AGREEMENT TO IMPLEMENT U.S. DISTRICT COURT ORDER DATED MAY 25, 2006

The Parties to this Agreement are the United States Department of Energy ("DOE"), the United States Navy, Naval Nuclear Propulsion Program ("Navy")[1] and the State of Idaho (by and through the Governor of the State of Idaho, C.L. "Butch" Otter, and the Idaho Attorney General, Lawrence G. Wasden) and the Governor of the State of Idaho, C.L. "Butch" Otter, individually in his official capacity (collectively "Idaho").

The Parties hereto enter this Agreement in full and final settlement of the current dispute between the Parties in the matter entitled *Public Service Company of Colorado v. Batt*, CV-91-0035-S-EJL and CV 91-0054-S-EJL[2], regarding the interpretation of Paragraph B.1 of the October 17, 1995 Settlement Agreement and Consent Order which is attached hereto as Appendix A.

I. DEFINITIONS

A. "1995 Settlement Agreement" shall mean the October 17, 1995 Settlement Agreement and Consent Order in the matter entitled Public Service Company of Colorado v. Batt, CV-91-0035-S-EJL and CV 91-0054-S-EJL.

B. "741 Sludge" shall mean waste identified as 741 Sludge in the Waste Information Location Database (WILD) or otherwise having characteristics substantially similar to such waste.

C. "742 Sludge" shall mean waste identified as 742 Sludge in the Waste Information Location Database (WILD) or otherwise having characteristics substantially similar to such waste.

D. "743 Sludge" shall mean waste identified as 743 Sludge in the Waste Information Location Database (WILD) or otherwise having characteristics substantially similar to such waste.

E. "Court" shall mean the United States District Court of Idaho or any successor court having jurisdiction over matters arising under Federal Laws within the State of Idaho.

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[1] The Navy is party to this Agreement due to the relationship of this Agreement to the 1995 Settlement Agreement and Consent Order in *Public Service Company of Colorado v. Batt*, CV-91-0035-S-EJL and CV 91-0054-S-EJL to which the Navy is a party. The provisions of this Agreement do not relate to or otherwise affect the terms of the 1995 Settlement Agreement as related to the Navy. The term "Parties" as used herein refers to Idaho and DOE.

[2] Pursuant to Federal Rule of Civil Procedure 25(d) the caption in this matter has been amended numerous times to reflect the Idaho Governors holding office at the time, Hon. Cecil Andrus, Hon. Philip Batt, Hon. Dirk Kempthorne and Hon. C.L. "Butch" Otter. For purposes of consistency of reference in this Agreement, the matter will be referred to as: *Public Service Company of Colorado v. Batt*, CV-91-0035-S-EJL and CV 91-0054-S-EJL.

F. "DOE" shall mean the United States Department of Energy, and any successor agency or agency of the United States Government assigned to assume ownership or control of the INL.

G. "Filters/pre-filters" shall mean waste identified as Filters/pre-filters in the Waste Information Location Database (WILD) or otherwise having characteristics substantially similar to such waste.

H. "Graphite waste" shall mean waste identified as Graphite waste in the Waste Information Location Database (WILD) or otherwise having characteristics substantially similar to such waste.

I. "INL" shall mean the Idaho National Laboratory (or any predecessor or successor name for the facility), which consists of approximately 900 square miles of area under the jurisdiction, custody and control of the United States and operated by DOE within the State of Idaho, and as more particularly set forth in Appendix B attached hereto.

J. "Radioactive Waste Management Complex" or "RWMC" shall mean that portion of the INL that is depicted in Appendix C attached hereto.

K. "Subsurface Disposal Area" or "SDA" shall mean that portion of the RWMC at the INL that is depicted in Appendix C.

L. "Targeted Waste" shall mean those wastes identified in Section IV of this Agreement and as defined therein.

M. "Transuranic Waste" shall be defined as set forth in Paragraph A.4 of the 1995 Settlement Agreement.

N. "Transuranic Waste Storage Area" or "TSA" shall mean that portion of the RWMC at the INL that is depicted in Appendix C.

O. "Uranium Oxide" shall mean waste identified as uranium oxide in the Waste Information Location Database (WILD) or otherwise having characteristics substantially similar to such waste.

P. "Waste Information Location Database" or "WILD" shall mean the version, current as of February 28, 2007, of the database designated by this name and maintained by and in the possession of DOE's Idaho Operations Office and independently maintained in the possession of the State of Idaho for records of waste disposal at the SDA.

II. FINDINGS OF FACT

In executing this Agreement, the Parties agree to the following:

A. On October 17, 1995, the Parties to this Agreement entered into the 1995 Settlement Agreement, which was subsequently entered as a Consent Order in the matter entitled *Public Service Company of Colorado v. Batt*, CV-91-0035-S-EJL and CV 91-0054-S-EJL.

B. On April 18, 2002, Idaho sought to re-open the above-entitled matter seeking a declaratory ruling that Paragraph B.1 of the 1995 Settlement Agreement applied to "Transuranic Waste" located in the SDA at the INL[3].

C. A trial was conducted before the Court in the above-captioned matter on February 6-10, 2006.

D. On May 25, 2006 the Court entered a Memorandum Decision and Judgment establishing the responsibilities of DOE under the 1995 Settlement Agreement with respect to Transuranic Waste buried in the Subsurface Disposal Area.

E. On July 24, 2006 the United States Department of Energy appealed the decision to the Ninth Circuit Court of Appeals. On March 17, 2008, the Ninth Circuit Court of Appeals affirmed the decision of the District Court.

F. Since the filing of the Motion to Re-open in 2002 and the date of this Agreement, DOE, Idaho and the United States Environmental Protection Agency (EPA) have continued to evaluate environmental hazards posed by the Subsurface Disposal Area and Transuranic and other wastes disposed of there. In furtherance of that evaluation, DOE conducted comprehensive reviews of shipping and disposal records, which information was compiled in the WILD Database, and generated maps showing the locations of waste forms in the SDA. In reaching this agreement, DOE and Idaho base their knowledge of waste locations on the WILD database and maps generated by DOE on or before February 28, 2007. Copies of these maps have been lodged with Idaho and shall be kept throughout the duration of this Agreement. Idaho's participation in this Agreement is based upon the representation by DOE that the information contained in the WILD Database and accompanying maps represents a substantially accurate estimate of the extent of Targeted Waste in the SDA.

G. In addition to shipping and disposal record review, DOE conducted a retrieval

[3] At the time of the 1995 Settlement Agreement, the Idaho National Laboratory (INL) was denominated the Idaho National Engineering Laboratory. It was renamed in 2005 as the Idaho National Laboratory.

action at Pit 9 where complete excavation of the retrieval area yielded 454 55-gallon drums of waste of which 63 drums qualified as Targeted Waste.

H. DOE is currently conducting two Non Time Critical Removal Action retrievals and related sampling and record verification from Pit 4 in the SDA known as Advance Retrieval Projects I and II (ARP I, ARP II). DOE and Idaho have also reviewed documentation from retrievals conducted in the 1970s in Pits 2, 5, 10, 11 and 12 of the SDA; and a review of historic disposal records for items posing worker safety, practicality or national security concerns. DOE also continues to evaluate waste being retrieved from the Transuranic Storage Area, which includes waste previously excavated from the Subsurface Disposal Area.

I. Based upon operational experience to date and review of historic records as referenced in Sections II.F-H above, the Parties agree that Transuranic Waste located in the Subsurface Disposal Area is primarily found (based on curie content) in the following waste streams:

1. 741 Sludge
2. 742 Sludge
3. 743 Sludge
4. Graphite Waste
5. Filters/pre-filters

J. Based upon operational experience to date and the limitations of technology, other forms of Transuranic Waste located in the Subsurface Disposal Area are difficult to segregate or discern during retrieval from non-Transuranic Wastes.

K. As described in Sections II.F-J above, the Parties used historic disposal records generated by DOE to identify areas within the SDA where retrieval is, based upon current knowledge and technological capabilities, appropriate in light of countervailing considerations of worker safety and national security. The Parties based the identification of these areas upon the following criteria:

1. Estimated concentrations of curies of transuranic elements;
2. Density of Targeted Waste;
3. Amount and type of non-Targeted Waste requiring handling to retrieve and the corresponding risks posed to workers or the environment and

impacts on retrieval practicability (e.g., considerations given to areas with high gamma radiation or biological hazards, posing undue risks to workers, and areas containing large, unwieldy objects making retrieval impracticable);

4. Reasonable efficacy of retrieval technology in locating Targeted Wastes within the SDA;

5. Absence of classified materials in proximity to Targeted Waste that, for national security reasons, would make retrieval impracticable;

6. Collocation of other environmentally detrimental wastes such as volatile organic compounds; and

7. Existence of effective alternatives to retrieval to address environmental or health risks posed by leaving potential Targeted Waste in place.

III. AGREEMENT / PURPOSE AND INTENT

The Parties agree for the purpose of fully and finally settling the existing dispute and litigation regarding interpretation of Paragraph B.1 of the 1995 Settlement Agreement, that the May 25, 2006 Memorandum Order of the Court defines the Parties' responsibilities for carrying out the requirements of Paragraph B.1 as related to Transuranic Waste buried in the Subsurface Disposal Area at the INL. The purpose of this Agreement is to agree on detailed performance obligations that will fully implement the duties of the Parties under Paragraph B.1 related to Transuranic Waste buried in the Subsurface Disposal Area at the INL. Complete performance of the terms and conditions of this Agreement by DOE shall be deemed by the Parties to constitute compliance with Paragraph B.1 of the 1995 Settlement Agreement as that term has been interpreted by the Court as related to Transuranic Waste buried in the Subsurface Disposal Area at the INL.

