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ADMINISTRATIVE RECORD

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6 THE STATE OF NEVADA
7 DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES,
8 DIVISION OF ENVIRONMENTAL PROTECTION
9

10 AND

11 THE UNITED STATES DEPARTMENT OF ENERGY
12

13 AND
14

15 THE UNITED STATES DEPARTMENT OF DEFENSE
16

17 IN THE MATTER OF:
18

19 FEDERAL FACILITY AGREEMENT
20

21 AND
22

23 CONSENT ORDER
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39 MARCH 15, 1996
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FEDERAL FACILITY AGREEMENT AND CONSENT ORDER

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1 INTRODUCTION

2
3 This Federal Facility Agreement and Consent Order (Agreement) is
4 made and entered into by and among the State of Nevada, acting by
5 and through the Department of Conservation and Natural Resources,
6 Division of Environmental Protection (NDEP), the United States
7 Department of Energy (DOE), and the United States Department of
8 Defense (DoD). The NDEP enters into this Agreement pursuant to its
9 statutory authority to protect the public health and the
10 environment.

11
12 The facilities for which DOE has assumed responsibility and which
13 are subject to this Agreement include the Nevada Test Site (NTS).

1 Agreement. The provisions of this Agreement shall be binding on all
2 successors in interest and on any successor agency.

3
4 I.3. DOE and DoD shall be responsible for ensuring that their
5 respective contractors conduct their activities in conformance with
6 the requirements of this Agreement. Contractors of each party are
7 not considered parties to this Agreement.

8
9 I.3.a. DOE and DoD shall provide copies of this Agreement
10 to all their respective prime contractors presently
11 retained to perform work related to any part of this
12 Agreement within thirty (30) calendar days of execution of
13 this Agreement.

14
15 I.3.b. DOE and DoD shall provide copies of this Agreement
16 to all additional prime contractors retained to perform
17 work related to any part of this Agreement within ten (10)
18 calendar days following their retention.

19
20 I.3.c. Copies of this Agreement shall be made available
21 to all other contractors and subcontractors retained to
22 perform work under this Agreement.

23
24
25 **PART II. STATEMENT OF PURPOSE**

26
27 II.1. The purposes of this Agreement include, but are not
28 limited to:

29
30 II.1.a. Identifying sites of potential historic
31 contamination and implementing proposed corrective actions
32 based on public health and environmental considerations as
33 follows to:

34
35 II.1.a.i. Ensure that the impacts and potential
36 impacts at the facilities, as defined in paragraph

1 | or from the facilities are subject to corrective
2 | actions and closure requirements, under the oversight
3 | of NDEP.

1 or streamlining of duplicative or unnecessary procedures.
2
3 II.1.f. Satisfying the corrective action requirements of
4 40 CFR 264.101 and Sections 3004(u) and 3004(v) of the
5 Resource Conservation and Recovery Act (RCRA) (42 U.S.C.

1 et seq., Chapters 444, 445, and 459 of the Nevada Administrative
2 Code (NAC), the Nevada Administrative Procedure Act, NRS Chapter
3 233B, as these laws may be amended from time to time, and all other
4 applicable provisions of state and federal law. NDEP specifically
5 retains all of its hazardous waste and clean water authorities and
6 legal rights, both substantive and procedural, both under the
7 authorities delegated by the U.S. Environmental Protection Agency,
8 and under its own laws and regulations as well. DOE does not waive
9 any claim of jurisdiction over matters which may be reserved to DOE
10 by law, including the Atomic Energy Act, 42 U.S.C. §2011 et seq.
11

12 ~~to the extent not inconsistent with federal law, the laws~~

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1 | discharged and/or having the potential of being discharged into

1 | information for planning investigation activities associated with
2 | corrective action units or corrective action sites. A CAIP may
3 | reference information in the optional CAU work plan or other
4 | applicable documents. If a CAU work plan is not developed, then
5 | the CAIP must include or reference all of the management,
6 | technical, quality assurance, health and safety, public
7 | involvement, field sampling, and waste management information

