



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

MAY 29 1990

MEMORANDUM FOR: Regis R. Boyle, Section Leader
Regulatory Branch
Division of Low-Level Waste Management
and Decommissioning, NMSS

FROM: Dominick A. Orlando, Project Manager
Regulatory Branch
Division of Low-Level Waste Management
and Decommissioning, NMSS

SUBJECT: TRIP REPORT FOR THE WEST VALLEY PROJECT MEETING
MAY 10, 1990

PLACE: Federal Building, New York City, New York, 11th floor
conference room

TIME: 10:30 a.m. - 1:30 p.m.

ATTENDEES:

<u>NRC</u>	<u>EPA</u>	<u>DOE</u>
R.D. Hurt	J. Gorman	W. Bixby L. Smith
D.A. Orlando	C. Howard	B. Bowhan D. Rasch
J. Wolf	W. Sawyer	P. Hinman C. Blake
		M. Stahr C. Ljungberg
		V. Franklin
		T. McIntosh

<u>WVNS</u>	<u>NYSDEC</u>	<u>NYSDERDA</u>
G. Baker	J. Jones	H. Jack
R. Carter	T. Diuilio	D. Miller
J. Knabenschuh	K. Johnson	P. Gitlin
	S. Quine	
	D. Christian	

DISCUSSION: The meeting opened with Mr. Bixby introducing the attendees and stating that the project was "ready to start". By this I believe he meant that the preliminary work had been taken care of and the paperwork was in order. He indicated that the project had a high priority with the DOE and would be a method by which the regulatory agencies could regain any lost credibility with the public. He stated that the DOE was interested in continuing proactive discussions with all involved parties.

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- ° The first item discussed was the draft FFCA (Federal Facility Compliance Agreement) or FSFCA (Federal and State Facility Compliance Agreement) and the RCRA 3008.h Interim Status Corrective Action Order. The DOE combined these two documents as they felt this was the best way to handle the issue (a copy of the document was distributed and is attached). NYSERDA indicated that the document was not acceptable in the form in which it was presented. The EPA indicated that they would not accept any documents unless they were in the form that EPA required, i.e., a separate FFCA or FSFCA and a 3008.h order. EPA also indicated that they were very concerned about the approaching 6/6/90 deadline for submission of these two documents. This discussion continued and the outcome was that EPA will review the document and DOE will prepare a separate 3008.h order, in the event the document is not acceptable to EPA. DOE indicated that they would want official sign-off by all parties. The DOE indicated that a conference call would be set up on 5/17/90 for the legal representatives of each agency to discuss the document. DOE indicated that they would provide administrative support to for the document finalization and preparation of meeting minutes. EPA indicated that they would have to consider the offer.
- ° The next item was a presentation by G.Baker, Ph.D., (DOE) of the technical issues and plans for the project. An overview folder was distributed and is attached. The issues presented were favorably accepted by the attendees, and I gathered by the way in which the attendees reacted to the presentation that these items had been discussed at length and agreed upon in the past. The EPA re-stated that they were mostly interested in seeing the paperwork associated with the plans (FFCA, FSFCA, and 3008.h order). I am not familiar with the FFCA document but I will investigate and get back to you on them. The technical issues and plans did not seem to be unreasonable and I did not get the impression that there was any concern by the attendees. The document provided by Davis Hurt (Executive Summary Part A Permit and Federal Facilities Compliance Agreement Information and Technical Discussion) contains some statements that I think we need to take a look at, though.
- ° The item listed on the agenda indicating that a discussion concerning the 3008.h order was not performed as the EPA indicated that they had nothing new to add to what I presume have been on-going discussions about this matter.

MAY 29 1990

- ° The DOE indicated they would like to see any public documents concerning the project written in such a way that the positive developments are emphasized. They also indicated that they would like to see evidence of progress towards full compliance as an acceptable substitute for full compliance now.
- ° The next item discussed was the division of financial responsibility for the project and how the different participants would interact. The outcome was that DOE would work with NYSERDA and worry about the bills later.

SUMMARY:

The EPA seemed more interested in getting the paperwork, on the proper form, than any technical issues. They were very adamant about this item. The DOE seemed interested in getting the EPA to take a look at their combined document with an open mind. NYSDEC did not have any comments during the meeting. NYSERDA seemed to want the DOE to come up with a document to cover the EPA's questions and a determination of who would be responsible for the different aspects of the program.

Original signed by

Dominick A. Orlando, Project Manager
Regulatory Branch
Division of Low-Level Waste Management
and Decommissioning, NMSS

Enclosure: As stated

cc: J. Austin

Distribution: ~~Central File#~~ NMSS r/f LLRB r/f NOrlando

PDR YES ☒ NO ☐ Category: Proprietary ☐ or CF Only ☐
ACNW YES ☐ NO ☒

SUBJECT ABSTRACT: TRIP REPORT FOR THE WEST VALLEY PROJECT MEETING

OFC :LLRB :LLRB :

NAME: NOrlando/es :RBoyle :

DATE: 5/29/90 : 5/29/90 :

OFFICIAL RECORD COPY

received 5/10/10
at EPA / New York
RDH

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II,
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
AND THE
UNITED STATES DEPARTMENT OF ENERGY
AND THE
WEST VALLEY NUCLEAR SERVICES COMPANY, INC.
(INCLUDING SUCCESSOR DOE MANAGEMENT AND OPERATING CONTRACTOR),
AND THE
NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
AND THE
UNITED STATES NUCLEAR REGULATORY COMMISSION

The West Valley Demonstration
Project; and
The Western New York Nuclear
Service Center

FEDERAL AND STATE FACILITIES
COMPLIANCE AGREEMENT AND
CONSENT ORDER

ROUGH DRAFT - Preliminary, Discussion Only

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TABLE OF CONTENTS

	Page
1.0 PARTIES.....	1
2.0 PURPOSE OF THE AGREEMENT.....	2
3.0 JURISDICTION.....	3
4.0 DEFINITIONS.....	4
5.0 SCOPE.....	8
6.0 STATEMENT OF FACTS AND CONCLUSIONS OF LAW.....	10
7.0 PROJECT COMPLIANCE REQUIREMENTS.....	19
8.0 DESIGNATION OF LEAD REGULATORY AGENCY.....	20
9.0 RESOLUTION OF DISPUTES.....	21
10.0 ENFORCEMENT.....	25
11.0 REPORTING AND RECORD KEEPING.....	26
12.0 EXTENSIONS.....	26
13.0 COMPLIANCE WITH LAWS.....	30
14.0 FORCE MAJEURE.....	30
15.0 MODIFICATION OF AGREEMENT.....	32
16.0 DESIGNATED PROJECT COORDINATORS.....	32
17.0 COVENANT NOT TO SUE/RESERVATION OF RIGHTS.....	33
18.0 ADDITIONAL WORK.....	35
19.0 FUNDING.....	36
20.0 TERMINATION AND SATISFACTION.....	37
21.0 EFFECTIVE DATE.....	38
22.0 NRC REVIEW AND CONSULTATION.....	38
23.0 REVIEW AND COMMENT PROCESS FOR SUBMITTED DOCUMENTS.....	40

1.0 PARTIES

- 1.1 The Parties to this Federal and State Facilities Compliance Agreement and Consent Order ("Agreement") are the United States Environmental Protection Agency ("EPA"), Region II, the State of New York ("State") through its Department of Environmental Conservation ("DEC"), the United States Department of Energy ("DOE"), the New York State Energy Research and Development Authority ("NYSERDA"), and the West Valley Nuclear Services Co., Inc. (WVNS). The United States Nuclear Regulatory Commission (NRC) is a signator in the limited capacity set forth in Article 22.0, but the NRC is not a Party to nor bound by any other portion of this Agreement.
- 1.2 The terms of this Agreement shall apply to and be binding upon the Parties.
- 1.3 DOE, WVNS and NYSERDA shall take all appropriate measures to ensure that their respective employees, contractors, agents or assignees performing work under this Agreement act in a manner consistent with the terms of this Agreement. This section shall not be construed as an Agreement by the Parties to indemnify each other or any third Party.
- 1.4 Reference in this Agreement to WVNS shall also constitute reference to any successor DOE Management and Operations contractor performing work on DOE's behalf at the West Valley Demonstration Project. Upon termination of the WVNS contract, DOE shall give written notice to the other Parties that as of the termination date, WVNS is no longer a Party to this Agreement and will designate the substitute contractor or contractors if any. At the time of termination of the WVNS contract, or, if WVNS obligations have been terminated by operation of this Agreement, or otherwise consistent with applicable law, the Parties agree that DOE will require the successor contractor to accept transfer of WVNS responsibilities pursuant to

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this Agreement or DOE shall be deemed to have accepted transfer of responsibility for such future performance. Upon such termination, WVNS will be relieved of any further obligations for performance under this Agreement, including its responsibilities under DOE's Action Plan prepared pursuant to Article 7.0 of this Agreement.