IV. AGREEMENT TO RETRIEVE TARGETED WASTE

Based upon the facts and conclusions set forth above in Sections II.F-L the Parties agree that in determining compliance with Paragraph B.1 of the 1995 Settlement Agreement and the Court's May 25, 2006 Memorandum Order, with respect to Transuranic Waste located in the Subsurface Disposal Area, removal of the following waste streams (Targeted Waste) in accordance with Section V satisfies removal of Transuranic Waste from the Subsurface Disposal Area:

A. 741 Sludge

B. 742 Sludge

C. 743 Sludge

D. Graphite Waste

E. Filters/pre-filters

F. Uranium Oxide (DOE and Idaho recognize that Uranium Oxide is not a Transuranic Waste within the definition of the 1995 Settlement Agreement. Notwithstanding that, the Parties agree that removal of Uranium Oxide co-located with other Targeted Wastes is environmentally beneficial and thus have included it as a Targeted Waste.)

G. Other waste streams mutually agreed by the Parties, as the result of operational experience or process knowledge, to routinely be recognizable as Transuranic Waste.

V. TRANSURANIC RETRIEVAL VOLUME

A. DOE shall retrieve not less than 6,238 cubic meters of Targeted Waste from within that portion of the Subsurface Disposal Area identified in Appendix D attached hereto or areas immediately adjacent to those areas within retrieval enclosures constructed pursuant to this Agreement.

1. Compliance with the obligation set forth above in Section V.A shall be measured as 7,485 cubic meters packaged for shipment out of Idaho**.** The volume of Targeted Waste packaged for shipment shall be measured as the internal volume of the primary waste container as packaged from the Drum Packaging Station. One 55-gallon drum of waste shall constitute 0.208 m^3 of Targeted Waste packaged for shipment; a Standard Waste Box full of waste shall constitute 1.88 m^3 of Targeted Waste packaged for shipment; and a Standard Waste Box used as an over-pack of four 55-gallon drums of waste shall constitute 0.832 m^3 of Targeted Waste packaged for shipment.

DOE will record a running volume of Targeted Waste packaged for shipment and will provide this information to the State upon request.

All primary waste containers will be filled with Targeted Waste, while maintaining necessary headspace. It is recognized that package liners and necessary absorbent materials may also be present. Final fill volume may be limited by weight and fissile loading limits, with the understanding that in such cases waste shall be packaged in the smallest container practical.

2 The Parties agree that pursuant to the Glovebox Excavator Method (GEM), ARP I and ARP II retrieval projects DOE has retrieved and packaged Targeted Waste for shipment from Idaho. The volume of this waste shall be verified pursuant to Section VI and counted toward meeting the requirements of Section V.A above.

B. Notwithstanding Section V.A above, DOE shall do both of the following:

1. Fully excavate those areas identified in Appendix E attached hereto.

a) In complying with the obligation set forth in Section V.B, DOE shall excavate to the full lateral extent of the areas identified in Appendix E. The vertical extent of excavation will go down as steeply as possible without compromising slope stability until bedrock is reached, underburden is encountered, further excavation is not warranted based on factors identified in Section VII.A or the presence of large, unwieldy objects makes excavation impracticable.

b) The Parties agree that pursuant to ARP I, DOE had, as of February 14, 2008, excavated 0.385 acres of the area identified in Appendix E which shall be counted toward meeting the requirements of Section V.B.

2. Retrieve all Targeted Waste from those areas of the SDA identified in Appendix E in conformity with the protocol attached hereto as Appendix F.

C. The Parties may by mutual agreement and consistent with Section IX of this Agreement, modify the boundaries of the areas identified in Appendix E, provided however, that such modifications shall not affect the requirement of Section V.A.

D. If DOE is unable to recover the volume of Targeted Waste identified in Section V.A above from the areas identified in Appendix E, DOE shall continue to excavate from those additional areas identified in Appendix D until such time as it has met the requirement of Section V.A.

VI. <u>CONFIRMATION OF WASTE IDENTIFICATION AND VOLUME</u>:

In satisfying the obligations set forth in Sections V and VI DOE shall comply with the protocol identified in Appendix F. The Parties may, by mutual agreement in writing, modify the protocol identified in Appendix F to reflect operational experience.

A. To ensure the appropriateness of the Parties' reliance on disposal records for identifying retrieval areas under this Agreement; DOE shall use means acceptable to Idaho to compare disposal records with actual waste disposal. These means shall

include at a minimum:

1. Comparison of information contained in the WILD database reflecting waste disposal volumes, types and locations with volumes of and locations of retrieved 741 Sludge, 742 Sludge, 743 Sludge, and Uranium Oxide, and

2. Comparison of information contained in the WILD database reflecting locations of disposal containers with identifiable labeling or other unique characteristics with actual disposal locations of those containers as determined during the course of retrieval.

B. DOE shall follow the protocol identified in Appendix F and shall be subject to Idaho oversight, to ensure proper identification of Targeted Waste at the dig face and any other process where Targeted Waste segregation occurs so as to assure that retrieved volume calculations are accurate and that wastes meeting the definition of "Targeted Waste" set forth in Section IV.G are identified, segregated and packaged for shipment in future retrievals.

C. DOE shall follow the protocol identified in Appendix F and shall be subject to Idaho oversight to ensure that volume measurements of waste retrieved and packaged pursuant to Section V for the purpose of satisfying Section V.A are accurate and appropriate.

D. For purposes of compliance verification, DOE shall provide qualified Idaho personnel unrestricted access to all excavation records, information, sampling data, and exhumation video recordings. Further, DOE shall provide qualified Idaho personnel unrestricted access for direct observation of exhumation operations, waste sorting, waste container packaging, and waste container assay.

VII. SAFETY/SECURITY ISSUES

A. Excavation and retrieval of Targeted Waste as set forth in Section V of this Agreement are required unless such excavation and/or retrieval presents a substantial danger to worker or public safety or to the environment, or implicates national security issues involving classified information, such factors constituting the exclusive basis upon which DOE may request the suspension of a retrieval obligation under this Agreement.

B. If excavation and retrieval of Targeted Waste from the areas identified in Appendix D or E present a substantial danger to worker or public safety or to the environment or implicates national security issues involving classified information, the Parties agree that retrievals may be suspended until such time as such issues are resolved either through negotiation or judicial determination. The Parties agree to promptly meet and confer regarding any such issues and to attempt in good faith

to resolve such issues. If such resolution cannot be promptly achieved the Parties agree to use the dispute resolution procedures in Section IX.

C. In the event the suspension occurs in an area identified in Appendix E and the cause for such suspension cannot be resolved so to allow for completion of retrieval, the Parties shall agree upon an area of at least equivalent size containing an equivalent volume of Targeted Waste from within the areas identified in Appendix D from which to excavate and retrieve Targeted Waste so as to satisfy the obligations of Sections V.A-C.

VIII. SHIPMENT OF RETRIEVED TRANSURANIC WASTE

DOE agrees to ship any Transuranic Waste retrieved from the SDA prior to December 31, 2017 from the State of Idaho by not later than December 31, 2018. Any Transuranic Waste retrieved from the SDA after December 31, 2017 shall be shipped from the State of Idaho to an appropriate disposal facility within 365 days of the date from which it was retrieved from the SDA and placed in a container.

IX. DISPUTE RESOLUTION: The Parties agree that in the event an impasse is reached in the implementation of this Agreement or that any Party to this Agreement contends that any other Party has violated any terms of this Agreement, the Parties shall seek to resolve their differences informally, which shall at a minimum involve: (1) written notice from either Party identifying the nature of the impasse and/or breach; (2) thirty (30) days within which to meet and confer following written notice; and (3), at least one conference either in person or by telephone between the signatories hereto or their successors before asking for resolution by the Court.

X. JUDICIAL REVIEW

The Parties agree that disputes arising from the performance of this Agreement which cannot be resolved by dispute resolution pursuant to Section IX, shall be resolved by the Court, which having retained jurisdiction over the 1995 Settlement Agreement, shall have continuing jurisdiction over disputes arising under this Agreement.

XI. REMEDY

In the event that the Court determines that DOE is in breach of Paragraph B.1 of the 1995 Settlement Agreement and/or this Agreement, the sole and exclusive remedy for such breach shall be the remedy specified in Paragraph B.2 of the 1995 Settlement Agreement.

XII. AMENDMENT, MODIFICATION AND TERMINATION

A. This Agreement may only be amended by mutual agreement of the Parties or their successors in office. Any amendment or modification of this Agreement shall be in writing, shall have as the effective date the date of signature by the Governor and the Attorney General of Idaho, and shall be incorporated into this Agreement and be enforceable in the same manner as any other requirement of this Agreement.

B. This Agreement shall bind the Parties, their employees, officers, directors, officials, trustees, contractors, subcontractors, consultants, tenants, agents, successors and assigns until such time as the terms of this Agreement are met and this Agreement is terminated in writing by the Parties.

C. Termination of this Agreement shall not affect any remaining obligations of the Parties under the 1995 Settlement Agreement.

XIII. RESERVATION

It is expressly understood and agreed by the Parties that the basis for this agreement are the factual findings set forth in Section II of this Agreement. The Parties reserve the right to seek appropriate relief pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.

XIV. FUNDING

A. Consistent with Paragraph H of the 1995 Settlement Agreement, DOE shall take all necessary steps to obtain sufficient funding to comply with the provisions of this Agreement and, once obtained, shall obligate those funds for the purpose of compliance with this Agreement.

B. Consistent with Paragraph J.3 of the 1995 Settlement Agreement, DOE maintains that any requirement for the obligation of funds under this Agreement is subject to the provisions of the Anti-Deficiency Act, 31 U.S.C. § 1341. DOE also maintains that any requirement for the obligation of funds under this Agreement is subject to the availability of appropriated funds and that the unavailability of such funds may constitute a valid defense to any judicial action that may be brought to enforce the terms of this Agreement. Idaho recognizes the provisions of the Anti-Deficiency Act but has specifically reserved the right to exercise its remedy pursuant to Paragraph K.1.a. of the 1995 Settlement Agreement.