- 1 IV.23. "Department of Energy" (DOE) shall mean the U.S.
2 Department of Energy and/or any predecessor or successor
3 agency(ies) and/or their authorized representatives.
4
- 5 IV.24. "Due date" shall mean the date by which a nonenforceable
6 milestone is due.
7
- 8 IV.25. "Enforceable milestone" shall mean a milestone which is
9 enforceable and for which a deadline has been assigned.
10
- 11 IV.26. "Facilities" shall include the Nevada Test Site (NTS),
12 parts of the Tonopah Test Range, parts of the Nellis Air Force
13 Range, the Central Nevada Test Area, and the Project Shoal Area.
14 The NTS as defined herein does not include those areas being used
15 to conduct activities under the Nuclear Waste Policy Act.
16
- 17 IV.27. "Fiscal year" (FY) shall mean the federal fiscal year
18 unless otherwise specified.
19
- 20 IV.28. "Hazardous substance" shall have the meaning given in
21 CERCLA §101, 42 U.S.C. §9601(14), and NRS 459.429. DOE asserts
22 that this definition is subject to Part III, Legal Authority.
23
- 24 IV.29. "Hazardous waste" shall have the meaning given in
25 42 U.S.C. §6903(5) and NRS 459.430.
26
- 27 IV.30. "Milestone" shall mean an important or critical event,
28 goal, task, and/or activity that must occur in order to achieve the
29 objective(s) for that corrective action unit.
30
- 31 IV.31. "Mixed waste" shall have the meaning given in 42 U.S.C.
32 §6903 (41).
33
- 34 IV.32. "Nellis Air Force Range" shall mean the property so
35 described in Appendix I, Description of Facilities.
36
- 37 IV.33. "Nevada Test Site" (NTS) shall mean the property so
38 described in Appendix I, Description of Facilities.
39
- 40 IV.34. "Parties" shall mean the parties named in Part I, Parties,
41 to this Agreement.
42
- 43 IV.35. "Person" for the purposes of this Agreement shall include
44 DOE, DoD, and NDEP within the definitions of "person" contained in
45 the Nevada Water Pollution Control Law, NRS 445A.300 et seq., and
46 the Nevada Hazardous Waste Law, NRS 459.400 et seq.
47
- 48 IV.36. "Pollutant" shall have the meaning given in NRS 445A.400.

1 DOE asserts that this definition is subject to Part III, Legal
2 Authority.
3
4 IV.37. "Project Shoal Area" shall refer to the locality so
5 described in Appendix I, Description of Facilities.
6
7 IV.38. "RCRA" shall mean the Resource Conservation and Recovery
8 Act of 1976, Public Law 94-580, 42 U.S.C. Section 6901 et seq., as
9 amended by the Hazardous and Solid Waste Amendments of 1984,
10 P.L. 98-616, as amended by the Federal Facility Compliance Act of
11 1992, P.L. 102-386, and any other amendments thereto.
12
13 IV.39. "RCRA Permit" shall mean a permit issued by NDEP for
14 hazardous waste treatment, storage, and/or disposal units
15 including as required post-closure monitoring of such units.

1 V.2. Appendix I, "Description of Facilities," contains the
2 descriptions of each of the facilities covered by this Agreement.

3
4 V.3. Appendix II, "Corrective Action Sites/Units," contains a
5 list of all CAUs which have been identified to date and which have
6 not yet been transferred to subsequent appendices or CASSs which
7 have not yet been grouped into CAUs. A CAU shall consist of one or
8 more CASSs, and each CAS in each CAU will be identified. New
9 CASSs/CAUs identified by any of the parties shall be added to
10 Appendix II on a quarterly basis. CAUs shall be grouped in
11 categories and subcategories in accordance with Appendix VI,
12 Corrective Action Strategy. The CAU categories may include:

13
14 V.3.a. Industrial sites;

15
16 V.3.b. Underground test areas;

17
18 V.3.c. Contaminated soil sites; and

19
20 V.3.d. Offsites.

21
22 V.4. Appendix III, "Corrective Action Investigations/Corrective
23 Actions," shall list those CAUs that have been identified and
24 prioritized for CAIs and/or for corrective actions as described in
25 Part XII, Corrective Action Investigations/Corrective Actions.
26 This appendix shall also contain CAU milestones with associated due
27 dates and deadlines.

28
29 V.5. Appendix IV, "Closed Corrective Action Units," shall list
30 those CAUs for which all corrective actions have been completed and
31 approved by NDEP in accordance with Part XII, Corrective Action
32 Investigations/Corrective Actions.