2.0 PURPOSE OF THE AGREEMENT

2.1 This Agreement is entered into by the Parties to provide a process for implementing compliance plans and schedules set forth in Appendices A and B of this Agreement (hereinafter the "Action Plans"); and to address the management of radioactive mixed waste at the Western New York Nuclear Service Center ("Center") consistent with the requirements of the Resource Conservation and Recovery Act, the Atomic Energy Act of 1954, as amended, (AEA), the West Valley Demonstration Project Act (WVDP Act) and the National Environmental Policy Act (NEPA) or, as appropriate, the New York State Environmental Quality Review Act. (SEQRA)

2.2 The purpose of this Agreement is to specify those terms and conditions under which the Parties shall accomplish the following mutual objectives:

2.2.1 Define the regulatory framework for all present and future activities through site closure so as to resolve potential inconsistencies between regulations involving hazardous and radioactive waste management, assure regulatory compliance, or equivalency, and provide for dispute resolution.

2.2.2 Specify an appropriate review process and schedule to assure that the current WVDP radioactive mixed waste management activities are carried out in a manner consistent with, or equivalent to RCRA and the New York State Industrial Hazardous Waste Management Act (IHWMA) and in a manner which furthers the WVDP mission of solidification of the high-level radioactive waste (HLW).

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- 2.2.3 Identify, store, treat and minimize restrictive wastes restricted from land disposal.
 - 2.2.4 Achieve compliance or demonstrate equivalency with requirements for interim status treatment and storage facilities.
 - 2.2.5 Undertake comprehensive site characterization to determine the need for corrective action, if any, consistent with the WVDP Act.
 - 2.2.6 Implement environmental compliance activities or corrective action, if any consistent with NEPA and similar New York State requirements.
 - 2.2.7 Facilitate cooperation and exchange of information between all Parties to the Agreement.
 - 2.2.8 Allow continued storage of restricted wastes at the Center until on-site treatment or offsite disposal facilities are operational or until treatment can be secured.
- 2.3 EPA and DEC have determined that this Agreement, including the requirements contained herein, constitutes a "plan" as described in Section 1-601 of Executive Order 12088, to address compliance issues at the Center regarding hazardous waste requirements found at 40 CFR Parts 268 to 270.

3.0 JURISDICTION

- 3.1 EPA enters into this Agreement pursuant to the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), 42 U.S.C. 6901, et seq., including without limitation sections 3004(u) and (v) 3005(e), 3008(h) and 3013.

D R A F T

- 3.2 DEC enters into this Agreement pursuant to the New York State Industrial Hazardous Waste Management Act, (hereinafter referred to as "IHWMA") E.C.L. Article 27, Title 9, and E.C.L 3-0301, and the regulations promulgated thereunder.
- 3.3 DOE has entered into this Agreement under authority of the West Valley Demonstration Project Act, the National Environmental Policy Act (NEPA), the Atomic Energy Act of 1954 (AEA), as amended, and Executive Order 12088.
- 3.4 With respect to DOE's management of radioactive mixed waste, nothing in this Agreement shall be construed to require DOE to take any action pursuant to RCRA which is inconsistent with the requirements of the Atomic Energy Act or the West Valley Demonstration Project Act.

4.0 DEFINITIONS

- 4.1 Except as provided below or otherwise explicitly stated herein, the definitions provided in RCRA shall control the meaning of the terms used in this Agreement.
- 4.1.1 Additional Work shall mean any work agreed upon by the Parties under Article 18 (Additional Work) to this Agreement.
- 4.1.2 Agreement shall mean this Federal and State Facilities Compliance Agreement and Consent Order, including all Appendices attached hereto.
- 4.1.3 Atomic Energy Act (AEA) shall mean the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011, et seq.
- 4.1.4 Authorized Representatives shall mean a Party's employees, agents, successors, assigns, contractors or subcontractors,

D R A F T

including Management and Operating contractors, acting in any capacity (including an advisory capacity) consistently with their contracts, when so designated by that Party for a particular purpose or purposes.

- 4.1.5 Center shall mean the Western New York Nuclear Service Center as referred to in the West Valley Demonstration Project Act and further described in the "Cooperative Agreement" between DOE and NYSERDA.
- 4.1.6 Cooperative Agreement shall mean the Cooperative Agreement entered into between NYSERDA and DOE effective October 1, 1980, as amended September 18, 1981.
- 4.1.7 Days shall mean calendar days, unless business days are specified. Any submittal or written statement of dispute that under the terms of this Agreement would be due on a Saturday, Sunday, or holiday shall be due on the following business day.
- 4.1.8 DEC shall mean the New York State Department of Environmental Conservation and its authorized representatives.
- 4.1.9 DOE shall mean the United States Department of Energy and its authorized representatives, exclusive of WVNS, but including the Idaho Operations Office and the West Valley Project Office.
- 4.1.10 EPA shall mean the United States Environmental Protection Agency and its authorized representatives.
- 4.1.11 Force Majeure shall have the meaning as set forth in Article 14.0 (Force Majeure).

D R A F T

- 4.1.12 Hazardous Constituent(s) shall mean those substances listed in Appendix VIII to 40 CFR Part 261, and in 6 NYCRR 371, Appendix 23.
- 4.1.13 Hazardous Waste(s) shall have the meaning set forth by Section 1004(5) of RCRA, 42 U.S.C. Section 6903(5), 40 CFR Parts 260 and 261.
- 4.1.14 Industrial Hazardous Waste Management Act (IHWMA) shall mean the New York State Industrial Hazardous Waste Management Act, E.C.L. Section 27-0900, et seq., as implemented under 6 NYCRR Parts 370 through 373.
- 4.1.15 Management and Operating Contractor shall mean a contractor with the federal government which contracts for the operation, maintenance, or support, on its behalf, of a federal government-owned or controlled research, development, demonstration, special production or testing establishment wholly or principally devoted to one or more major programs of the contracting federal agency.
- 4.1.16 NEPA shall mean the National Environmental Policy Act of 1969 (P.L. 91-190), as amended by P.L. 94-83 (August 9, 1975), 42 U.S.C. Sec. 4321, et seq.
- 4.1.17 NRC shall mean the U. S. Nuclear Regulatory Commission and its authorized representatives.
- 4.1.18 Parties shall mean all Parties who are signatories to this Agreement, excluding the NRC.
- 4.1.19 Restricted Wastes shall mean the hazardous waste component of radioactive mixed wastes that are restricted from storage or disposal pursuant to the amendments to Section 3004 of RCRA by the Hazardous and Solid Waste Amendments of 1984.

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- 4.1.20 Project Coordinator(s) shall mean the representative(s) designated by the Parties to coordinate, monitor or direct actions required by this Agreement at the Site.
- 4.1.21 Radioactive Mixed Waste(RMW) or Mixed Waste shall mean waste that contains both hazardous components subject to RCRA and radioactive components subject to the Atomic Energy Act of 1954 and as further defined in DOE's interpretive rule for by-product material, 10 CFR 962, (52 FR 15937), May 1, 1987.
- 4.1.22 RCRA shall mean the Resource Conservation and Recovery Act, Pub. L. 98-616, 42 U.S.C. 6901, et seq., as amended by the Hazardous and Solid Waste Amendments of 1984.
- 4.1.23 SEQRA shall mean the New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, Title 0101, et seq.
- 4.1.24 Solid Waste(s) shall have the meaning set forth in Section 1004(2) of RCRA, 42 U.S.C. Section 6903(27), and 40 C.F.R. Part 261.
- 4.1.25 Timetables and Deadlines shall mean schedules as well as that work and those actions that are to be completed and performed in conjunction with such schedules, including performances of actions established pursuant to Articles 7.0 (Compliance Requirements), 9.0 (Resolution of Disputes), 11.0 (Reporting) and 18.0 (Additional Work) of this Agreement.
- 4.1.26 WVDP shall mean the West Valley Demonstration Project as authorized by the WVDP Act.
- 4.1.27 WVNS shall mean West Valley Nuclear Services Co., Inc., DOE's management and operating contractor at the time of the

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effective date of this Agreement and any successor DOE Management and Operating contractor for the WVDP.

4.1.28 WVNS Contract shall mean the Management and Operating Contract between DOE and WVNS for the West Valley Demonstration Project, Contract No. DE-AC07-81NE44139, effective on August 26, 1981.

4.1.29 WVDP Act shall mean the West Valley Demonstration Project Act of 1980, Public Law 96-368.

5.0 SCOPE

5.1 Except as specifically set forth herein, this Agreement shall apply to all Radioactive Mixed Waste units located on the Center; to the RCRA Land Disposal Restrictions pertaining to past, ongoing and future collection, storage, and treatment and disposal of restrictive waste collected, or treated at the Center. The storage restrictions of LDR requirements apply only to those restrictive wastes placed in RMW storage units or disposal facilities after the effective dates of the LDR prohibitions.