C. If, at any time, adequate funds or appropriations are not available to comply with this Agreement, DOE shall notify Idaho in writing and Idaho shall determine whether it is appropriate to adjust the deadlines set forth in this Agreement or otherwise

pursue any and all available remedies under this Agreement and the 1995 Settlement Agreement.

XV. MISCELLANEOUS PROVISIONS:

A. APPLICABILITY OF THIS AGREEMENT AND RELATIONSHIP TO OTHER OBLIGATIONS: This Agreement is intended solely to govern the rights and liabilities of the Parties as related to Transuranic Waste located at the SDA. Nothing in this Agreement shall affect the remaining obligations, rights or remedies of the Parties pursuant to the 1995 Settlement Agreement, including but not limited to shipments of Transuranic Waste from the Transuranic Waste Storage Area and other locations at the INL.

B. EFFECT OF OTHER LAWS: This Agreement shall not relieve the Parties from their obligation to comply with any applicable federal, state, or local law. Nothing in this Agreement shall be construed to limit or otherwise constrain DOE's authority or obligation under other laws, including but not limited to CERCLA, to excavate or retrieve waste from outside of the areas identified in Appendix D.

C. RELATIONSHIP TO THE FEDERAL FACILITY AGREEMENT AND CONSENT ORDER ("FFA/CO"): The Parties recognize that there are actions being undertaken at the RWMC and SDA pursuant to the terms and conditions of the 1991 FFA/CO between DOE, Idaho and the United States Environmental Protection Agency ("EPA") which are intended to satisfy the requirements of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA). It is the intent of the Parties that actions undertaken pursuant to this Agreement be coordinated with those undertaken under the FFA/CO process for addressing contamination at the SDA. It is the expectation of the Parties that simultaneously with the filing of this Agreement a draft Record of Decision (ROD) will be issued for remediation of the SDA. It is further the expectation of the Parties that the draft ROD and any final ROD will be consistent with this Agreement. It is the intention of the Parties to work together and to consult with EPA to assure that implementation of this Agreement and the final ROD will proceed in a harmonious manner. Notwithstanding the foregoing, however, nothing in the FFA/CO or in the draft or final ROD, shall affect the independent obligations to retrieve and ship Targeted Waste located at the SDA as set forth herein. Moreover, DOE reserves its rights pursuant to CERCLA and the FFA/CO.

D. PROPOSED CONSENT JUDGMENT: The Parties agree that they shall jointly present this Agreement to the United States District Court for the District of Idaho with a proposed Order that will provide for the incorporation of this Agreement into the 1995 Settlement Agreement and Consent Decree, continuing jurisdiction of the Court and administrative termination of the matter entitled *Public Service Company*

of Colorado v. Batt, CV-91-0035-S-EJL and CV 91-0054-S-EJL without prejudice to the right of the Parties to reopen the proceedings for good cause shown.

E. NO ADMISSION OF LIABILITY: The Agreement effected hereby is a compromise of a disputed claim, and except for purposes of enforcement of this Agreement, shall not be construed as an admission of liability by any person or entity, the same being denied.

F. INTEGRATED AGREEMENT: The Parties declare and represent that no promise, inducement or agreement not herein expressed has been made and that this Agreement contains the entire agreement between the Parties and that the terms of this Agreement including all definitions contained herein are contractual and not mere recital.

G. ADVICE OF COUNSEL: The Parties acknowledge that each is represented by counsel and that each has been fully advised concerning this Agreement and the obligations of the Parties contained in this Agreement.

XVI. EFFECTIVE DATE

The effective date of this Agreement shall be the entry of the Consent Order by the Court as provided for in Section XV.D.

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 State to this Agreement.

SO AGREED:

SIGNED: _____ DATE July 1, 2008
HON. JAMES RISPOLI
ASSISTANT SECRETARY FOR ENVIRONMENTAL MANAGEMENT
U.S. DEPARTMENT OF ENERGY

SIGNED: _____ DATE 6/25/2008
ADMIRAL KIRKLAND DONALD
DIRECTOR, NAVAL NUCLEAR PROPULSION PROGRAM

SIGNED: _____ DATE July 1, 2008
HON. C.L. "BUTCH" OTTER, GOVERNOR
STATE OF IDAHO

SIGNED: _____ DATE 1/July/2008
HON. LAWRENCE G. WASDEN, ATTORNEY GENERAL
STATE OF IDAHO

Appendix A: 1995 Court Settlement
Appendix B: Map of INL
Appendix C: Map of INL's Radioactive Waste Management Complex, including the Transuranic Storage Area and Subsurface Disposal Area
Appendix D: Map of 7.40 Acre Retrieval Area
Appendix E: Map of 5.69 Acre Retrieval Area
Appendix F: Protocol for Targeted Waste Retrievals and Volume Determinations

SETTLEMENT AGREEMENT

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

A. DEFINITIONS

For purposes of this Agreement, the following definitions shall apply:

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

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

3. "Treat" shall be defined, as applied to a waste or spent fuel, as any method, technique, or process designed to change the physical or chemical character of the waste or fuel to render it less hazardous; safer to transport, store, dispose of; or reduce in volume.

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

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

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

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

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

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APPENDIX A

removed from naval reactors as a result of refueling overhauls (refueling) or defueling inactivations (defueling).

9. "Metric ton of spent fuel" shall be defined as a metric ton of heavy metal of spent fuel.

10. "Naval reactors" shall be defined as nuclear reactors used aboard naval warships (submarines, aircraft carriers, or cruisers), naval research or training vessels, or at land-based naval prototype facilities operated by the Naval Nuclear Propulsion Program for the purposes of research, development, or training.

11. "Calendar year" shall be defined as the year beginning on January 1, and ending on December 31.

12. "Mixed Waste" shall be defined as set forth in the EIS, Volume 2, Appendix E.

13. "EIS" shall be defined as the Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Program Final Environmental Impact Statement issued April, 1995.

14. "ROD" shall be defined as the Record of Decision issued by DOE on June 1, 1995, concerning the EIS.

15. "INEL" shall be defined as the Idaho National Engineering Laboratory.

16. "Running Average" shall mean the total number of shipments of naval spent fuel to INEL, or transuranic waste from INEL, over any period of three years, divided by three.

17. The "Court" shall mean the United States District Court for the District of Idaho before which is pending Public Service Company of Colorado v. Batt, No. CV 91-0035-S-EJL and United States v. Batt, No. CV 91-0054-S-EJL, and any appellate court to which an appeal may be taken, or with which an application for a writ of certiorari may be filed, under applicable law.

B. TRANSURANIC WASTE SHIPMENTS LEAVING IDAHO

1. DOE shall ship all transuranic waste now located at INEL, currently estimated at 65,000 cubic meters in volume, to the Waste Isolation Pilot Plant (WIPP) or other such facility designated by DOE, by a target date of December 31, 2013, and in no event later than December 31, 2018. DOE shall meet the following interim deadlines:

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

b. By December 31, 2002, no fewer than 3,100 cubic meters (15,000 drum-equivalents) of transuranic waste shall have been shipped out of the State of Idaho.

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

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

C. SPENT FUEL & HIGH-LEVEL WASTE SHIPMENTS LEAVING IDAHO

1. DOE shall remove all spent fuel, including naval spent fuel and Three Mile Island spent fuel from Idaho by January 1, 2035. Spent fuel being maintained for purposes of testing shall be excepted from removal, subject to the limitations of Section F.1 of this Agreement.

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

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

D. SHIPMENTS OF SPENT FUEL TO INEL

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

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

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

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Secretary of Defense, upon notice to the Governor of the State of Idaho, shall certify the total number of such shipments of naval spent fuel required to be made through the year 2035.

b. The Navy shall not ship more than twenty four (24) shipments to INEL from the date of this Agreement through the end of 1995, no more than thirty six (36) shipments in 1996, and no more than twenty (20) shipments per year in calendar years 1997 through 2000. From calendar year 2001 through 2035, the Navy may ship a running average of no more than twenty (20) shipments per year to INEL. The total number of shipments of naval spent fuel to INEL through 2035 shall not exceed 575. Shipments of naval spent fuel to INEL through 2035 shall not exceed 55 metric tons of spent fuel.

c. Prior to January 1 of each calendar year through the year 2035, the Navy shall provide to Idaho an estimate of the number of shipments and the number of metric tons of naval spent fuel to be shipped during the following calendar year.

d. By January 31 of each calendar year, the Navy shall provide to Idaho the actual number of shipments and actual number of metric tons of naval spent fuel shipped during the preceding calendar year.

e. The naval spent fuel stored at INEL on the date of the opening of a permanent repository or interim storage facility shall be among the early shipments of spent fuel to the first permanent repository or interim storage facility.