33
34 V.6. Appendix V, "Public Involvement Plan," is described in
35 Part XVII, Public Involvement. A draft of this appendix shall be

1 PART VI. ENFORCEABILITY/RESERVATION OF RIGHTS

2
3 VI.1. Except as described in paragraph VI.2 and paragraph
4 VIII.6, compliance with the terms and conditions of this Agreement
5 shall stand in lieu of any administrative or judicial remedies that
6 may be taken for matters covered by this Agreement.

7
8 VI.2. NDEP reserves the right to bring any enforcement action
9 against DOE and/or DoD for noncompliance with the terms and
10 conditions of this Agreement, including actions for the sole
11 purpose of compelling completion of a deficient activity whether or
12 not stipulated penalties are sought.

13
14 VI.3. For all matters outside the scope of this Agreement, NDEP

1 PART VII. PROGRESS REPORTS

2
3 VII.1. Following the effective date of this Agreement, DOE and
4 DoD shall, on or before the 30th calendar day following the end of
5 each calendar quarter, submit a written or electronic progress
6 report to NDEP that describes the actions taken during the calendar
7 quarter just ended. This information will serve as a partial basis
8 for the discussions at the quarterly meetings discussed in
9 paragraph XII.4.

10
11 VII.2. Each progress report shall include:

12
13 VII.2.a. Sufficient detail to clearly and accurately
14 convey to NDEP the manner and extent to which the
15 requirements and schedules set forth in the work plans and
16 other terms and conditions of this Agreement are being
17 met;

18
19 VII.2.b. Any known cost and schedule variances exceeding
20 the established thresholds will be reported along with the
21 cause of the variances and any actions which may be
22 implemented to correct the variances;

23
24 VII.2.c. Actions and issues of concern, where additional
25 communication is necessary.

26
27 VII.3. DOE and/or DoD shall, within sixty (60) calendar days of
28 NDEP's request, which is hereby established as the deadline for
29 this activity, provide NDEP with budgets and costs for activities
30 covered by this Agreement.

31
32 VII.4. DOE and DoD shall include in their quarterly reports a
33 three-month advance schedule outlining field activities (including
34 the field activities of their respective contractors,
35 subcontractors, operators, and agents), proposed to be implemented
36 under this Agreement. A more detailed schedule shall be provided
37 to NDEP on a bi-weekly basis, and shall provide the specific dates
38 for conducting these activities for the subsequent two-week period,
39 thereby enabling NDEP to select those activities it deems
40 appropriate to observe.

41
42 VII.5. The National Defense Authorization Act for 1994, 42 U.S.C.
43 §7274k, (P.L. 103-160, Section 3153) requires DOE to prepare and
44 submit an annual environmental restoration report. DOE shall
45 submit to NDEP a copy of the portions of that report that define
46 the conditions or otherwise relate to the activities being
47 undertaken by the DOE Nevada Operations Office within thirty (30)
48 calendar days of the report's submittal to Congress.

1 VII.6. Quarterly meetings will be held in part to discuss any
2 issues raised in or by the quarterly progress reports. These
3 meetings will also serve to initiate the prioritization discussions
4 identified in Part XII, Corrective Action Investigations/Corrective
5 Actions. Parties will attempt to resolve issues during the
6 quarterly meetings. Resolution of issues will be documented, and
7 unresolved issues will be discussed at or before the next quarterly
8 meeting.

9
10 VII.7. Parties may meet at times other than the quarterly
11 meetings as required, for example if there are events, such as
12 changes in available funding, that might affect milestones,
13 especially if those milestones are in the current fiscal year.

14
15
16 **PART VIII. STIPULATED PENALTIES**

17
18 VIII.1. Stipulated penalties shall be incurred by DOE and/or DoD
19 in the event that DOE and/or DoD fails to meet an established
20 deadline.

21
22 VIII.2. In the event DOE or DoD fails to meet an established
23 deadline contained herein, NDEP may assess a stipulated penalty in
24 the amount of \$5,000.00 per week for the first week or part thereof
25 of such failure, \$10,000.00 per week for the following week or part
26 thereof of such failure, and \$15,000.00 per week for the third and
27 each succeeding week for which the failure to meet an established
28 deadline occurs.

29
30 VIII.3 NDEP shall notify DOE and/or DoD in writing of any alleged
31 failure to meet an established deadline.