5.2 The Parties acknowledge that this Agreement is not intended to implement remedial actions authorized pursuant to the State Inactive Hazardous Waste Disposal Sites Act, E.C.L. Article 27, Title 13 or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Corrective action, to the extent required, shall be addressed as specified in Appendices A and B of this Agreement, the DOE Five Year Plan, any permits to be issued by the state and/or EPA, or applicable and appropriate orders, or in any subsequent modifications to this Agreement issued pursuant to RCRA, or the New York State IHWMA, or combination of the foregoing.

5.3 Nothing in this Agreement shall require DOE, WVNS or NYSERDA to take any action or exercise any discretion inconsistent with the scope of

D R A F T

their respective responsibilities and obligations under either the WVDP Act as implemented by the Cooperative Agreement or the WVNS Contract. The Parties acknowledge that the conditions giving rise to the need for this Agreement as they may relate to either the State Disposal Area, which is under NYSERDA's exclusive control, or to WVDP premises and facilities, which are under DOE's control, are appropriately addressed in the Action Plans (Appendices A & B). Under no circumstances shall any Party attempt to assess liability inconsistent with the WVDP Act for corrective action responsibilities against DOE or WVNS resulting from any conditions, acts or omissions occurring or existing prior to February 26, 1982, the date DOE took physical possession of the WVDP premises and facilities.

- 5.4 The Parties acknowledge the existence of the WVNS contract, the Memorandum of Understanding between DOE and the Nuclear Regulatory Commission (NRC) and the Cooperative Agreement between DOE and NYSERDA, and agree that nothing in this Agreement shall affect or operate to modify the above contractual or cooperative arrangements, including but not limited to, DOE's authority to supervise and direct its Management and Operating contractor's performance.
- 5.5 In no event shall WVNS be required to independently fund any work to be undertaken pursuant to the Action Plans or incur any liability other than that contemplated by the WVNS Contract or as otherwise imposed by law.
- 5.6 DOE, WVNS or NYSERDA do not waive any defenses DOE, WVNS or NYSERDA may have or wish to pursue in any action outside the terms of this Agreement with the exception that DOE and NYSERDA agree not to contest EPA's or DEC's jurisdiction to execute this Agreement.
- 5.7 Nothing in this Agreement shall constitute an admission or evidence of an admission by any Party, except in an action or preceeding by a Party to enforce the terms of this Agreement.

6.0 STATEMENT OF FACTS AND CONCLUSIONS OF LAW

6.1 History of the Western New York Nuclear Service Center

6.1.1 In 1962 Nuclear Fuel Services, Inc. (NFS) entered into Agreements with the Atomic Energy Commission and New York State to construct the first commercial reprocessing plant of nuclear fuel in the United States. The NFS reprocessing facility was located on state owned property known as the Western New York Nuclear Service Center (Center). A provisional operating license for the Center was issued on April 19, 1966.

6.1.2 From 1966 to 1972, the Western New York Nuclear Service Center was the location of the only commercial nuclear fuel reprocessing facility ever operated in the United States. As a result of this operation, nearly 600,000 gallons of high level liquid nuclear waste, a by-product of reprocessing, was produced and remained in underground storage tanks at the facility.

6.1.3 In 1972, the NFS Reprocessing plant was shut down for modifications to increase capacity.

6.1.4 In 1976, NFS withdrew from the reprocessing business.

6.2 The West Valley Demonstration Project Act and DOE's Involvement

6.2.1 In 1980, Congress passed the WVDP Act, Public Law 96-368, directing the U.S. Department of Energy (DOE) in cooperation with NYSERDA to carry out a high level radioactive waste management demonstration project at the Center for the purpose of demonstrating solidification techniques which can be used for preparing high level radioactive waste for ultimate disposal.

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- 6.2.2 Under the WVDP Act, DOE is mandated to solidify the liquid high-level radioactive waste in a form suitable for transportation and eventual disposal at a federal high-level radioactive waste repository; develop containers suitable for permanent disposal of the high-level radioactive waste presently located at the Center; as soon as feasible transport the solidified high-level waste to a federal repository for permanent disposal; dispose of low-level and transuranic waste produced by WVDP activities; and decontaminate and decommission the tanks in which the high level waste was stored and facilities, hardware and material used in the WVDP.
- 6.2.3 Pursuant to Section 2(c) of the WVDP Act, DOE entered into a Memorandum of Understanding with the Nuclear Regulatory Commission (NRC) concerning activities to be conducted at the Center. The full text of this Memorandum of Understanding, effective September 27, 1981, is published in the Federal Register at 46 FR 56960 (November 19, 1981). This Memorandum of Understanding established procedures for review and consultation by the NRC with respect to activities at the Center under the WVDP Act.
- 6.2.4 Effective October 1, 1980, DOE, on behalf of the United States of America, and NYSERDA, on behalf of the State of New York, entered into a Cooperative Agreement as required under Section 2(b)(4) of the WVDP Act. The express purpose of the Cooperative Agreement is to establish a cooperative framework for the implementation of the WVDP by DOE and NYSERDA.
- 6.2.5 On September 30, 1981, the NRC issued an amendment to the facility license (Change No. 31 to facility license No. CSF-1) which permitted transfer of the facility to the

D R A F T

DOE for the purpose of carrying out the WVDP (46 FR 49237). On February 18, 1982, the NRC published notice in the Federal Register (47 FR 7352) that it had issued an Amendment to the license held jointly by NFS and NYSERDA. Under this amendment NFS authority and responsibility under the license was terminated. This action was subject to the following three conditions, all of which have been subsequently satisfied:

1. Acceptance of surrender of the facility by NYSERDA from NFS;
2. DOE's assumption of exclusive possession of the facility; and
3. Settlement of pending litigation in the U.S. District Court for the Western District of New York.

NYSE&DA remains the exclusive licensee but NYSERDA has no authority to operate the facilities on WVDP premises or on the Center under the license. NYSERDA's authority for activities with regard to the State Licensed Disposal Area (SDA) is separate from this license.

- 6.2.6 On August 24, 1981, the West Valley Nuclear Services Company, Inc., (WVNS) was selected as DOE's Management and Operating Contractor for the WVDP. WVNS is obligated under this contract (Contract No. DE-AC07-81NE44137) to manage, operate, and maintain the WVDP facilities on behalf of DOE upon the terms and conditions of the contract "in accordance with such direction and instructions not inconsistent with this contract which the [DOE] Contracting Officer may deem necessary to give [WVNS] from time to time."

D R A F T

6.2.7 On February 26, 1982 the DOE and WVNS assumed physical possession and control of WVDP facilities and premises without the transfer of title from the State of New York. NYSERDA has jurisdiction over the Center for the State of New York under Public Authorities Law Section 1856, including WVDP facilities and premises, and holds title to the Center in the name of the state.

6.2.8 Pursuant to Section 2(b)(4)(A) of the WVDP Act, as implemented by Section 4.03 of the Cooperative Agreement, DOE is required to surrender to NYSERDA premises, facilities, material and hardware used to carry out the WVDP.

6.3 The National Environmental Policy Act and the State Environmental Quality Review Act

6.3.1 The requirements of the National Environmental Policy Act (NEPA) apply to the DOE activities at the WVDP. They are reinforced and given a further site-specific perspective by virtue of several additional factors, including, but not limited to, the following:

6.3.1.1 The West Valley Demonstration Project Act reiterates the requirement to undertake environmental impact analysis (Section 2(L)(3)(D)).

6.3.1.2 DOE/EIS-0081, "Final Environmental Impact Statement -- Long-Term Management of Liquid High-Level Radioactive Waste Stored at the Western New York Nuclear Service Center," dated June 1982 which provided the NEPA review for initial WVDP HLW Solidification activities committed the DOE to follow-on environmental reviews, as appropriate, for low-level and transuranic waste disposal and final decontamination and decommissioning of the tanks in

D R A F T

which the high-level waste was stored and the facilities, material and hardware used during the Project.

- 6.3.1.3 New York State has its own State Environmental Quality Review Act (SEQRA) which requires state agencies to evaluate their proposed actions in much the same way as NEPA applies to federal agencies.
- 6.3.1.4 In the Cooperative Agreement, Section 6.03, DOE and NYSERDA agreed that their respective actions under the Cooperative Agreement would only be taken in accordance with the applicable legal requirements of NEPA, and SEQRA, respectively.
- 6.3.1.5 On December 27, 1987, the United States District Court for the Western District of New York approved a Stipulation of Compromise Settlement, Civil No. 86-1052-C, in which DOE agreed to specified conditions regarding NEPA review for disposal of WVDP produced radioactive waste not classified as high-level waste.
- 6.3.1.6 On December 30, 1988, the DOE published a Notice of Intent to prepare an Environmental Impact Statement jointly with NYSERDA for "Completion of the West Valley Demonstration Project Activities and Closure of the Western New York Nuclear Service Center." (53 FR 53052) The EIS is to provide environmental information for consideration in federal and NYSERDA decision-making related to West Valley Demonstration Project completion activities by DOE and the state, and the closure of the Western New York Nuclear Service Center by NYSERDA. NYSERDA subsequently published a similar notice.