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

2. Shipments of DOE spent fuel to INEL shall take place as follows:

a. If DOE and the U.S. Department of State adopt a policy to accept spent fuel from foreign research reactors into the United States, DOE may send to INEL a maximum of 61 shipments of spent fuel from foreign research reactors during the period beginning on the date such a policy is adopted and ending on December 31, 2000. The Secretary of Energy, upon notice to the Governor of the State of Idaho, must certify that these shipments are necessary to meet national security and nonproliferation requirements. Upon such certification, DOE may ship not more than 10 such shipments from the date such policy is adopted through December 31, 1996, not more than 20 such shipments from the date the policy is adopted through December 31, 1997, and not more than 40 such shipments from the date the policy is adopted

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through December 31, 1998.

b. Until such time as a permanent repository or interim storage facility for storage or disposal of spent fuel, located outside of Idaho, is operating and accepting shipments of spent fuel from INEL, DOE shall be limited to shipments of spent fuel to INEL as set forth in Sections D.2.a., c., d., e., and (f). After a permanent repository or interim storage facility is operating and accepting shipments of spent fuel from INEL, the State of Idaho and DOE may negotiate and reach agreement concerning the timing and number of shipments of DOE spent fuel that may be sent to INEL, in addition to those otherwise permitted under this Section D.2., for preparation for storage or disposal outside the State of Idaho.

c. After December 31, 2000, DOE may transport shipments of spent fuel to INEL constituting a total of no more than 55 metric tons of DOE spent fuel (equivalent to approximately 497 truck shipments) and subject to the limitations set forth in Sections D.2.e., f., g., and h. below, except that the limitations of Section D.2.a. above will not apply.

d. No shipments of spent fuel shall be made to INEL from Fort St. Vrain, unless a permanent repository or interim storage facility for spent fuel located outside of Idaho has opened and is accepting spent fuel from INEL, in which case such shipments may be made for the purpose of treating spent fuel to make it suitable for disposal or storage in such a repository or facility. Shipments of spent fuel from Fort St. Vrain shall remain at INEL only for a period of time sufficient to allow treatment for disposal or storage in such a repository or facility. The total number of Fort St. Vrain shipments shall not exceed 244, constituting no more than sixteen (16) metric tons of spent fuel, and shall be in addition to those allowed under Section D.2.c. above.

e. Except as set forth in Section D.2.d. above, DOE will make no shipments of spent fuel from commercial nuclear power plants to INEL.

f. After December 31, 2000, and until an interim storage facility or permanent repository is opened and accepting spent fuel from INEL, DOE shall not ship to INEL more than 20 truck shipments of spent fuel in any calendar year, except that:

(i) In one calendar year only, DOE may make not more than 83 truck shipments of spent fuel to INEL from the West Valley Demonstration Project;

(ii) DOE may not make more than 13 truck shipments in any of the nine calendar years succeeding the

shipment of the West Valley Demonstration Project spent fuel to INEL; and

(iii) Shipments DOE is entitled to make to INEL in any calendar year, but has not made, may be shipped in any subsequent calendar year, notwithstanding the limitations in this Section D.2.f. on the number of shipments per year.

For purposes of this section and Section D.2.c., in determining the number of truck shipments, one rail shipment shall be deemed equivalent to 10 truck shipments, except that in the case of shipments from West Valley Demonstration Project, seven rail shipments shall be deemed to be equal to 83 truck shipments. DOE may elect to make rail shipments in lieu of truck shipments, in accordance with this conversion formula and subject to other limitations of this section.

g. Prior to January 1 of each calendar year through the year 2035, DOE shall provide to Idaho an estimate of the number of shipments and the number of metric tons of DOE spent fuel to be shipped during the following calendar year.

h. No later than January 31st of each calendar year, DOE shall provide to Idaho the actual number of shipments and actual number of metric tons of DOE spent fuel shipped during the preceding year.

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

E. TREATMENT & TRANSFER OF EXISTING WASTES AT INEL

1. Treatment Commitment. DOE agrees to treat spent fuel, high-level waste, and transuranic wastes in Idaho requiring treatment so as to permit ultimate disposal outside the State of Idaho.

2. Mixed Waste Treatment Facility. DOE shall, as soon as practicable, commence the procurement of a treatment facility ("Facility") at INEL for the treatment of mixed waste, transuranic waste and alpha-emitting mixed low-level waste ("Treatable Waste"). DOE shall execute a procurement contract for the Facility by June 1, 1997, complete construction of the Facility by December 31, 2002, and commence operation of the Facility by March 31, 2003. Commencement of construction is contingent upon Idaho approving necessary permits.

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

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

4. Calcination of Remaining Non-Sodium Bearing Liquid Wastes. DOE shall complete the process of calcining all remaining non-sodium bearing liquid high-level wastes currently located at INEL by June 30, 1998.

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

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

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

7. Transfer of Three Mile Island Fuel. DOE shall complete construction of the Three Mile Island dry storage facility by December 31, 1998. DOE shall commence moving fuel into the facility by March 31, 1999, and shall complete moving fuel into the facility by June 1, 2001.

8. Transfer out of Wet Storage. By December 31, 1999, DOE shall commence negotiating a schedule with the State of Idaho for the transfer of all spent fuel at INEL out of wet storage facilities. DOE shall complete the transfer of all spent fuel from wet storage facilities at INEL by December 31, 2023. If DOE determines that transfer to dry storage of any portion of such spent fuel is technically infeasible, or that transfer to such dry storage presents significantly greater safety or environmental risks than keeping the fuel in wet storage, DOE shall inform the State and propose a later date or alternative action. If the State does not agree to such later date or alternative action, DOE may apply to the Court for appropriate relief. DOE shall, after consultation with the State of Idaho, determine the location of the dry storage facilities within INEL, which shall, to the extent technically feasible, be at a point removed from above the Snake River Plain Aquifer ("Aquifer").

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

F. SPENT FUEL PROGRAM

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

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permitted by this Agreement shall leave the State of Idaho within five years of the date of receipt at INEL.

2. Construction of Dry Storage. DOE shall include in its appropriation request for federal fiscal year 1998 to the Executive Office of the President funds necessary for DOE to initiate the procurement of dry storage at INEL to replace wet, below ground facilities. Spent fuel loading into dry storage shall commence by July 1, 2003.

3. Funding for Dry Cell Expansion Project. The Naval Nuclear Propulsion Program shall include in its appropriation request to the Executive Office of the President for federal fiscal year 1997 funds necessary for the Dry Cell Expansion Project ("Project") at the Expended Core Facility at the Naval Reactors Facility to accommodate removal of excess material and examination of naval spent fuel in a dry condition. The Project shall commence as soon as Idaho issues the required permit under the Clean Air Act and funding is appropriated. Completion of this project shall result in the expenditure of approximately $26 million dollars over the next five years.

4. Multi-Purpose Canisters. DOE and the Navy shall employ Multi-Purpose Canisters ("MPCs") or comparable systems to prepare spent fuel located at INEL for shipment and ultimate disposal of such fuel outside Idaho. Procurement shall be performed in accordance with the Federal Acquisition Regulation which ensures that companies in Idaho will have opportunity to bid on and obtain any competitive contracts for such work. The Record of Decision on the NEPA analysis shall be completed by April 30, 1999.

5. ECF Hot Cell Facility Upgrade. The Naval Nuclear Propulsion Program shall include in its appropriation request for federal fiscal year 1997 to the Executive Office of the President funds necessary to proceed with upgrades which shall require approximately $12 million of expenditures during the next three years.

6. ECF Dry Storage Container Loading Station. The Naval Nuclear Propulsion Program shall include in its appropriation request for federal fiscal year 1997 to the Executive Office of the President funds necessary to proceed with design and construction of a dry storage container loading station at ECF. This project shall require no less than $20 million of expenditures during the next five years.

7. Funding for Discretionary Environmental Remediation Work at the Naval Reactors Facility. The Naval Nuclear Propulsion Program shall undertake environmental remediation efforts at the Naval Reactors Facility totaling approximately $45

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million over the next five years.

8. Water Pool Reracking. DOE may proceed with installing new racks into the water pool in the building at the Idaho Chemical Processing Plant Facility currently holding naval spent fuel to provide enhanced capability for spent fuel storage in the existing water pool space until dry storage can be made available. Installation of the new racks may commence as soon as Idaho issues the necessary permit under the Clean Air Act. Idaho shall issue said permit within 180 days after DOE re-submits its application to Idaho.

G. INEL ENVIRONMENTAL RESTORATION PROGRAM

1. INEL Environmental Restoration Program to Continue. DOE shall continue to implement the INEL environmental restoration program in coordination with Idaho and EPA. Such implementation shall be consistent with the schedules contained in the Federal Facilities Agreement and Consent Order (FFA/CO) entered into with the State of Idaho, EPA and DOE, and it shall include schedule requirements developed pursuant to the completed and future Records of Decision under the FFA/CO. The sole remedies for failure to implement the environmental restoration activities specified in the FFA/CO shall be those specified in the FFA/CO.

H. OBTAINING TIMELY FEDERAL FUNDING FOR COMPLIANCE WITH THIS ORDER

1. Compliance Funding. DOE and the Naval Nuclear Propulsion Program shall share budget information concerning INEL with Idaho prior to submitting the budget request to the Executive Office of the President. Consultations with the State of Idaho shall continue throughout the budget process. The current DOE estimate for the costs of the activities and projects described in Sections A through G over the next five years is approximately $200 million above established budget targets.

I. FEDERAL FUNDS FOR THIS SETTLEMENT AGREEMENT

1. DOE shall provide to the State of Idaho beginning in federal fiscal year 1996 and continuing through 1997-2000, a total amount of $30 million for community transition purposes and any other purposes that are mutually acceptable to the parties, such as the non-Federal development of Boron Neutron Capture Therapy and Radiological Toxicology technology in Idaho.

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

J. GOOD FAITH COMPLIANCE & AFFIRMATIVE SUPPORT

1. The federal parties and Idaho agree that the activities to be performed under this Agreement and the subsequent Consent Order are in the public interest. The federal parties and Idaho acknowledge the complexity of this Agreement and have agreed to act in good faith to effectuate its fulfillment. The federal parties and Idaho shall affirmatively support this Agreement and its terms, conditions, rights and obligations in any administrative or judicial proceeding. The federal parties and Idaho intend to seek a sense of the Congress resolution expressing support for the terms, conditions, rights and obligations contained in this Agreement and the subsequent Consent Order and recommending to future Congresses that funds requested by the President to carry out this Agreement be appropriated. In any administrative or judicial proceeding, Idaho shall support the adequacy of the EIS and ROD against any challenges by third parties. Idaho shall have the ability, in its sole discretion, to waive performance by the federal parties of any terms, conditions and obligations contained in this Agreement.

2. Idaho shall promptly issue, upon submission of legally sufficient applications, all permits, licenses or other approvals needed by the DOE, the Navy or the Naval Nuclear Propulsion Program for the performance of any of their respective obligations set forth in this Agreement.