32
33 VIII.3.a. If NDEP's written notice of a missed deadline
34 cites that the specified deadline was not met, evidence
35 supporting any alleged defense must be submitted to NDEP
36 within thirty (30) calendar days from the date of receipt
37 of NDEP's written notice unless otherwise agreed. No
38 penalty shall be assessed if NDEP accepts the DOE's and/or
39 DoD's defense. If NDEP rejects the defense, DOE and/or
40 DoD shall be assessed the stipulated penalty from the date
41 of the missed deadline, and DOE and/or DoD may initiate
42 the appeal procedure in accordance with paragraph IX.2 of
43 this Agreement.

44
45 VIII.3.b. If a milestone for which a deadline has been
46 established is construed by NDEP to be substantially
47 deficient, and therefore not complete, NDEP shall issue a
48 written Notice of Deficiency to DOE and/or DoD that cites

1 the alleged deficiencies. If DOE and/or DoD accept(s)
2 NDEP's position, DOE and/or DoD shall, within twenty-one
3 (21) calendar days of receipt of the Notice of Deficiency
4 or such longer time period as specified by NDEP, correct
5 the deficiencies and resubmit or otherwise complete the
6 milestone for which the deadline was established. Any
7 stipulated penalty(ies) connected to failure to meet the
8 established deadline shall begin upon DOE's and/or DoD's
9 receipt of the Notice of Deficiency. The penalty(ies)
10 shall accrue during such twenty-one (21) calendar days, or
11 otherwise specified period, and may, at NDEP's discretion,
12 be waived unless the resubmitted deliverable or completed
13 milestone is determined by NDEP to remain substantially
14 deficient. If DOE and/or DoD is aggrieved by either
15 NDEP's original or subsequent determination of substantial
16 deficiency, DOE and/or DoD may initiate the appeal
17 procedure in accordance with paragraph IX.2.
18

19 VIII.4. Stipulated penalties will continue to accrue and may be
20 assessed at NDEP's discretion during pursuit of remedies contained
21 in Part IX, Informal Dispute Resolution and Appeal Procedure,
22 except accrual of such penalties shall be suspended during any
23 period of time in excess of fourteen (14) calendar days required by
24 NDEP to render its decision under paragraph VIII.3. DOE and/or DoD
25 are responsible for stipulated penalties only for the time
26 ultimately determined to be deficient, and stipulated penalties are
27 to be paid within thirty (30) days of a final determination of
28 deficiency unless the parties agree to a different schedule.
29

30 VIII.5. The provisions of this Part shall not affect DOE's and/or

1 of interest on the unpaid balance compounded daily at a rate equal
2 to the rate of interest fixed for 1-year United States treasury
3 bills on the date of the commencement of the action, as reported in
4 the "Federal Reserve Bulletin" published by the Board of Governors
5 of the Federal Reserve System or other commonly used business or
6 financial publication. In the event payment of interest is not
7 allowed by law, DOE shall, to the satisfaction of NDEP, establish
8 the basis of this position.

9
10 VIII.9. NDEP's position is that the DoD is required to pay
11 interest in accordance with paragraph VIII.8. DoD's position is
12 that absent express Congressional authorization the United States

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1 for an extension within thirty (30) calendar days from the date of
2 receipt of the written request.

3
4 X.4. NDEP may grant the extension for less time than originally
5 requested if it determines that the shorter extension is reasonable
6 in light of the good cause.

7
8 X.5. If NDEP denies the requested extension, or approves an
9 extension but modifies the length of time requested for the
10 extension, it will include in its written statement of denial or
11 modification an explanation of the basis for its decision.

12
13
14 **PART XI. AMENDMENTS AND MODIFICATIONS**

15
16 XI.1. Amendments to this Agreement may be proposed by any of the
17 parties.

18
19 XI.2. Amendments may be proposed for the following reasons,
20 among others:

21
22 XI.2.a. To assure that this Agreement remains consistent
23

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1 | Actions, will initially reflect current prioritization of CAUs
2 | based on previous discussions with NDEP and/or the Community
3 | Advisory Board in developing the budgets and priorities for FY 96
4 | and FY 97. Following the initial prioritization, new CAUs will be