6.4 The Role of NYSERDA

6.4.1 NYSERDA is responsible for maintaining the inactive State-licensed Disposal Area (SDA) adjacent to WVDP premises. Pursuant to Section 4.11, the Cooperative Agreement, DOE performs certain services for NYSERDA on a total cost reimbursement basis related to the SDA and other premises and facilities retained by NYSERDA.

6.4.2 [OMITTED]

6.4.3 [OMITTED]

6.4.4 The requirements of the New York State Environmental Quality Review Act (SEQRA) apply to NYSERDA activities at the Center.

6.5 The West Valley Demonstration Project

6.5.1 WVDP is located on the Western New York Nuclear Service Center, near the Town of West Valley, New York, and is situated approximately 50 KM (30 miles) south-east of Buffalo, New York.

6.5.2 The West Valley Demonstration Project premises and facilities are generally described as approximately 200 acres of land situated in the Town of Ashford, Cattaraugus County, State of New York, located north of Buttermilk Road, formerly part of the approximately 3300 acre parcel known as the Western New York Nuclear Service Center. The site consists of all land and improvements including the Process Plant and project facilities within the perimeter of an eight foot chain link fence, including the Nuclear Regulatory Commission Licensed Burial [Disposal] Area (NDA) but excluding an approximately 15 acre rectangular area situated in the southeastern portion

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of the site known as the State Licensed Low Level Burial [Disposal] Area (SDA).

6.5.3 DOE has no authority under the WVDP Act with respect to disposition of those portions of "Project Premises and Facilities" (as defined in the Cooperative Agreement) not used in the solidification project, nor does DOE generally have authority with regard to disposition of facilities not on WVDP Premises. [REMAINDER OMITTED]

6.5.4 The clean-up and management of the WVDP facilities and premises results in the collection and storage of restricted waste for which there is no currently available treatment capacity.

6.6 The Applicability of RCRA

6.6.1 On April 13, 1984, DOE was found to be subject to regulation by the EPA under RCRA, except as inconsistent with the Atomic Energy Act. LEAF v. Mead, 586 F. Supp. 1163 (E. D. Tenn. 1984). The DOE is subject to RCRA requirements by virtue of RCRA Section 6001.

6.6.2 On October 17, 1984, pursuant to Section 3010 of RCRA, 42 U.S.C. Section 6910, DOE notified EPA of WVDP hazardous waste management activities and requested the issuance of an EPA Hazardous Waste Identification number.

6.6.3 On September 23, 1988, EPA published a Clarification Notice (53 FR 37045) which stated that "Facilities treating, storing, or disposing of radioactive mixed waste in states that received authorization by September 23, 1988, are not subject to RCRA regulations until the state revisits its existing authorized hazardous waste program to include authority to regulate radioactive mixed waste." The State of New York is such a jurisdiction.

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- 6.6.4 Pursuant to Section 3006(b) of RCRA, 42 U.S.C. 6926(b), on May 15, 1986 the Administrator of EPA authorized the State of New York, effective May 29, 1986, to administer and enforce the state hazardous waste program in lieu of the federal program (51 FR 17737). By EPA "Immediate Final Rule" dated March 6, 1990, New York State was authorized to regulate the hazardous waste constituents of radioactive mixed waste, effective May 7, 1990 (55 FR 7896).
- 6.6.5 On May , 1990 DOE and NYSERDA submitted a RCRA "Part A" Permit Application, addressing the active RMW waste management units at the WVDP. A schedule for submitting the WVDP "Part B" permit applications are addressed in the Action Plans.
- 6.6.6 NYSERDA is the "owner" of both the WVDP site and the Center as a whole, including units where hazardous and radioactive mixed waste are or were, collected, treated, stored and disposed of at the Center, as those terms are defined in 40 CFR Part 260.10 and New York State Hazardous Waste Management Regulations, 6 NYCRR 370.2(b)(120).
- 6.6.7 The WVDP is a "facility" as that term is defined at 40 CFR 260.10 and 6 NYCRR 370.2(b)(63).
- 6.6.8 Pursuant to Section 3006(g) of RCRA, requirements or restrictions applicable to the generation, transportation, treatment, storage or disposal of hazardous waste imposed by or through HSWA take effect immediately in authorized states and are enforceable by EPA. The requirements set out in 40 CFR Part 268 were imposed pursuant to HSWA amendment of Sections 3004(a) through (k) and 3004(m), and are therefore enforceable by EPA.

D R A F T

6.6.9 As of the effective date of this Agreement, the state has not been authorized to administer the LDR portion of HSWA. 51 FR 24504 [INSERT DATE].

6.7 The Applicability of LDR

- 6.7.1 LDR regulations were first promulgated by EPA on November 7, 1986, for listed solvents and dioxins (51 FR 40572). On July 8, 1987, EPA promulgated regulations for certain California list wastes (52 FR 25760). Radioactive waste mixed with LDR solvents and dioxins or California list waste is prohibited from land disposal pursuant to the solvent, dioxin and California list land disposal prohibitions.
- 6.7.2 The LDR prohibits the land disposal of hazardous wastes (other than those wastes which qualify for an exemption from the restrictions pursuant to 40 CFR Part 268) which have not been treated with specified technologies or to treatment standards determined by EPA to be protective of human health and the environment.
- 6.7.3 Certain wastes which have been restricted from land disposal pursuant to RCRA were previously collected and stored, and are currently treated and rendered non-hazardous.
- 6.7.4 Pursuant to 40 CFR 268.50, storage of hazardous waste except for the purpose of accumulating quantities necessary to facilitate proper recovery, treatment or disposal of such wastes, is prohibited unless pursuant to 40 CFR 268.6 an exception has been granted.
- 6.7.5 DOE and WVNS brought to EPA's attention that it is currently storing radioactive contaminated restricted waste, and such storage could be construed as storage for purposes other than for accumulating quantities necessary to facilitate proper

D R A F T

recovery, treatment or disposal of such wastes. With respect to the WVDP's high level radioactive waste, EPA and DEC have determined that after _____ 1992 DOE's collection and storage of restrictive wastes, prohibited from land disposal, are being accumulated to facilitate proper recovery, treatment and disposal and thus does not constitute a violation of applicable hazardous waste laws and regulations, including RCRA regulations found at 40 CFR 268.50.

6.7.6 DOE and NYSDERDA are currently planning, permitting, constructing and operating a number of RMW treatment and storage facilities to accommodate the wastes to be collected and which are currently in storage at the Center.

6.7.7 On _____, 1989 DOE-ID submitted to DOE-HQ the information needed to prepare the National Report on restrictive Waste and Treatment Options, which was submitted to EPA on _____, 19____, as required by the Rocky Flats Plant Federal Facility Compliance Agreement.

6.7.8 WVDP has prepared and implemented a site-wide hazardous waste minimization program. Annual reports are submitted to EPA and DEC.

7.0 PROJECT COMPLIANCE REQUIREMENTS

[The following sections, 7.1, 7.2 and 7.3 will describe how DOE and NYSDERDA will address, as appropriate, compliance issues concerning LDR, equivalency, ALARA, schedules, etc.]

7.1 Description of Operable Units [To Be Provided]

7.2 Compliance Concerns [To be Provided]

7.3 Regulatory Determinations [To be Provided]

D R A F T

7.4 The DOE and NYSERDA Action Plans, are attached as Appendices A and B. These Action Plans describe how DOE and NYSERDA will address issues concerning site characterization or investigation and corrective actions, if any, and schedules for regulatory compliance. Implementation of their respective Action Plans shall remain the separate responsibilities of DOE and NYSERDA. Modification to the Action Plans shall require approval of the Lead Regulatory Agency, but shall not require signature of all Parties under section 15.1 (Modifications). Modifications to their respective Action Plans as may be proposed by DOE or NYSERDA shall be subject to dispute resolution under Article 9.0 (Resolution of Disputes) if not approved by the Lead Regulatory Agency. Proposed modifications to NYSERDA's Action plan shall be provided to DOE for comment. Proposed modifications to DOE's action plan shall be provided to NYSERDA for comment.

7.5 Summary of Action Plan to be provided by DOE. DOE's Action Plan shall be referred to as Appendix A.

THIS INFORMATION TO BE PROVIDED BY THE WVDP TECHNICAL STAFF AFTER
CONSULTATION WITH THE EPA AND NYSDEC.

7.6 Summary of Action Plan to be provided by NYSERDA. NYSERDA's Action Plan shall be referred to as Appendix B.

THIS INFORMATION TO BE PROVIDED BY THE **NYSERDA** TECHNICAL STAFF AFTER
CONSULTATION WITH THE EPA AND NYSDEC.

8.0 DESIGNATION OF LEAD REGULATORY AGENCY

8.1 For purpose of this Agreement, EPA shall be the Lead Regulatory Agency for all matters related to site characterization, including, the investigation of the Center and any subsequent implementation of corrective measures, if any. EPA shall also be the Lead Regulatory Agency for matters relating to LDR.