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

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

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the Agreement to that selected action. Approval of such modification shall not be unreasonably withheld. If the State refuses to accept the requested modification, DOE or the Navy may seek relief from the Court. On motion of any party, the Court may extend the time for DOE or the Navy to perform until the Court has decided whether to grant relief. If the Court determines that the State has unreasonably withheld approval, the Agreement shall be conformed to the selected action. If the Court determines that the State has reasonably withheld approval, the time for DOE or the Navy to perform the action at issue shall be as set forth in this Agreement and subject to enforcement as set forth section in Section K.1.

5. Effect of Certain Court Orders.

a. Navy. In the event that a court order is entered in the case of Snake River Alliance Education Fund v. United States Department of Energy, No. CV-95-0331-S-EJL (D. Idaho), or in any other judicial proceeding, that prohibits in whole or in part any shipment of spent fuel to INEL by the Navy under section D, then all obligations, requirements and deadlines of the federal parties under this Agreement shall be suspended during the period of applicability of the order. Upon the vacating, dissolving or reversing of any such order, the obligations, deadlines and requirements provided for in this Agreement shall be extended by a period that corresponds to their period of suspension.

b. DOE. In the event that a court order is entered in the case of Snake River Alliance Education Fund v. United States Department of Energy, No. CV-95-0331-S-EJL (D. Idaho), or in any other judicial proceeding, that prohibits in whole or in part any shipment of spent fuel to INEL by DOE under section D, then the DOE has the option to suspend all DOE shipments to INEL and suspend all of DOE's obligations, requirements and deadlines under this Agreement during the period of applicability of the order. If DOE exercises this option, then upon the vacating, dissolving, or reversing of any such order, DOE's obligations, deadlines and requirements provided for in this Agreement shall be extended by a period that corresponds to their period of suspension.

K. ENFORCEMENT

1. Suspension of Shipments.

a. DOE. If DOE fails to satisfy the substantive obligations or requirements it has agreed to in this Agreement or fails to meet deadlines for satisfying such substantive obligations or requirements, shipments of DOE spent fuel to INEL

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PAGE.013 NO.383 D13

shall be suspended unless and until the parties agree or the Court determines that such substantive obligations or requirements have been satisfied.

b. Navy. If the Navy or the Naval Nuclear Propulsion Program fails to satisfy the substantive obligations or requirements it has agreed to in this Agreement or fails to meet deadlines for satisfying such substantive obligations or requirements, shipments of Navy spent fuel to INEL shall be suspended unless and until the parties agree or the Court determines that such substantive obligations or requirements have been satisfied.

2. Other Enforcement

a. Judicial Enforcement. The Court may enforce the rights, obligations and requirements assigned by this Agreement, other than those exclusively enforceable under Section K.1., pursuant to all legal and equitable remedies available to the courts of the United States, including, but not limited to, use of the Court's contempt powers.

b. RCRA Enforcement. Nothing in this Agreement shall prohibit the State of Idaho from requiring necessary remedial actions as set forth in the Resource Conservation and Recovery Act, 42 U.S.C. section 6929 ("RCRA") (or statutory equivalent), including penalty and fine procedures, the sums of which shall be payable to the State of Idaho.

c. Payment Obligation. In the event that the federal parties do not carry out the requirement that all spent fuel located at INEL be removed from Idaho by January 1, 2035, then subject to the availability of the appropriations provided in advance for this purpose, the federal parties shall pay to the State of Idaho $60,000 for each day such requirement has not been met.

3. Prior Orders, Agreements and Decisions. The terms of this Agreement shall supersede all rights, duties and obligations set forth in any prior orders, agreements or decisions entered in this litigation, captioned Public Service Company of Colorado v. Batt, and United States of America v. Batt, Nos. CV 91-0035-S-EJL and CV 91-0054-S-EJL, except for the provisions of paragraph 4 of the December 22, 1993 Court Order.

4. Dispute Resolution. In the event that any party to this Agreement contends that any other party has violated any terms of the Agreement, the parties shall seek to resolve their differences informally before asking for resolution by the Court.

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L. CONSENT ORDER

1. The parties agree they shall jointly present this Agreement to the U.S. District Court with a proposed Consent Order which will provide for the incorporation of this Agreement, continuing jurisdiction of the Court and the administrative termination of this action without prejudice to the right of the parties to reopen the proceedings for good cause shown. This Agreement and Consent Order shall not preclude any party from applying to the Court under Rule 60, of the Federal Rules of Civil Procedure, or the Court from granting relief thereunder.

2. If the Consent Order is not entered by the Court, in accordance with Section L.1 above, within 45 days of lodging with the Court, then either party to this Agreement may elect to terminate this Agreement, in which case this Agreement becomes null and void, and of no force or effect.

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CEN001761

For the Federal Parties:

Robert R. Matthews
General Counsel
Department of Energy

Thomas P. Grumbly
Assistant Secretary
for Environmental Management
Department of Energy

Steven E. Weisman
General Counsel
Department of the Navy

Admiral Bruce DeMars
Director, Naval Nuclear
Propulsion Program

For the State of Idaho:

Philip E. Batt
Governor, State
State of Idaho

Alan G. Lance
Attorney General,
State of Idaho

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UNITED STATES COURTS
DISTRICT OF IDAHO
OCT 17 1995
8:34 A.M. REC'D
LODGED FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

PUBLIC SERVICE COMPANY OF COLORADO, Plaintiff, v. PHILIP E. BATT, individually and as Governor of the State of Idaho, Defendant.	Civil No. 91-0035-S-EJL (Lead Case)
UNITED STATES OF AMERICA, Plaintiff, v. PHILIP E. BATT, in his official capacity as Governor of the State of Idaho; STATE OF IDAHO, Defendants.	Civil No. 91-0054-S-EJL CONSENT ORDER

Upon consideration of the parties' Joint Motion For Entry of Consent Order Based on Settlement Agreement, it is hereby ORDERED

That the Motion is GRANTED,

That the terms of the appended Settlement Agreement are hereby incorporated in this Consent Order,

That all prior injunctions entered in this action are hereby VACATED except paragraph 4 of the Order entered December 23, 1993 and entitled Amended Order Modifying Order of June 28, 1993, and

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

October 17th, 1995

UNITED STATES DISTRICT JUDGE

RECEIVED
OCT 17 1995
OFFICE OF THE ATTORNEY GENERAL

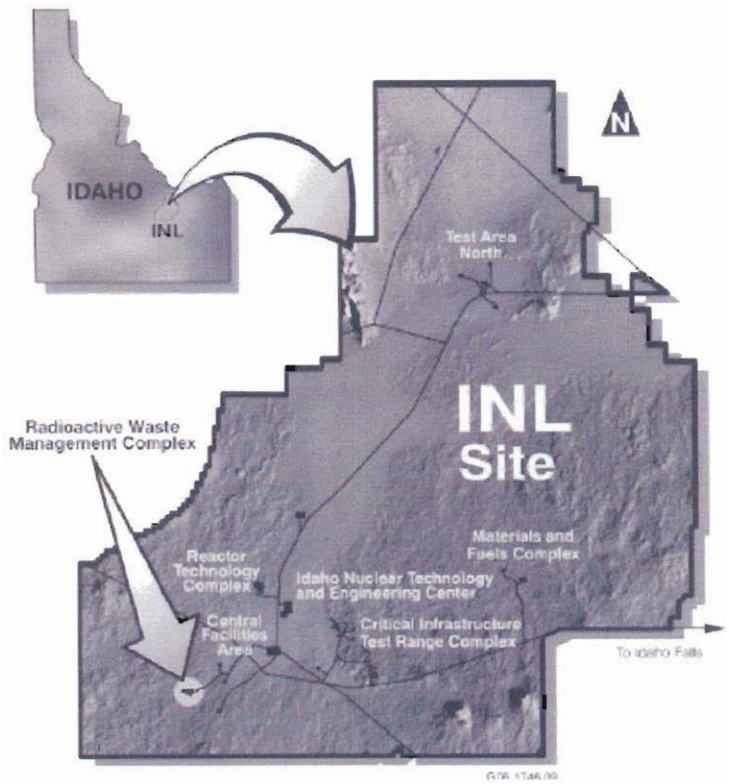
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES COURTS
DISTRICT OF IDAHO
OCT 17 1995
8:34 A M. REC'D
LODGED FILED