1 XII.4.b. During the quarterly meeting held during the
2 fiscal year second quarter, the parties shall initiate the
3 process to establish priorities, milestones, and
4 associated due dates for CAUs for FY+2. At this meeting,
5 DOE will propose CAU milestones for target and planning
6 funding levels, as appropriate. DOE may choose to develop
7 milestones above the target funding level, but shall
8 identify which proposed milestones are above the target
9 case. NDEP, under its authority, may establish deadlines
10 for any milestones for DOE and DoD activities subsequent
11 to the prioritization process established in Appendix VI,
12 Corrective Action Strategy. DoD asserts it is not able to
13 commit to these FY+2 enforceable dates. Prioritized CAUs
14 with their associated milestones, due dates, and/or
15 deadlines shall be listed in Appendix III, Corrective
16 Action Investigations/Corrective Actions. Parties reserve
17 the right to invoke paragraph IX.1 if an issue is not
18 resolved. Subsequent to this meeting, input on the
19 proposed priorities will be sought from the public and the
20 Community Advisory Board. DOE and DoD, in cooperation
21 with NDEP, will develop a final prioritization of CAUs for
22 CAIs and corrective actions with the setting of deadlines
23 by NDEP by March 15.

24
25 XII.4.c. During the quarterly meeting held during the
26 fiscal year fourth quarter, the parties shall review and
27 reconsider established priorities, milestones, and
28 associated due dates and deadlines for CAUs considering
29 factors established in Appendix VI, Corrective Action
30 Strategy, and the President's budget for FY+1. Parties
31 reserve the right to invoke paragraph IX.1 if an issue is

- 1 XII.6. The timeframes for submittals, activities, and tasks shall
2 be established in the appropriate planning documents and may be
3 bounded by the deadlines established in Appendix III, Corrective
4 Action Investigations/Corrective Actions.
5
- 6 XII.7. Once a CAI has been completed, DOE or DoD shall submit a
7 CADD, which includes evaluation of alternatives, to NDEP for its
8 evaluation. Prior to approving proposed actions, NDEP may seek
9 public comment which includes input from the Community Advisory
10 Board. If a corrective action is required, a CAP will be prepared
11 to guide the subsequent corrective action.
12
- 13 XII.8. NDEP shall, within thirty (30) calendar days of receipt of
14 a submittal unless otherwise specified in this Agreement. provide:

1 provide its own sample container(s) at the time of the sampling
2 event and is responsible for the management and analysis of any
3 such samples.
4

5

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1 | of access to NDEP personnel to any of the facilities or to any of
2 | the localities of any of the CAUs shall be provided to NDEP within

1 PART XV. OBLIGATIONS OF DOE AND DoD

2
3 XV.1. DOE and DoD shall take all necessary steps as set forth in
4 paragraphs XV.8 through XV.11 to obtain timely funding to meet
5 their obligations under this Agreement through consultation with
6 the parties and the submission of timely budget requests.

7
8 XV.2. Such obligations include, but are not limited to, updates
9 to Appendix II, Corrective Action Sites/Units, the corrective
10 action investigation/corrective action activities identified in
11 Appendix III, any monitoring required pursuant to Appendix IV, the
12 Public Involvement Plan activities required pursuant to Appendix V,
13 and support of NDEP's administrative and regulatory activities to
14 be performed in conjunction with oversight of corrective action
15 activities required by this Agreement.

16
17 XV.3. The base obligation of DOE and DoD required for NDEP to
18 oversee activities related to this Agreement shall be determined by
19 NDEP on a yearly basis, and transmitted to DOE and DoD in a timely
20 manner prior to the start of each state fiscal year as authorized
21 by NRS 459.565 and NDEP implementing policy and procedure(s). In
22 addition, NDEP shall at the same time transmit estimates of its
23 base obligations for the four succeeding out years to assist DOE
24 and/or DoD in their respective long-range planning. In accordance
25 with sections XV.4 and XV.5, DOE and DoD agree to pay fees and
26 service charges, consistent with §6001 of RCRA (42 U.S.C. §6961),
27 at a rate which would be assessed for similar activities on any
28 person for which NDEP provides oversight of corrective action
29 activities under applicable state law. If the parties disagree on
30 the fees and service charges, Part IX, Informal Dispute Resolution
31 and Appeal Procedure, may be invoked.

32
33 XV.4 On an annual basis, NDEP shall submit its estimated fee(s)
34 for its obligations to be incurred to DOE. DOE shall in turn,
35 within thirty (30) calendar days after October 1 of each year
36 unless otherwise agreed, make a deposit with NDEP sufficient to
37 meet that obligation for NDEP oversight of DOE activities.