D R A F T

8.2 DEC shall be the Lead Regulatory Agency for matters relating to interim status, permitting and closure of hazardous waste management units used by the WVDP.

8.3 In the event that the state becomes authorized, pursuant to Section 3006 of RCRA, for the LDR portion of the HSWA program while this Agreement is in effect, the Parties agree that as of the date of such authorization the designation of Lead Regulatory Agency for purposes of approval of documents submitted pursuant to Article 7.0 of this Agreement shall automatically transfer to the state in accordance with the change in authorization. Upon authorization of the state, this Agreement shall become enforceable by the state in accordance with the terms herein.

9.0 RESOLUTION OF DISPUTES

9.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, including a dispute under Article 7.0 (Compliance Requirements), the procedures of this Article shall apply. Any Party to this Agreement may invoke this dispute resolution procedure, provided, however, [PARTIAL OMISSION] WVNS will consult and coordinate with DOE prior to invoking the dispute resolution procedure. All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Coordinator or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Article shall be implemented to resolve a dispute.

9.2 Within thirty (30) days after any action which leads to or generates a dispute (including a failure of the informal dispute resolution process), the disputing Party shall submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the Dispute and the

D R A F T

information the disputing Party is relying upon to support its position. Within thirty (30) days of receipt of notice of dispute, the other Parties may submit written statements of position, with supporting information.

9.3 Prior to issuance of a written statement of dispute, the disputing Party shall engage the other Parties in informal dispute resolution among the Project Coordinators and/or their immediate supervisors. During this informal dispute resolution period, the Parties shall meet as many times as are necessary to discuss and attempt resolution of the dispute.

9.4 [OMITTED]

9.5 The DRC will serve as a forum for resolution of disputes for which Agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on the DRC is the _____ of EPA's Region II. DOE's designated member is the West Valley Project Office _____. NYSDERDA's representative is its _____. WVNS's representative is its Vice President and Radiological and Environmental Safety Manager. DEC's designated member is the _____. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Article 16.0 (Designated Project Coordinators).

9.6 Following the receipt of all statements of position or the expiration of the period provided for their submittal, (whichever occurs first) the DRC shall have twenty-one (21) days to unanimously

D R A F T

resolve the dispute and issue a written decision. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period, the written statement of dispute shall be forwarded within seven (7) days to the Senior Executive Committee (SEC) for resolution.

9.7 The SEC will serve as the forum for resolution of disputes for which Agreement has not been reached by the DRC. EPA's representative on the SEC is the _____ of EPA's Region II. DEC's _____ representative _____ on _____ the _____ SEC _____ is the _____. DOE's representative on the SEC is the DOE West Valley Project Operations Director. NYSERDA's representative on the SEC is _____. WVNS's representative is its President and General Manager. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, EPA's Regional Administrator shall issue a written decision on the dispute within 21 days of the close of the 21 day resolution period. Any SEC member may, within twenty-one (21) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event that DEC, DOE, WVNS, AND NYSERDA elect not to elevate the dispute to the Administrator within the designated twenty-one (21) day escalation period, they shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

9.8 Upon escalation of a dispute to the Administrator of EPA pursuant to Section 9.7, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Secretary of Energy and the Commissioner of DEC to discuss the issue(s) under dispute. Upon resolution, the Administrator shall

D R A F T

provide DEC, DOE, WVNS and NYSERDA with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Article 9.8 shall not be delegated.

[ADDITIONAL DISPUTE RESOLUTION MAY BE APPROPRIATE WHEN THE STAET (DEC) IS THE LEAD REGULATORY AGENCY.]

9.9 The pendency of any dispute under this Article shall not affect DOE's, WVNS's or NYDERDA's responsibility for timely performance of the work required by this Agreement, except that the time period of completion of work affected by such dispute shall be extended for a period of time, usually not to exceed the actual time taken to resolve any good faith dispute, in accordance with the procedures specified herein. All elements of the work required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable schedule.

9.10 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Lead Regulatory Agency requests, in writing, that work related to the dispute be stopped because, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or welfare or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. To the extent possible, EPA or DEC shall give DOE, WVNS and NYSERDA prior notification that a work stoppage request is forthcoming. After stoppage of work, if DOE or NYSERDA believes that the work stoppage is inappropriate or may have potential significant adverse impacts, DOE and NYSERDA may meet with the Lead Regulatory Agency, to discuss the work stoppage. Following the meeting, and further consideration of the issues, the lead Regulatory Agency will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the disputing Party.

DRAFT

9.11 Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Part, NYSERDA, WVNS and DOE shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

9.12 Except as provided below, resolution of a dispute pursuant to this Article of the Agreement constitutes a final resolution of that dispute arising under this Agreement. The DOE, WVNS and NYSERDA shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this section.

9.13 Disputes between NYSERDA and DOE concerning their respective authority and responsibilities arising from or related to the WVDP Act or the Cooperative Agreement, including disputes regarding matters referenced in their Agreement in Section 5.3 (Concerning the SDA) and Section 6.5.3 (Concerning the NDA) shall be subject to the procedures set forth in Section 8.03 of the Cooperative Agreement, entitled "Resolution of Disputes as to Project Cost."

9.14 [OMITTED]

9.15 [OMITTED]

10.0 ENFORCEMENT

10.1 DOE and NYSERDA recognize their respective obligations to comply with the applicable federal and state laws and regulations, including RCRA, as set forth in Section 6001 of RCRA, 42 U.S.C. Sec. 6961 and Parts 370 through 374 of Title 6 of the New York Code, Rules and Regulations, and to faithfully discharge the requirements described in the Actions Plans.

DRAFT

- 10.2 The provisions of this Agreement shall constitute requirements which are enforceable against DOE, WVNS or NYSERDA pursuant to the citizen suit provision of Section 7002 of RCRA, 42 U.S.C. 6972. DOE, WVNS and NYSERDA agree that the state (DEC) constitutes a "person" pursuant to Section 7002(a) of RCRA. Therefore, citizen suits include actions or suits by the state to enforce the terms of this Agreement.
- 10.3 The actions taken under this Agreement are presumed to satisfy applicable statutory requirements, regulations, permits, closure plans, or corrective actions, and thus are enforceable under Section 7002(a) of RCRA.
- 10.4 If any provision of the Agreement is determined to be invalid, illegal or unconstitutional, the remainder of the Agreement shall not be affected by such determination.

11.0 REPORTING AND RECORD KEEPING

- 11.1 All correspondence, notices, submittals, and agency comments shall be sent to the attention of the Project Coordinators designated under Article 16.0 (Designated Project Coordinators)
- 11.2 DOE will prepare meeting minutes summary for each formal meeting among the Parties concerning action under this Agreement and shall provide a copy to the other parties within fifteen (15) days. EPA, DEC or NYSERDA may provide written clarification of the minutes.

12.0 EXTENSIONS

- 12.1 Either a timetable or deadline shall be extended upon receipt of a timely request from DOE, WVNS or NYSERDA for extension and when good cause exists for the requested extension. Any request for an extension shall be made prior to the date for which extension is

D R A F T

sought to EPA or DEC, as appropriate, either in writing or orally with a written follow-up request within ten (10) business days of the request. The request for an extension shall operate to extend the deadline until receipt of EPA's or DEC's written position concerning the request, unless it is determined that the request was made in bad faith and without reasonable justification. Any oral or written request shall be provided to the other Parties pursuant to Article 16.0 (Designation of Project Coordinators). The written request shall specify:

12.1.1 The timetable and deadline or the schedule that is sought to be extended;

12.1.2 The length of the extension sought;

12.1.3 The good cause(s) for the extension; and

12.1.4 Any related timetable and deadline or schedule that would be affected if the extension were granted.

12.2 Good cause exists for an extension when sought in regard to:

12.2.1 An event of force majeure as provided for in Article 14.0;

12.2.2 A delay caused by another Party's failure to meet any requirement of this Agreement;

12.2.3 A delay caused by the good faith invocation of dispute resolution or the initiation of administrative or judicial action;

12.2.4 A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule;

D R A F T

- 12.2.5 A delay caused by additional work agreed to by the Parties;
- 12.2.6 Circumstances unforeseen at the time this Agreement was prepared that significantly affect the work required under the Agreement;
- 12.2.7 Delay in issuing a permit required to meet deadlines and schedules; and
- 12.2.8 Any other event or series of events including a delay caused by the initiation of a judicial action by anyone not a Party to this Agreement mutually agreed to by the Parties as constituting good cause.
- 12.3 Absent an agreement of the Parties with respect to the existence of good cause, the Parties may seek and obtain a determination through the dispute resolution process whether or not good cause exists.
- 12.4 For extension requests by DOE, WVNS, or NYSERDA, the EPA and DEC will follow the following procedures:
- 12.4.1 Within twenty-one (21) days of receipt of a written request for an extension of a timetable and deadline or a schedule, the EPA and DEC shall advise all Parties in writing of their respective positions on the request. Any failure by EPA or DEC to respond within the 21-day period shall be deemed to constitute concurrence with the requested extension. If the agency designated as the Lead Regulatory Agency pursuant to Article 8.0 (Lead Regulatory Agency Designation) for the activity subject to the request for an extension does not concur with the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

