall work toward a target date of April 30, 2004, for submission of the Notification of Completion of Stage II Excavation.

4. The Parties shall hold a status conference call each Thursday at 8:30 a.m. Mountain Time, starting on October 11, 2001. During these calls DOE will provide status updates to EPA and IDEQ and are not intended to be design reviews. Design reviews by EPA and IDEQ shall be limited to the following:

DRAFT—AGREEMENT TO RESOLVE DISPUTE AND ESD FOR OU 7-10

a. In accordance with DOE Order 413, DOE will have a review to establish Critical Decision 1. A conceptual design schedule will be established based on this Critical Decision. IDEQ and EPA will be informed at least 30 days prior to the scheduled preliminary design review. The review will occur at INEEL, and the IDEQ and EPA will provide comments within 10 days.

b. EPA and IDEQ will have 15 days to comment on the Remedial Design after its submittal on October 31, 2002.

B. OU 7-10 Stage III and OU 7-13/14

In order to facilitate the inclusion of information generated by the OU 7-10 Stage II Interim Remedial Action into the ongoing OU 7-13/14 RI/FS for WAG 7, the Parties agree that the OU 7-13/14 RI/FS may be supplemented by new data from the OU 7-10 Stage II Interim Remedial Action. The draft OU 7-13/14 RI/FS will be provided as scheduled in March 2002.

The Parties further agree that, in order to provide a uniform remedial protocol for WAG 7, the Stage III of the OU 7-10 Interim Remedial Action is hereby integrated into the Final ROD, and Final Remedial Design/Remedial Action for OU 7-13/14 covering all of WAG 7, including Pit 9. These actions will be subject to the review and concurrence of all Parties as prescribed in the FFA/CO procedure. A separate schedule of deadlines and target dates for Stage III of the Interim Remedial Action is therefore declared by the Parties to be superseded by the agreed deadlines and target dates for OU 7-13/14 as they presently exist or as they shall be agreed to hereafter by the Parties.

IV. Resolution of Dispute

The Parties agree that this Agreement fully satisfies the concerns and resolves the FFA/CO Part IX dispute among the Parties, which was formally initiated by the Statement of Dispute filed by DOE on March 16, 2001, and as to which the Director of IDEQ issued a Memorandum Decision and Order on July 23, 2001. The Parties agree that this ESD and Agreement supersede and replace those documents.

V. Affirmation of the Statutory Determinations

Considering the modifications in certain aspects of the Interim Remedial Action agreed to by the Parties and described above, the Parties believe that the remedy as modified protects human health and the environment, complies to the extent practicable with Federal and State requirements that were identified in the Interim ROD as applicable or relevant and appropriate to this remedial action at the time the Interim ROD was signed, and is cost-effective.

VI. Public Participation Activities

DRAFT—AGREEMENT TO RESOLVE DISPUTE AND ESD FOR OU 7-10

A notice publishing the availability of this Agreement and ESD will be placed in the Post-Register—Idaho Falls, Idaho State Journal—Pocatello, Times-News—Twin Falls, Idaho Statesman—Boise, Sho-Ban News—Fort Hall, and Daily News—Moscow. Consistent with Section 300.435(c)(2)(i) of the National Contingency Plan, this Agreement and ESD has been placed in the Administrative Record Section of the INEEL Information Repositories listed below upon publication of the Notice of Availability. A postcard announcing the availability of this Agreement and ESD will be sent to the entities on the INEEL mailing list. This Agreement and ESD, and the contents of the Pit 9 Administrative Record, are available for public review. In addition to the Administrative Record in file for the ROD, the Administrative Record for this action includes a copy of this Agreement and ESD and relevant newspaper notices associated with the explanation (refer to the binder for OU 7-10 and OU 7-13/14).

The revised schedule for Stage II of OU 7-10, and the reintegration of the Interim Remedial Action for OU 7-10 with the Final Remedial Action for OU 7-13/14, do not represent a fundamental change from that contained in the ROD, and therefore a formal comment period is not required. Additional information or briefings may be requested by contacting the office listed below or calling the toll-free number for the INEEL at 1-800-708-2680.

Erik Simpson
INEEL Community Relations Plan Office
P.O. Box 1625
Idaho Falls, Idaho 83415-3911
208-526-4700

Libraries and offices containing information repositories:

INEEL Technical Library
DOE-ID Public Reading Room
1776 Science Center Drive
Idaho Falls, ID 83415
208-526-1185

University of Idaho Library
U of Idaho Campus
Moscow, Idaho 83843
208-885-6344

VII. Execution by Representatives of the Parties

This ESD and Agreement are effective upon signature by all Parties.

DRAFT—AGREEMENT TO RESOLVE DISPUTE AND ESD FOR OU 7-10

Signature sheet for the foregoing Agreement to Resolve Dispute and Explanation of Significant Differences for Operable Unit 7-10 Interim Remedial Action

Warren E. Bergholz
Acting Manager
Department of Energy
Idaho Operations Office

Date

DRAFT—AGREEMENT TO RESOLVE DISPUTE AND ESD FOR OU 7-10

Signature sheet for the foregoing Agreement to Resolve Dispute and Explanation of Significant Differences for Operable Unit 7-10 Interim Remedial Action

Stephen Allred
Director
Idaho Department of Environmental Quality

Date

DRAFT—AGREEMENT TO RESOLVE DISPUTE AND ESD FOR OU 7-10

Signature sheet for the foregoing Agreement to Resolve Dispute and Explanation of Significant Differences for Operable Unit 7-10 Interim Remedial Action

John Iani
Administrator
US Environmental Protection Agency
Region 10

Date