38
39 XV.5. Reimbursement of costs/fees associated with services/
40 oversight of DoD's corrective action investigation and/or
41 corrective action activities shall be recoverable by NDEP through
42 the Defense/State Memorandum of Agreement and Cooperative Agreement
43 (DSMOA/CA). These services/oversight and accounting procedures,
44 including procedures for NDEP reimbursement, will be in accordance
45 with the DSMOA/CA. In the event that the DSMOA/CA Program is
46 modified, altered, ended or it fails to meet services/oversight
47 costs/fees, DoD shall remain liable for payment of these costs/fees
48 with appropriated Defense Environmental Restoration Act (DERA)

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1 any unresolved comments and additional activities with related
2 budget requirements identified by NDEP pursuant to paragraph XV.9.

3
4 XV.11. In accordance with established Department of Defense
5 policy as of the date of the signing of this Agreement, DoD
6 Headquarters shall forward its FY+2 restoration budget requests,
7 which will identify activities mandated by regulatory
8 considerations to the Deputy Under Secretary of Defense,
9 Environmental Security (DUSD)(ES) for consideration. DUSD(ES) is
10 responsible for consolidating Defense Agency submissions and
11 forwarding this along with all other Defense Service requests to
12 the Under Secretary of Defense Comptroller for incorporation into
13 the President's Budget Request.

14
15 XV.12. NDEP agrees not to release confidential budget information
16 to anyone prior to submission by the President of his Budget
17 Request to Congress, unless authorized by DOE or required to do so
18 by court order. DOE may seek to intervene in any proceeding
19 brought to compel or enjoin release of this information. If
20 allowed to intervene, DOE shall assert its interest in and the
21 legal basis for maintaining the confidentiality of this
22 information.

23
24 XV.13. DOE and DoD will provide to NDEP sections of the
25 President's Budget Request to Congress pertaining to the
26 facilities' environmental restoration programs in a timely manner
27 after submittal by the President to Congress. DOE and DoD shall
28 notify NDEP of any differences between the proposed budget requests
29 submitted in accordance with paragraph XV.9 and the actual requests
30 included in the President's Budget Request to Congress.

31
32 XV.14. If funding has been requested as described in paragraphs
33 XV.8 through XV.11 and in the event that the U.S. Congress has
34 failed to appropriate the funds so requested for Agreement
35 milestones, the parties shall review the level of presently

1 PART XVI. NOTIFICATION AND AGENCY COORDINATION
2

3 XVI.1. Documents shall be sent to NDEP in a manner designed to be
4 received by the date due in either the Carson City or Las Vegas
5 office. Formal requests by any party to this Agreement of any
6 other party to this Agreement shall be in writing.
7

8 XVI.2. Unless otherwise specified by written notice to the
9 agreement coordinators of DOE and DoD, any report, document, or
10 submittal provided to NDEP, pursuant to a milestone or deadline
11 identified in or developed under the provisions of this Agreement,
12 shall be sent to:
13

14 Chief
15 Bureau of Federal Facilities
16 Division of Environmental Protection
17 333 West Nye Lane
18 Carson City, Nevada 89710
19

20 with an additional copy provided concurrently to:
21

22 Bureau of Federal Facilities
23 Division of Environmental Protection
24 555 E. Washington, Suite 4300
25 Las Vegas, Nevada 89101
26

27 XVI.3. Unless otherwise specified by written notice from DOE to

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1 Chief, Technical Compliance Division
2 Defense Nuclear Agency
3 Field Command, Nevada Operations Office
4 P.O. Box 208
5 Mercury, Nevada 89023
6

7 with an additional copy provided concurrently to:
8
9



1 activities performed pursuant to this Agreement; take
2 and/or cause to be taken, photographs consistent with
3 security restrictions, for which purpose DOE consents that
4 DOE "Q" clearances, photographer's permits/official
5 photographer designations shall be issued to qualified
6 NDEP personnel as required by NDEP for this purpose;
7

8 XVI.9.d. Review and/or cause to be reviewed, all records,
9 files, and documents relevant to this Agreement, with the
10 determination as to what constitutes relevance made by
11 NDEP.
12

13 XVI.10. The DOE and/or DoD corrective action coordinators and
14 their representatives may implement modifications to the field work
15 to be performed pursuant to an approved work plan and will notify
16 NDEP of such action. This does not relieve either DOE or DoD of
17 their respective requirements to meet the performance objectives of
18 the approved work plan.
19

20
21 **PART XVII. PUBLIC INVOLVEMENT**
22

23 XVII.1. Appendix V, Public Involvement Plan, shall contain a
24 mechanism for continually providing information and for actively
25 seeking public input (including input from the Community Advisory
26 Board), concerning DOE and DoD activities undertaken pursuant to
27 this Agreement.
28