D R A F T

- 12.4.2 If the Lead Regulatory Agency agrees that the requested extension is warranted, then DOE shall extend the affected timetable and deadline or schedule accordingly. If the Lead Regulatory Agency does not agree that all or part of the requested extension is warranted, the timetable and deadline or schedule shall not be extended except in accordance with a determination resulting from the dispute resolution process.
- 12.4.3 Within twenty-one (21) days of receipt of a statement from the Lead Regulatory Agency of nonconcurrence with the requested extension, DOE, WVNS or NYSERDA may invoke dispute resolution. If DOE, WVNS or NYSERDA does not invoke dispute resolution within twenty-one (21) business days of receipt of a statement of nonconcurrence, then the nonconcurrence is accepted and the existing schedule will be followed.
- 12.4.4 When a timely and good faith request for an extension is made, EPA and or DEC shall refrain from judicial enforcement of the affected timetable and deadline or schedule until a decision is reached on whether the requested extension will be approved. Following the grant of an extension, an application for judicial enforcement may be sought, if appropriate, only to compel compliance with the timetable and deadline or schedule as most recently extended.
- 12.5 For extension requests by EPA and DEC, if no Party invokes dispute resolution within twenty-one (21) days after written notice of the requested extension, the extension shall be deemed approved.

D R A F T

13.0 COMPLIANCE WITH LAWS

All actions undertaken pursuant to this Agreement by DOE, WVNS, or NYSERDA shall be done in accordance with all applicable federal laws, regulations and Executive Orders, and all applicable state and local laws and regulations.

14.0 FORCE MAJEURE

14.1 Force Majeure shall mean any event arising from causes beyond the reasonable control of a Party that causes a delay in or prevents the performance of any obligations under this Agreement, including, but not limited to:

14.1.1 Acts of God; fire; war; insurrection; civil disturbances; or explosion.

14.1.2 Unanticipated breakups or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance;

14.1.3 Adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation;

14.1.4 Restraint by Court Order or order of public authority;

14.1.5 Inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority other than DOE or NYSERDA;

14.1.6 Delays caused by compliance with applicable statutes or regulations governing work to be performed under this Agreement including, but not limited to, contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and

D R A F T

14.1.7 Delays caused by compliance with NEPA;

14.1.8 For EPA, DEC, DOE and NYSERDA only, to the extent performance of activities pursuant to this Agreement require appropriated funds, insufficient availability of appropriated funds which have been diligently sought. In order for Force Majeure based on insufficient funding to apply to DOE or NYSERDA, DOE consistent with Article 19.0 (Funding) of this Agreement, or NYSERDA shall have made timely request for such funds.

14.1.9 For DOE's contractors only, including WVNS, insufficient availability of appropriated funds from DOE required to fund activities. It is expressly understood that neither WVNS nor its parent company, Westinghouse Electric corporation, is required to independently expend any funds to carry out any of the obligations of the Agreement.

14.1.10 Impossibility of performance despite the exercise of due diligence caused by matters outside the control of the Parties.

14.1.11 Any strike or other labor dispute, whether or not within the control of the Parties affected thereby.

14.2 Force Majeure shall not include increased costs or expenses of conducting any required activity, whether or not anticipated at the time such activity was initiated.

14.3 In the event of a Force Majeure creating an impossibility of performance in compliance with the terms herein, the Parties agree to negotiate in good faith a modification to the Agreement.

D R A F T

15.0 MODIFICATION OF AGREEMENT

- 15.1 This Agreement, including the Action Plans, may be modified by Agreement of all the Parties. All modifications shall be in writing and shall be effective when signed by all Parties. EPA shall be the last signatory to any modifications to the Agreement. Disagreements regarding the modifications are subject to dispute resolution under Article 9.0 (Resolution of Disputes).
- 15.2 Modification to the Action Plans shall require approval of the Lead Regulatory Agency but shall not require the signature of all Parties under this section; in accordance with Section 7.1 of this Agreement (Compliance Requirements).
- 15.3 No informal advice, guidance, suggestions or comments by EPA or DEC regarding reports, plans, specifications or schedules, nor other writing submitted by DOE, WVNS or NYSERDA shall be construed as relieving DOE, WVNS, or NYSERDA of their obligations to obtain such formal approval as may be required by this Agreement.

16.0 DESIGNATED PROJECT COORDINATORS

- 16.1 The Parties will each designate Project Coordinators to coordinate the implementation of this Agreement and shall notify the other Parties in writing of the designation within ten (10) days of the effective date of this Agreement. Any Party may unilaterally change its designated Project Coordinator by notifying the other Parties in writing.
- 16.2 Except where otherwise specified in the Agreement, communications between the Parties and all documents and notices including reports, agreements, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Agreement shall be directed through the Project Coordinators. Each Project Coordinator shall be responsible for assuring the

D R A F T

internal dissemination and processing of all communications and documents received from the other Project Coordinators.

17.0 COVENANT NOT TO SUE/RESERVATION OF RIGHTS

17.1 In consideration for DOE's, WVNS's and NYSERDA's compliance with this Agreement to implement those activities for which each is responsible under the Action Plans, and based on the information known to the Parties on the effective date of this Agreement, EPA and DEC agree that compliance with this Agreement shall stand in lieu of any administrative, legal and equitable remedies against the DOE, WVNS, NYSERDA, or each of their officers, directors, employees, agents or authorized representatives; and in lieu of civil or criminal referral by EPA to the Department of Justice, or DEC to the New York State Attorney General against DOE, WVNS, NYSERDA or their Authorized Representatives, with respect to matters covered by this Agreement.

17.2 In the event that any Party is alleged to be out of compliance with this Agreement, the noncompliance of that Party shall not operate to nullify the covenant not to sue with respect to the other Parties.

17.3 By entering into this Agreement, DOE does not waive any claim of sovereign immunity that it may have under federal or state law or not expressly waived by statute; nor does it waive any immunity from payment of fines or penalties, nor does it waive any claim of jurisdiction over matters reserved to it under the AEA.

17.4 Except as otherwise set forth in this Agreement, DEC does not waive any right or authority it may have under Federal or New York State law. DEC expressly reserves all rights and authorities it may have under Federal and New York State law except that it expressly agrees to exhaust any applicable remedies provided in Article 9.0, as appropriate (Resolution of Disputes) and as

D R A F T

provided in Article 10.0 (Enforcement) of this Agreement prior to exercising any such rights. Unless expressly waived by law, the State of New York does not waive its sovereign immunity by entering into this Agreement.

- 17.5 If dispute resolution concerning any matter requires decision by the Regional Administrator of EPA, or the Administrator of EPA, the Parties may mutually agree to accelerate that matter through the dispute resolution procedures of Article 9.0 (Resolution of Disputes) under this Agreement to the Administrator.
- 17.6 Notwithstanding Article 9.0 of this Agreement (Resolution of Disputes), DOE, WVNS and NYSERDA reserve the right to seek judicial review with regard to such disputes not resolved under Section 9.1.12, 9.1.14 and 9.1.15 above (regarding resolution of disputes).
- 17.7 Except as otherwise set forth in this Agreement, the Parties reserve any other rights with respect to any other Party to this Agreement, or their Authorized Representatives, and with regard to any person not a Party to this Agreement, except to the extent that that person is acting in compliance with this Agreement as the Authorized Representative of a Party.
- 17.8 In the event that the Agreement is terminated pursuant to its terms, EPA and the DEC reserve any right they may have to address any alleged violations existing as of the date of termination. However, such termination shall not operate to modify the terms of this section with respect to activities conducted by DOE, NYSERDA or WVNS after the effective date and prior to termination which were in compliance with the terms of this Agreement.

18.0 ADDITIONAL WORK

- 18.1 Either EPA or DEC may at any time request additional work, including field modifications, investigatory work, or engineering evaluations, which the Parties determine necessary to accomplish the purposes of this Agreement. Such requests shall be in writing to DOE, WVNS and NYSERDA with copies to the other Parties. DOE, WVNS or NYSERDA, as appropriate, agree to give full consideration to all such requests. The DOE, WVNS or NYSERDA, as appropriate, may either accept or reject any such requests and shall do so in writing, together with a statement of reasons, within forty-five (45) days of receipt of any such requests. However, before DOE's contractors (including WVNS) may accept any requests for additional work which would require the expenditure of DOE funds or affect a schedule or other matter for which DOE is responsible under this Agreement, DOE's contractors must obtain the concurrence of DOE prior to accepting any such requests. If there is no Agreement concerning whether or not the requested additional work or modification to work should be conducted, then dispute resolution may be invoked.
- 18.2 Should additional work be required pursuant to this section, deadlines and schedules for implementation of any activity shall be proposed by DOE, WVNS or NYSERDA, as appropriate, and reviewed and approved by the Lead Regulatory Agency and shall be included in the Action Plans prepared pursuant to Sections 7.5 and 7.6 of this Agreement.
- 18.3 The discovery of previously unknown facts or conditions related to equivalency, ALARA, extensions, LDR's or other compliance issues may be addressed as additional work under this section.
- 18.4 Any additional work or modifications to work proposed by NYSERDA, DOE or WVNS shall be proposed in writing to the other Parties and shall be subject to review by the Lead Regulatory Agency.