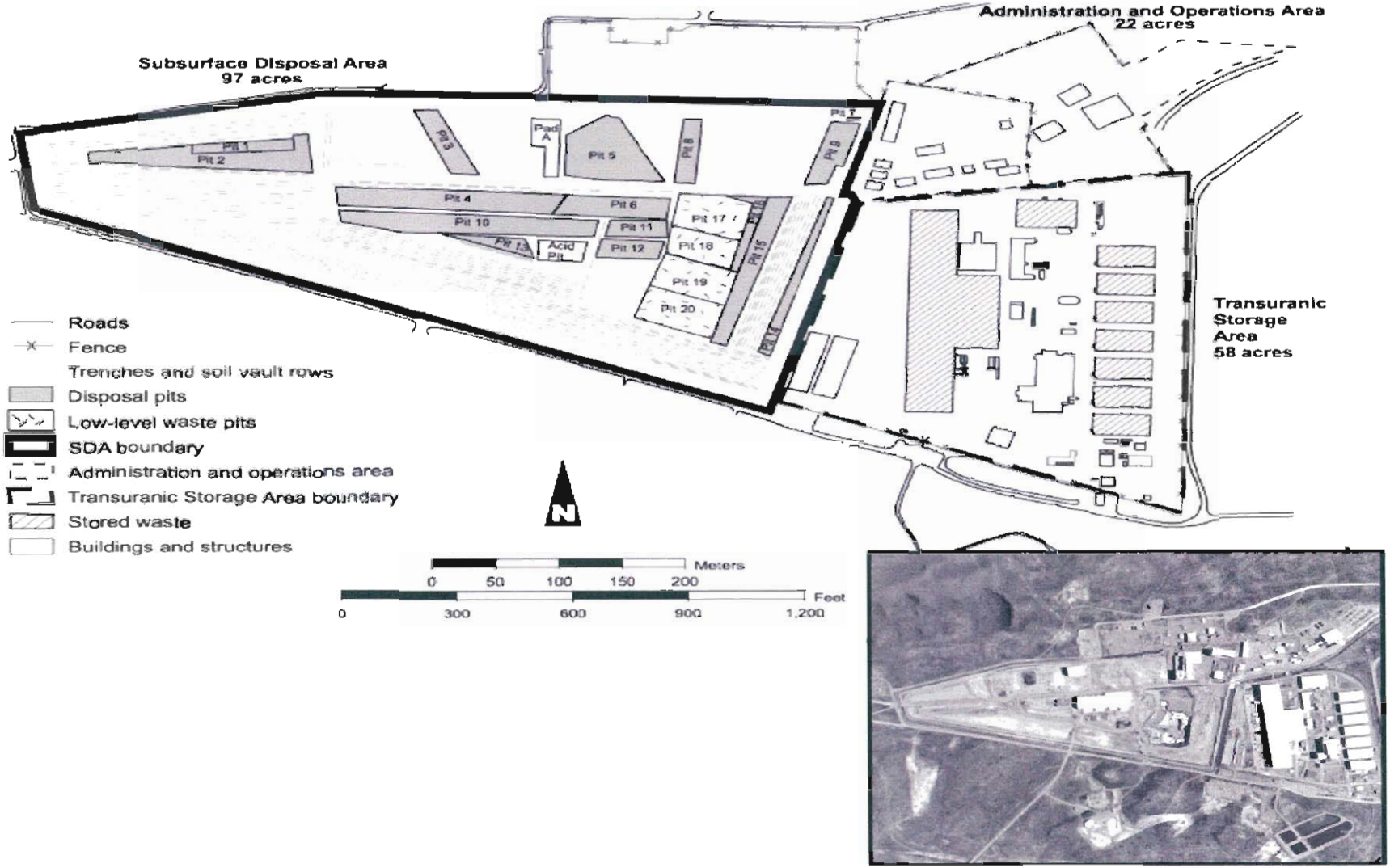
PUBLIC SERVICE COMPANY OF COLORADO, Plaintiff, v. PHILIP E. BATT, individually and as Governor of the State of Idaho, Defendant.	Civil No. 91-0035-S-EJL (Lead Case)
UNITED STATES OF AMERICA, Plaintiff, v. PHILIP E. BATT, in his official capacity as Governor of the State of Idaho; STATE OF IDAHO, Defendants.	Civil No. 91-0054-S-EJL JOINT MOTION FOR ENTRY OF CONSENT ORDER BASED ON SETTLEMENT AGREEMENT

The parties have negotiated and executed a settlement agreement that resolves all issues in this action. Accordingly, the parties hereby jointly move for entry of a consent order that (1) incorporates the terms of the Settlement Agreement, (2) vacates all prior injunctions in this action except paragraph 4 of the Order entered December 23, 1993 and entitled Amended Order Modifying Order of June 28, 1993 and (3) administratively terminates this action, subject to continuing jurisdiction of the Court and the right of the parties to reopen the action for good cause.

APPENDIX B
Map of Idaho National Laboratory (INL)



Appendix C
Map & Aerial Photo of Radioactive Waste Management Complex



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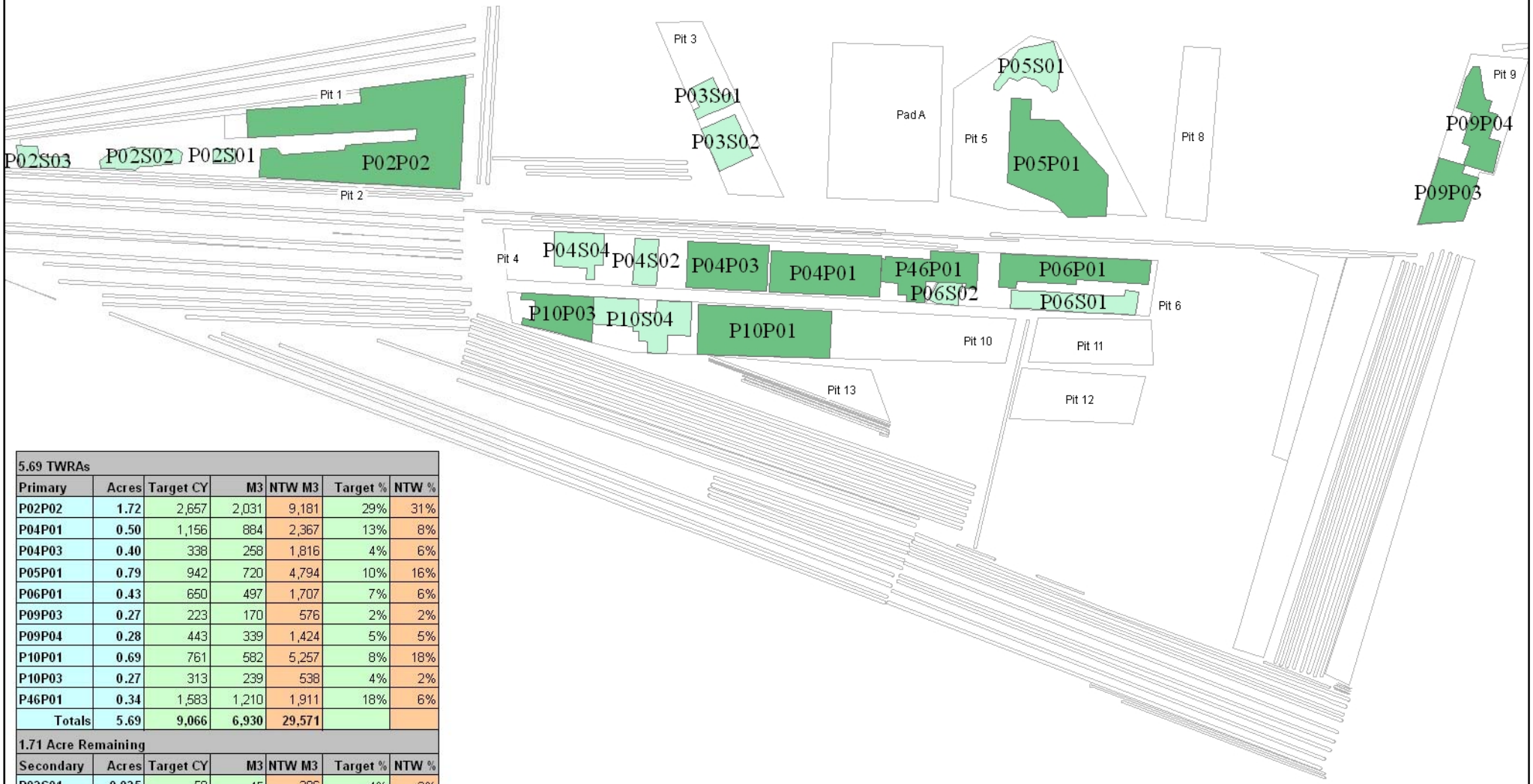
APPENDIX D
RETRIEVAL AREAS



5.69 TWRAs						
Primary	Acres	Target CY	M3	NTW M3	Target %	NTW %
P02P02	1.72	2,657	2,031	9,181	29%	31%
P04P01	0.50	1,156	884	2,367	13%	8%
P04P03	0.40	338	258	1,816	4%	6%
P05P01	0.79	942	720	4,794	10%	16%
P06P01	0.43	650	497	1,707	7%	6%
P09P03	0.27	223	170	576	2%	2%
P09P04	0.28	443	339	1,424	5%	5%
P10P01	0.69	761	582	5,257	8%	18%
P10P03	0.27	313	239	538	4%	2%
P46P01	0.34	1,583	1,210	1,911	18%	6%
Totals	5.69	9,066	6,930	29,571		
1.71 Acre Remaining						
Secondary	Acres	Target CY	M3	NTW M3	Target %	NTW %
P02S01	0.035	59	45	296	4%	3%
P02S02	0.148	241	185	1,004	15%	10%
P02S03	0.082	102	78	590	6%	6%
P03S01	0.104	62	47	537	4%	5%
P03S02	0.177	133	102	831	8%	8%
P04S02	0.119	50	38	639	3%	6%
P04S04	0.190	295	226	1,459	18%	14%
P05S01	0.206	138	105	1,177	8%	12%
P06S01	0.253	173	133	1,489	10%	15%
P06S02	0.063	93	71	327	6%	3%
P10S04	0.342	297	227	1,773	18%	18%
Totals	1.72	1,643	1,257	10,122		

Grade

- 5.69 Acre TWRAs
- 1.71 Acre Remaining
- SDA_boundaries

Notes:
"% of Total" is the percentage of targeted waste volume per total waste volume (targeted and non-targeted waste volume) for the given area.

All volumes represent "as disposed" values.