29 XVII.2. The Public Involvement Plan's objectives include, among
30 others:
31

32 XVII.2.a. Identifying and considering the public's
33 concerns, needs, and values prior to making decisions;
34

35 XVII.2.b. Providing an outline of activities and materials
36 which offer accurate, timely, and understandable
37 information to stakeholders (including the general
38 public);
39

40 XVII.2.c. Fulfilling all applicable state and federal
41 regulatory requirements regarding public involvement;
42

43 XVII.2.d. Planning public involvement activities to
44 reflect current schedules and priorities contained in this
45 Agreement.
46

47 XVII.3. At a minimum, public reading rooms shall be located within
48 the two major population centers in the state, one in the north and

1 one in the south. Based on continuing public input, the parties
2 shall annually evaluate the need for additional public reading
3 rooms.

4
5 XVII.4. The public reading rooms shall contain the following, when
6 prepared:

7
8 XVII.4.a. CAI work plans and reports;

9
10 XVII.4.b. Corrective action work plans and reports;

11
12 XVII.4.c. CADDs;

13
14 XVII.4.d. Health assessments;

15
16 XVII.4.e. Risk assessments;

17
18 XVII.4.f. Comments and information submitted by the
19 public;

20
21 XVII.4.g. National Environmental Policy Act documents;

22
23 XVII.4.h. Public Involvement Plan;

24
25 XVII.4.i. Public notices;

26
27 XVII.4.j. This Agreement;

28
29 XVII.4.k. RCRA Permit for NTS;

30
31 XVII.4.l. DOE/NDEP Mutual Consent Agreement; and

32
33 XVII.4.m. Index of the environmental restoration documents
34 in the public reading room and information on how to
35 acquire further environmental restoration information from
36 NDEP, DOE, or DoD.

37
38
39 **PART XVIII. RETENTION OF RECORDS**

40
41 XVIII.1. DOE and DoD shall establish and maintain a compilation
42 of all work plans, data reports, numerical models, numerical model
43 results, monitoring results, and other writings generated pursuant
44 to this Agreement in accordance with DOE and DoD records retention

1 included in the NDEP's Administrative Record, which includes, but
2 is not limited to, those documents cited in paragraph XVII.4. NDEP
3 shall maintain the Administrative Record in accordance with the
4 requirements of NRS Chapter 239.

5
6 XVIII.3. DOE and DoD shall notify NDEP at least one hundred
7 eighty (180) calendar days prior to the proposed destruction or
8 disposal of any documents or records described in this part.

9
10
11 **PART XIX. CONVEYANCE OF TITLE**

12
13 XIX.1. No conveyance of title, easement, or other interest in any
14 of the facilities on which any containment system, treatment
15 system, monitoring system, or other construct is installed or
16 implemented or may be installed or implemented pursuant to this
17 Agreement, shall be consummated by DOE and/or DoD and/or any
18 contractor and/or subcontractor to DOE and/or DoD respectively,
19 without provision for continued maintenance of any such system or
20 other response action(s).

21
22 XIX.2. At least one hundred twenty (120) calendar days prior to
23 any such proposed conveyance, DOE and/or DoD shall notify NDEP of
24 the provisions made for the continued operation and maintenance of
25 any system(s) installed or implemented pursuant to this Agreement.

26
27
28 **PART XX. SEVERABILITY**

29
30 XX.1. If any provision of this Agreement (which may include any
31 activity conducted pursuant to this Agreement) is ruled invalid,
32 unenforceable, unlawful, or unconstitutional by a court of
33 competent jurisdiction, the remainder of this Agreement (including
34 other activities taken thereunder) shall not be affected by such
35 ruling.

36
37
38 **PART XXI. CLASSIFIED AND CONFIDENTIAL INFORMATION**

39
40 XXI.1. Personnel designated by NDEP as requiring DOE "Q"
41 clearances who have subsequently been issued such "Q" clearances by
42 the DOE shall be eligible for access to classified information on
43 a "need to know" basis. Only responsible DOE/DoD officials, with
44 the authority to do so, may make the determination of the "need to
45 know." Recipients of the information are responsible for
46 protecting all classified information to which they have access or
47 custody. DOE and/or DoD shall provide within ten (10) business
48 days of such refusal a written response to NDEP requests for

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