D R A F T

NYSERDA, DOE or WVNS shall not initiate such work prior to review and approval by the Lead Regulatory Agency.

18.5 Any additional work or modification to work agreed to or required under this Article, shall be completed in accordance with the standards, specifications and schedules determined or approved by the Lead Regulatory Agency and shall be governed by the provisions of this Agreement.

19.0 FUNDING

It is the expectation of the Parties to this Agreement that all obligations of DOE arising under this Agreement will be fully funded. DOE shall take all necessary steps and make efforts to obtain timely funding to meet its obligations under this Agreement.

19.1 DOE is preparing an Environmental Restoration and Waste Management Five Year Plan (the "Five Year Plan") to identify, integrate, and prioritize DOE's compliance and cleanup activities at all DOE nuclear facilities and sites. The Five Year Plan will assist DOE in addressing environmental requirements at its facilities and sites and in developing and supporting its budget requests. DOE will update its Five Year Plan on an annual basis.

19.2 The terms of the Five Year Plan shall be consistent with the provisions of this Agreement, including all requirements and schedules contained herein; it is the intent of the Parties that DOE's Five Year Plan be drafted and updated in a manner that ensures that the provisions of this Agreement are incorporated into the DOE planning and budget process.

19.3 DOE is developing a national prioritization system for inclusion in its Five Year Plan. DOE's application of its national prioritization system may indicate to DOE the amendment or modification of the provisions and/or milestones established by

DRAFT

this Agreement is appropriate. In that event, DOE may request, in writing, amendment or modification of this Agreement, including deadlines established herein. Where the Parties are unable to reach Agreement on a requested amendment or modification, DOE may invoke the dispute resolution provisions of this Agreement. Pending resolution of any such dispute, the provisions and deadlines in effect pursuant to this Agreement shall remain in effect and enforceable in accordance with the terms of this Agreement.

19.4 DOE shall include in its annual report to Congress the specific cost estimates and budgetary proposal associated with the implementation of this Agreement. Any requirement for the payment or obligation of funds by DOE established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. and 1341, et seq.

19.5 In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

19.6 Nothing herein shall affect DOE's authority over its budget and funding level submissions.

20.0 TERMINATION AND SATISFACTION

20.1 This Agreement shall remain in effect until such time that all activities conducted under this agreement are completed or until such time that it is superceded or modified by Agreement of all Parties.

D R A F T

20.2 Following the issuance of a RCRA Part B permit, or upon completion of all required actions and upon written request by DOE, WVNS or NYSERDA, EPA and DEC shall send to DOE, WVNS and NYSERDA (as appropriate) a written notice of satisfaction of the terms of this Agreement within ninety (90) days of this request. WVNS may request written notice of satisfaction under this section only regarding matters, if any, which EPA or DEC have required WVNS to independently perform. The notice shall state that, in the opinion of EPA and DEC, that DOE, WVNS or NYSERDA (as appropriate) has satisfied all of the terms of this Agreement in accordance with the requirements of RCRA, and all related regulations and that the work performed by DOE, WVNS or NYSERDA was consistent with the Agreement. Any refusal by EPA and/or DEC to supply DOE, WVNS or NYSERDA with a notice of satisfaction shall be subject Article 9.0 (Resolution of Disputes).

21.0 EFFECTIVE DATE

This Agreement is effective upon the date signed by EPA. EPA shall be the final signatory to the Agreement.

22.0 NRC REVIEW AND CONSULTATION

22.1 As mandated by the WVDP Act, Section 2(c), DOE and NRC entered into a Memorandum of Understanding (MOU) (46 FR 56960, November 19, 1981) which established procedures for review and consultation by the NRC with respect to WVDP activities conducted by the DOE. The MOU encompassed those development, design, construction, operation, and decontamination and decommissioning activities associated with the WVDP. The NRC review, consultation and monitoring established by the MOU is to provide the DOE with independent analyses to assist DOE in fulfilling its responsibility for public health and safety. The NRC is responsible to carefully review, critique and analyze, in a timely manner, the information provided by DOE to identify to DOE any

potential radiological danger to the public health and safety. In addition, the WVDP Act provides, in Section 2(a):

"(4) The [DOE] shall, in accordance with applicable licensing requirements, dispose of low-level radioactive waste and transuranic waste produced by the solidification of the high-level radioactive waste under the project.

" (5) The [DOE] shall decontaminate and decommission -

(A) the tanks and the facilities of the Center in which the high-level radioactive waste solidified under the project was stored,

(B) the facilities used in the solidification of the wastes, and

(C) any material and hardware used in connection with the project

in accordance with such requirements as the [NRC] may prescribe.

[Emphasis supplied].

22.2 For those portions of the Center in the possession of DOE which are not used in connection with the WVDP, the DOE is to provide the NRC information to identify any potential radiological danger to the public health and safety and provide NRC access to monitor activities.

22.3 To promote consistency with requirements for radiological and hazardous constituents with respect to WVDP Radioactive Waste Management activities, the Parties desire to obtain the review and consultation of the NRC to assist in implementing this Agreement. Such coordination is also intended to reduce duplication in effort.

22.4 To the extent practical and as resources are available, NRC will act as a technical consultant regarding implementation of this Agreement and, as requested by EPA, DEC or DOE, conduct

D R A F T

independent review of documents provided or submitted pursuant to this Agreement.

23.0 REVIEW AND COMMENT PROCESS FOR SUBMITTED DOCUMENTS

- 23.1 The provisions of this Article establish the procedures that shall be used by the Parties to provide appropriate notice, review, comment and response to comments regarding documents relating to site characterization or investigation and corrective action, if any submitted pursuant to this Agreement. NYSERDA, DOE and WVNS will normally be responsible for submitting documents pursuant to their respective responsibilities under the Action Plans to EPA and DEC. As of the effective date of the Agreement, all such documents or any other document so designated by the Lead Regulatory Agency which may be required from DOE, WVNS or NYSERDA pursuant to this Agreement shall be prepared and distributed under the procedures of this Article, and subject to dispute in accordance with Section 23.9 below.
- 23.2 The designation of a document as "revised" or "approved" is solely for purposes of consultation with EPA and DEC in accordance with this Article. Such designation does not effect the obligation of the Parties to issue documents, which may be referred to herein as "revised" or "approved," to the public for review and comment as required by law.
- 23.3 Any document required to be submitted by DOE, WVNS or NYSERDA and approved by the Lead Regulatory Agency pursuant to the Action Plans, shall be submitted by DOE, WVNS or NYSERDA to the Lead Regulatory Agency for review and comment on or before the date specified in the Action Plans. Copies of such submittals shall be provided to all Parties. Except as the Lead Regulatory Agency may otherwise direct, work may not proceed unless the applicable document is approved.

D R A F T

23.4 Unless extended or otherwise specified in the applicable Action Plans, all documents shall be subject to a 30-day period of review and comment by the Lead Regulatory Agency. Review of any document by EPA or DEC may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with any pertinent guidance or policy issued by EPA or DEC. Comments by EPA and DEC shall be provided with adequate specificity so that NYSERDA and/or DOE may respond to comments and, if appropriate, make changes to the document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request, EPA and DEC shall provide a copy of the cited authority or reference. EPA or DEC may extend the 30-day comment period for an additional 30 days by written notice to NYSERDA, DOE or WVNS prior to the end of the 30-day period. This time period may be further extended pursuant to Article 9.0 (Resolution of Disputes) if necessary to adequately comment on the submitted document. On or before the close of the comment period, EPA and DEC shall transmit, by next day mail, their written comments to the other Parties. If EPA and DEC do not transmit comments within the comment period (including any extension under this paragraph) such submitted documents shall be deemed approved.

23.5 Representatives of DOE, WVNS or NYSERDA, as appropriate, shall make themselves readily available to EPA and DEC during the comment period for purposes of informally responding to questions and comments on submitted documents. Oral comments made during such discussions need not be subject of a written response by DOE, WVNS or NYSERDA.

23.6 Following the close of the comment period for a submitted document, NYSERDA, DOE and WVNS shall give full consideration to all written comments submitted during the comment period. Within 30 days of the close of the comment period, NYSERDA, DOE and WVNS

D R A F T

shall submit to EPA and DEC a revised document which shall be responsive to all written comments received within the comment period.

23.7 NYSERDA, DOE and WVNS may extend the 30-day period for issuing the revised document for an additional 20 days by providing written notice to EPA and DEC. In appropriate circumstances, this time period may be further extended in accordance with Article 12.0 (Extensions).