0 200 400 Feet

Project: 5.69 Acre Retrieval Study Area
Authors: Brandt Meagher, Kirk Green, Rick Powell
Date Drawn: 4/22/2008
Note: This information is based on the same data set used to generate a similiar map dated 2/28/07
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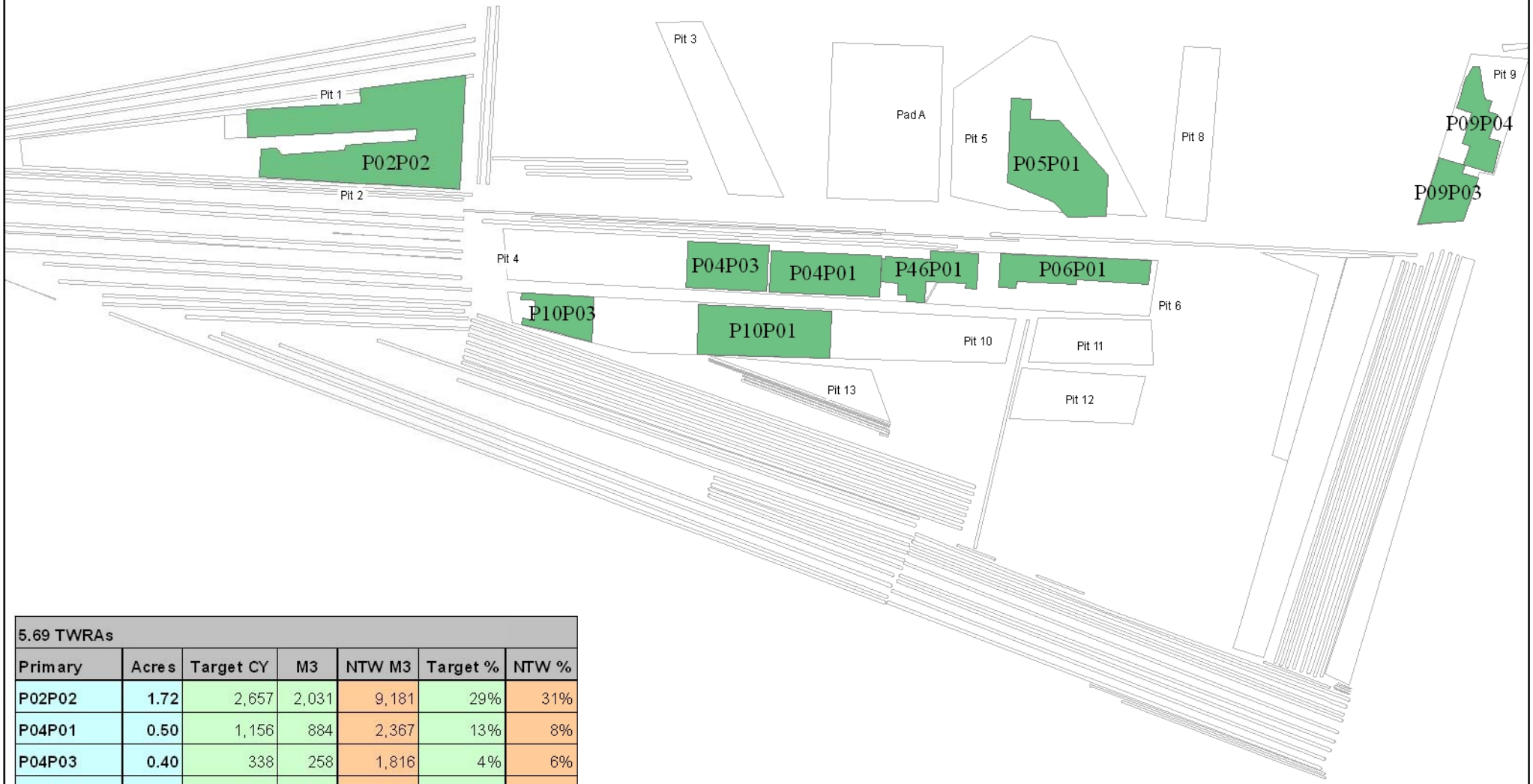
APPENDIX E
RETRIEVAL AREAS



5.69 TWRAs						
Primary	Acres	Target CY	M3	NTW M3	Target %	NTW %
P02P02	1.72	2,657	2,031	9,181	29%	31%
P04P01	0.50	1,156	884	2,367	13%	8%
P04P03	0.40	338	258	1,816	4%	6%
P05P01	0.79	942	720	4,794	10%	16%
P06P01	0.43	650	497	1,707	7%	6%
P09P03	0.27	223	170	576	2%	2%
P09P04	0.28	443	339	1,424	5%	5%
P10P01	0.69	761	582	5,257	8%	18%
P10P03	0.27	313	239	538	4%	2%
P46P01	0.34	1,583	1,210	1,911	18%	6%
Totals	5.69	9,066	6,930	29,571		

5.69 Acre TWRAs
SDA_boundaries

Notes:
"% of Total" is the percentage of targeted waste volume per total waste volume (targeted and non-targeted waste volume) for the given area.

All volumes represent "as disposed" values.

0 200 400 Feet

Project: 5.69 Acre Retrieval Study Area
Authors: Brandt Meagher, Kirk Green, Rick Powell
Date Drawn: 4/22/2008
Note: This information is based on the same data set used to generate a similiar map dated 2/28/07
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File Name: appendix_E_RA_al_v1.mxd

Protocol For Targeted Waste Retrievals and Volume Determinations

This Protocol describes procedures used in the field by the operators of the retrieval projects to conduct excavation, waste identification, retrieval and segregation.

SUMMARY:

The approach taken in the field involves sectioning a defined pit area into grids for tracking purposes. Operators excavate and sort through all of the material in each grid with an excavator before moving to another grid area. The lateral extent of the excavations is defined in Appendices D and E of the Agreement. The vertical extent of excavation will go down as steeply as possible without compromising slope stability until basalt bedrock is reached, underburden is encountered or further excavation is not warranted based on safety, national security or practicability considerations. Waste material encountered during excavation is visually identified by a Retrieval Specialist as Targeted Waste or non-Targeted Waste. This observation is logged onto form FRM-196 for record and comparison purposes. Targeted Waste is placed in trays and processed through the Drum Packaging Station (DPS) where it is further examined to remove any Waste Isolation Pilot Plant (WIPP)-prohibited items. The waste is then placed in a container for characterization to meet WIPP or other appropriate facility requirements. Non-Targeted Waste is staged for potential placement back into the pit.

1. Identification of Targeted Waste

Targeted Waste is identified in Paragraph IV of the Agreement. The Operators and Retrieval Specialists will use a visual identification process to determine Targeted Waste during excavation as set forth in *TPR-7420 – AR Project – Waste Retrieval* and *Guide GDE-318 SDA Targeted Waste and Non-Targeted Waste Identification Operator Guide*. The formal record of Targeted Waste exhumed will be recorded on form FRM-196. This form is designated as a "record" under the Federal Facility Agreement and Consent Order (FFA/CO) and complies with those requirements. All records will be administratively controlled under *MCP-557 Records Management.* All records will be available to the Parties. All excavation activities will also be video recorded and backed up on a server for interim storage. These video recordings will not be designated as a "record" under the FFA/CO but shall be admissible in legal proceedings consistent with the Idaho or Federal Rules of Evidence. When that server is full, all video recordings will be transferred to other suitable electronic storage media and retained for twenty years following completion of retrieval operations. All such video recordings shall be made available to qualified State personnel for review upon request.

As the excavator identifies a drum, whether that drum is intact or partly disintegrated, the drum will be breached for safety reasons to ensure that inadvertent releases do not occur near personnel. Once a drum is opened, the waste is visually identified as either Targeted or non-Targeted Waste. Where trained personnel can visually identify

(through video) whether the waste is Targeted or Non-Targeted, the contents of the drum will be emptied into a waste tray or returned to the pit, as the case may be. In those instances where the visual identification of the waste as Targeted or non-Targeted through video is indeterminate, such identification will be made when the waste has been loaded into the tray and examined in the Drum Packaging Stations ("DPS") as further described below.

This Targeted/non-Targeted Waste determination will be recorded on form FRM-196 by the Retrieval Specialist and uploaded to the Buried Waste Information System (BWIS)[1] where it will be used to generate accountability maps. If the waste is non-Targeted Waste it will be staged for potential reburial back in the pit. If the waste is identified as Targeted Waste, it will be loaded into a tray which is transported to the DPS. In the DPS, trained contractor personnel, under the direction of personnel from the Central Characterization Project (CCP), will remove any items which, if present, would prohibit the shipment of the waste to WIPP. The remaining waste will then be packaged in a new drum, and after appropriate characterization and certification, shipped to WIPP or other appropriate disposal facility.

2. Accountability Mapping of Identified Targeted Waste

During retrievals, maps will be generated using the information collected and contained in BWIS which will be used for comparison with information contained in the WILD database to confirm the efficacy of retrievals. In creating these maps, DOE notes the occurrence of waste as incidents of retrieval of recognized Targeted Waste items or waste containers. It is recognized, that the exhumation and packaging process will increase the volume of Targeted Waste. This expansion occurs because waste is reconfigured and the entire content of a drum may or may not be transferred to a single new drum package.

When an intact drum is opened, the process of opening the drum will change the physical configuration of the waste. An example would be an intact waste drum that is opened on the drum opening table. During the process where the excavator opens the drum, the original waste form is modified as an incidental function of opening the drum. The waste must also be spread out on the table during the visual inspection process for determining if the waste is a Targeted Waste. Each container must also be verified to not contain items prohibited from disposal at WIPP. The visual examination process for the WIPP waste certification prior to packaging also requires modifying the original waste form in order to enable inspection of the physical contents of the original container. For non-intact drums of waste, there is an unquantifiable amount of interstitial soil comingled with the waste. This soil becomes part of the new waste package due to the inability to separate the soil from the waste. All of these conditions result in a number of packaged containers that differs from the original number of disposed containers. Therefore even though the contents of a drum may not fit in a single final waste package, the exhumed drum will be counted only once for waste accountability map generation purposes. Conversely, when the drum and packaging is significantly degraded, an excavator

[1] The BWIS is a database used to manage waste on the site.

scoop of waste is counted as an occurrence and is recorded on form FRM-196 as such. The contents of an intact drum that is retrieved may be placed in more than one tray, but is counted as a single occurrence on form FRM-196.

Occurrences noted on form FRM-196 shall only be used for the purpose of generating waste accountability maps. This information shall not be used for the purpose of measuring or calculating the volume of Targeted Waste packaged for shipment to meet the requirements of Section V of the Agreement.

3. Excavation Process

Pit boundaries are defined by latitude and longitude coordinates from the original disposal shipment records. Shipments were mapped into the pit boundaries. The pit boundaries were then mapped into the site's Graphical Information System (GIS) from which pit area maps were drawn. The GIS is a subsystem in the BWIS. Field surveys will be conducted to locate the retrieval enclosures as necessary over each pit area based on where the maps show the waste to be located. For each of the pit areas delineated in the areas identified in Appendices D and E to the Agreement, a retrieval enclosure will be placed over the area where waste exhumation will occur. Retrieval enclosures shall be of sufficient dimension to allow for excavation and retrieval of Targeted Waste to the lateral and vertical extent of waste within the areas identified in Appendices D and E to the Agreement without compromising slope stability or enclosure structure integrity. Utilizing the coordinates from the disposal maps that document where the Targeted Waste was disposed of, the exhumation footprint will be overlaid with a grid system. This grid system will be the foundation for coordinating where overburden is removed and waste exhumation is to be performed.

During waste exhumation, the excavator will be placed adjacent to each grid area and the grid will be excavated as provided in Paragraph V.B.1.a. of the Agreement. The excavation process will be repeated for each of the grids within the excavation footprint until the entire exhumation area for that pit area is completed.

4. Sampling of Non-Targeted Waste

Characterization activities will be implemented for selected radionuclides within the non-Targeted Waste and underburden that is not removed as part of the removal action. This is described *in RPT-204 Revision 1 – Field Sampling Plan for Accelerated Retrieval Project II.* These activities will be carried out for all future retrievals under the Agreement. The objective of this sampling is to collect information about the waste zone material and under burden soils to estimate the radionuclide activity of the non-Targeted Waste that would remain in the pit and determine the presence of mobile radiological contaminants in the underburden.

This sampling will further provide confirmation of the effectiveness of the Targeted Waste visual identification process, and the extent of Targeted Waste retrieval within the pits. Lessons learned will be discussed with the Parties and applied to subsequent

retrieval operations by mutually agreed revisions to the *TPR-7420 – AR Project – Waste Retrieval, Guide GDE-318 SDA Targeted Waste and Non-Targeted Waste Identification Operator Guide, and RPT-204 Revision 1 – Field Sampling Plan* as appropriate.

Non-Targeted Waste sampling in future waste retrievals is done with a non-Targeted Waste sample being taken from every third grid area retrieved. Samples are taken at a collection depth of about 8 ft. below the base of the excavator. Samples are collected in the middle of the grid. The first non-Targeted Waste excavated at or immediately around this origin will make up the non-Targeted Waste sample material. The same procedure will be followed for all excavations carried out under the Agreement.

Underburden sampling will be randomly performed in areas where records would anticipate the presence of mobile radiological contaminants in the underburden below the waste. These samples will be collected through a core sample and sent to the analytical laboratory for analysis.

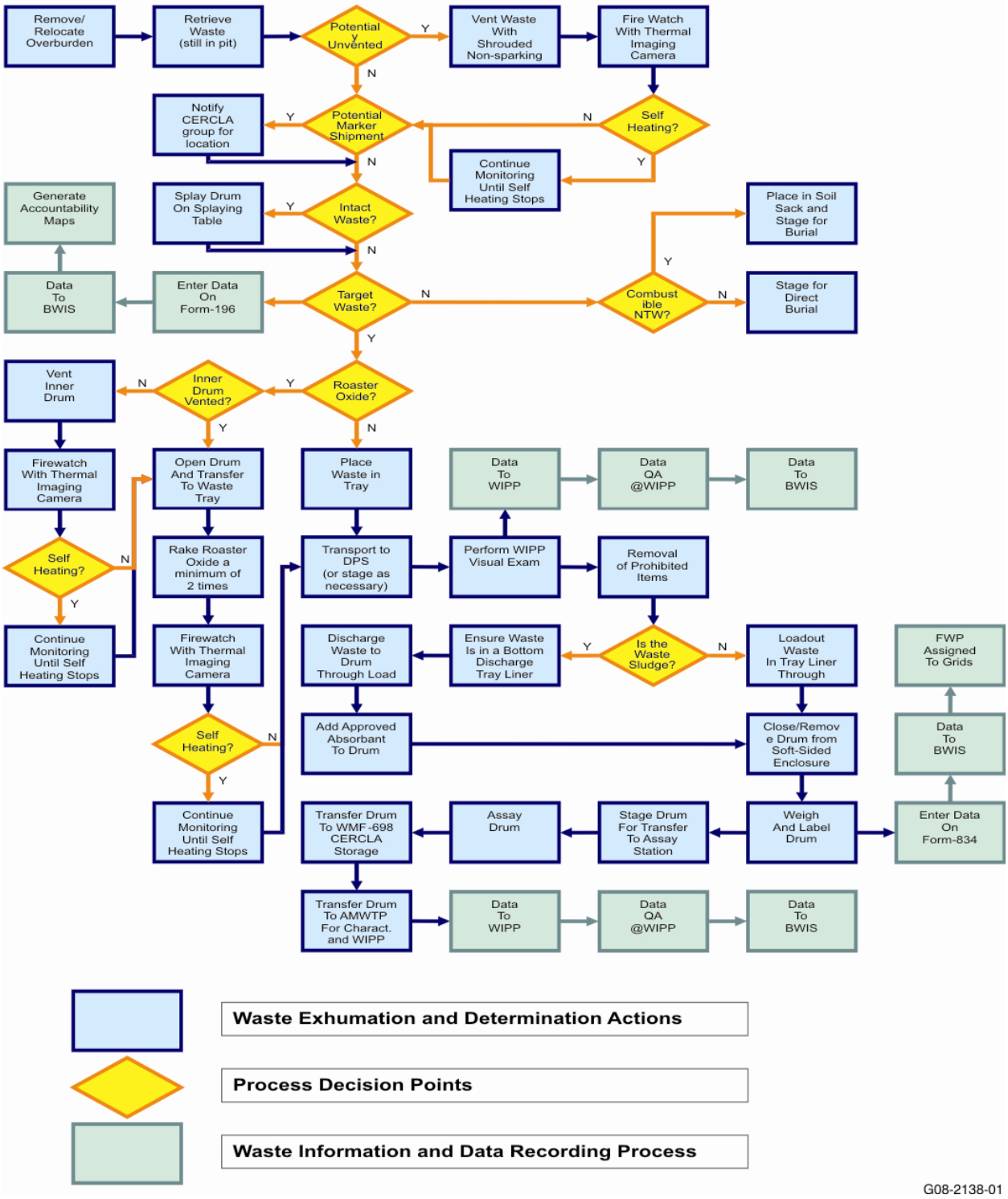
5. Oversight Measures

In accordance with Paragraph V.I.D. of the Agreement, upon request, State representatives may visit the site and observe the excavation operations, Targeted Waste identification, and packaging activities. Upon request, DOE will provide the State with Waste Accountability Maps, showing excavation status on grid maps of the retrieval areas. These maps will identify expected and as-retrieved volumes of all Targeted Waste streams as well as Targeted Waste packaged for shipment volumes. Upon request, DOE will provide the State with all sample data collected. DOE will also collect data on what are termed “markers,” which are legible drum labels, or other unique features, conditions, or objects that were documented in the disposal records to compare the waste retrieved to what is expected. Upon request, the State representatives will be provided data from the Waste Information and Location Database (WILD), and the Buried Waste Information System (BWIS). Other access opportunities will continue to be provided to the State and the Environmental Protection Agency (EPA), which include read only access to all information in the Waste Information Location Database, form FRM-196 data, and all information relative to Targeted Waste identification, removal, description, assay and processing at a local workstation while performing oversight at the INL site location. Upon request, the State will be provided with information concerning comparisons of as-disposed waste volumes, types and locations with volumes, types and locations of retrieved and packaged Targeted Waste. Additionally, the State will be provided with information comparing all “marker” shipment disposal data with the actual retrieval locations of the “marker" shipments. As some of the disposed waste is classified, access to this information will require a security clearance. Following application and qualification, State and EPA representatives will be provided security clearances appropriate to access necessary information.

6. This Protocol may be amended by the mutual consent of the Deputy Director – Idaho Department of Environmental Quality, the Deputy Manager – Idaho Operations Office, United States Department of Energy to reflect field operation experience; provided, however, no amendment of the protocol shall alter or diminish DOE's duties under any substantive provision of the 1995 Agreement or the Agreement to ImplementU.S. District Court Order dated May 25, 2006

PRIVILEGED AND CONFIDENTIAL ATTORNEY CLIENT COMMUNICATION

Buried Waste Exhumation, Targeted Waste Determination, and Data Collection and Recording Process



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Rev. 7, 06/21/07
TPRs 7420, 7420-2, 7415, & 7415-2
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AR Project—Excavation Progress Log

Date: _____Grid_____ (If grid changes during shift, start another FRM-196.)

Depth Start:_____End_____ (Depths are instrument readings. Add 5 ft to reading when using live boom.)

Instructions:

1) Use comment line on bottom of form to note location of Items of Interest (for example, large objects, high-rad objects, outcroppings of basalt, marker shipments, underburden thickness estimated depth within each grid) left in or pulled from the pit.
2) Refer to daily count line when describing items, using comment lines on bottom of page. Describe any interesting or unusual items during the excavation and provide any comments on drum/waste evaluation, as necessary.

		Non Target Waste	X = Drum Volume, Before Tray B = Bulk Direct to One Tray Targeted Waste							
Daily count	**Time**		**741**	**742**	**743**	**Filters**	**Graphite**	**RO**	**Tray #**	Comments.
1										
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For additional comments.

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AR Project—Excavation Progress Log

		Non Target Waste	X = Drum Volume, Before Tray B = Bulk Direct to One Tray Targeted Waste							
Daily count	**Time**		**741**	**742**	**743**	**Filters**	**Graphite**	**RO**	**Tray #**	Comments.
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For additional comments.

Retrieval Specialist Signature: _____ Date: _____

Operations Foreman Signature: _____ Date: _____