23.8 Except as may be specifically stated in a document, no submittal, revision or response shall affect or modify the respective rights, obligations or liabilities of NYSERDA, DOE or WVNS under the WVDP Act nor any contract or agreement other than this Agreement.

23.9 Availability of Dispute Resolution for Documents

23.9.1 Dispute resolution shall be available to the Parties for comments or revised documents provided pursuant to this Article 23.0 as set forth in Article 9.0 (Resolution of Disputes).

23.9.2 When dispute resolution is invoked on a comment or a revised document, DOE, WVNS or NYSERDA may extend the time for performance of the work required by this Agreement in accordance with the procedures set forth in Article 9.0 (Resolution of Disputes).

23.10 The revised document shall be deemed final and approved unless the Lead Regulatory Agency in its discretion:

23.10.1 Submits additional comments and requests revision pursuant to the procedures of Section 23.4; or

23.10.1 Invokes dispute resolution pursuant to Section 23.9 above.

DRAFT

IT IS SO AGREED:

DATE: _____ SIGNED: _____
A. Pitrolo
U.S. Department of Energy
Idaho Falls Operation Office

DATE: _____ SIGNED: _____
R. A. Thomas
President and General Manager
West Valley Nuclear Services Co., Inc.

DATE: _____ SIGNED: _____
Irvin L. White
President
New York State Energy Research and
Development Authority

DATE: _____ SIGNED: _____
Director _____
Region II
U.S. Environmental Protection Agency

DATE: _____ SIGNED: _____
N. D. Khal
Director _____
Region IX
New York State Department
of Environmental Compliance

And, for the limited purpose of review and consultation, as provided in Article 22.0 (NRC Review and Consultation) of this Agreement, the U. S. Nuclear Regulatory Commission enters herein:

DATE: _____ SIGNED: _____
NAME
TITLE
U.S Nuclear Regulatory Commission

EPA/NYSDEC TECHNICAL BRIEFING
PRESENTATION TO EPA AND NYSDEC 5/10/90

GENERAL PRESENTATION OF ISSUES

PRESENTED BY:
GARY G. BAKER, PhD.
ENVIRONMENTAL COMPLIANCE

EPA/NYSDEC TECHNICAL BRIEFING

WASTE MANAGEMENT

THE WVDP GOAL

**THE WVDP IS A WASTE MANAGEMENT
AND DEMONSTRATION PROJECT
MANDATED BY FEDERAL
LAW WHICH WILL RESULT IN THE
RESTORATION OF THE ENVIRONMENT
AND DISPOSAL OF RADIOACTIVE WASTE**

EPA/NYSDEC TECHNICAL BRIEFING

SITE BRIEFING

NY RCRA AUTHORIZATION

THE NEW REGULATION CONCERNING RADIOACTIVE MIXED WASTE BECAME EFFECTIVE ON MAY 7 WITH A TOTAL COMPLIANCE DATE OF JUNE 7. THE NEW REGULATIONS HAVE PRODUCED SOME AREAS THAT REQUIRE REGULATORY INTERPRETATION. THESE ARE:

- EQUIVALENCY,
- ALARA,
- EXTENSIONS,
- LDP'S, AND
- SITE CHARACTERIZATION

EPA/NYSDEC TECHNICAL BRIEFING

OPERABLE UNITS

- OPERABLE UNIT I -

- SWMU - 13 - HLW TANKS
- SWMU - 18 - LWTS
- SWMU - YY - CSS
- SWMU - 19 - STS
- SWMU - 20 - VIT

*TREATMENT, Solidification
Vitrification*

- OPERABLE UNIT II -

- SWMU - XX - TRENCH INTERCEPTOR PROJECT
- SWMU - 11 - NDA STORAGE UNIT
- SWMU - 11a- NDA TANK STORAGE

- OPERABLE UNIT III

- SWMU - 15 - LAG STORAGE
- SWMU - 16a- LAG STORAGE (Plant #1)

- OPERABLE UNIT IV

- SWMU - 09 - HARDSTAND STORAGE (Old)
- SWMU - 09a- HARDSTAND STORAGE (New)
- SWMU - 14 - CPC STORAGE
- SWMU - 16 - LAG STORAGE (Extensions)

EPA/NYSDEC TECHNICAL BRIEFING

EQUIVALENCY

EQUIVALENCY – IS BASED UPON RADIOLOGICALLY ENGINEERED BARRIERS AND NUCLEAR QUALITY MATERIALS/INSTALLATION.

KEY REGULATORY AREAS ARE:

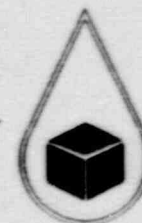
- MULTIPLE BARRIERS VS DOUBLE CONTAINMENT
- RADIOLOGICAL INSTRUMENTATION VS
HAZARDOUS MATERIALS INSTRUMENTATION
- SHIELDING VS AISLE SPACE
- ASSESSMENT OF TANKS/PIPING VS
INITIAL INSTALLATION/INSPECTION
- LEAK DETECTION VS RAD MONITORS

EPA/NYSDEC TECHNICAL BRIEFING

WVDP EQUIVALENCY POSITION

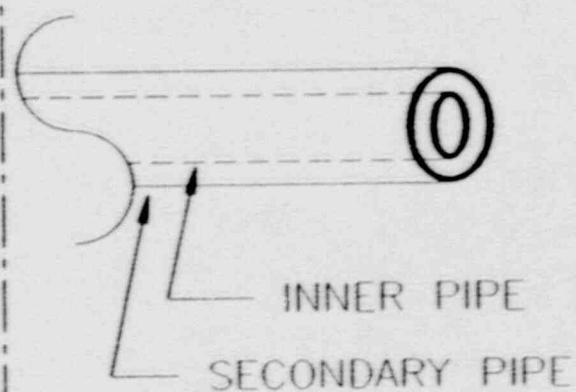
- EQUIVALENCY IS ONLY CONSIDERED IN THOSE CASES WHERE AN EQUAL OR GREATER LEVEL OF PROTECTION IS AFFORDED.
- EQUIVALENCY IS BASED ON "RADIOLOGICAL ENGINEERING". THIS IS THE PRINCIPLE OF MULTIPLE BARRIERS THAT SHIELD PERSONNEL AND THE PUBLIC FROM POTENTIAL RADIOLOGICAL EXPOSURE.
- THE EQUIPMENT AND PROCESS ARE DESIGNED TO THE ABOVE REQUIREMENTS AND AS SUCH DOUBLE CONTAINMENT IS PRESENT IN ALMOST ALL CASES.
- THIS END RESULT IS THAT THE EQUIPMENT, PROCESS AND END PRODUCT MEET OR EXCEED ALL OF THE HAZARDOUS WASTE REQUIREMENTS.

ENVIRONMENTAL COMPLIANCE

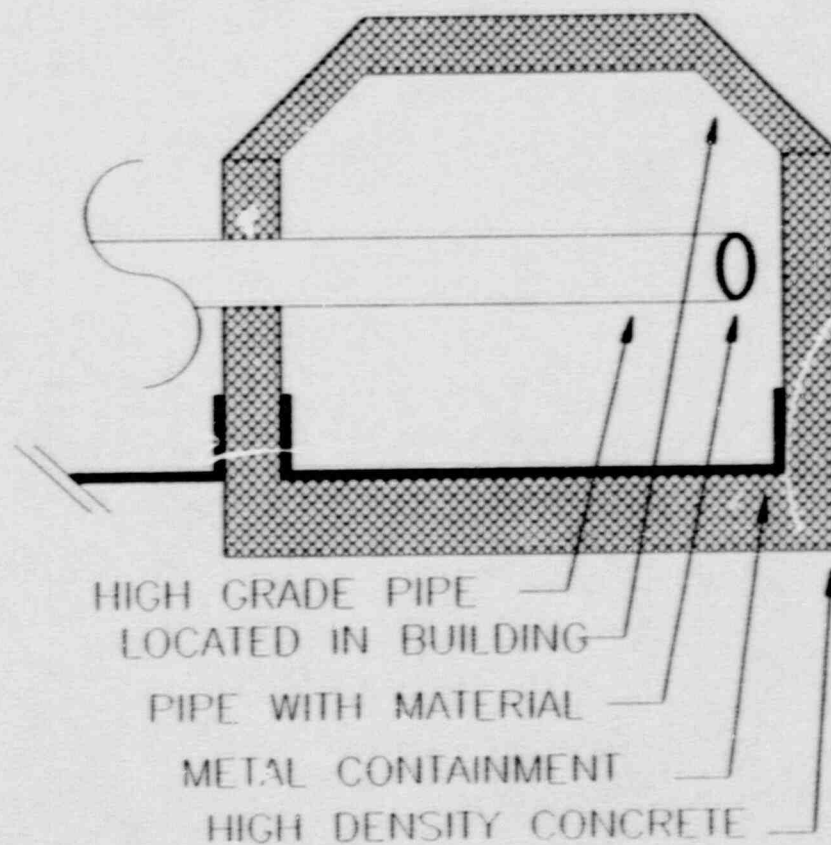


WVNS

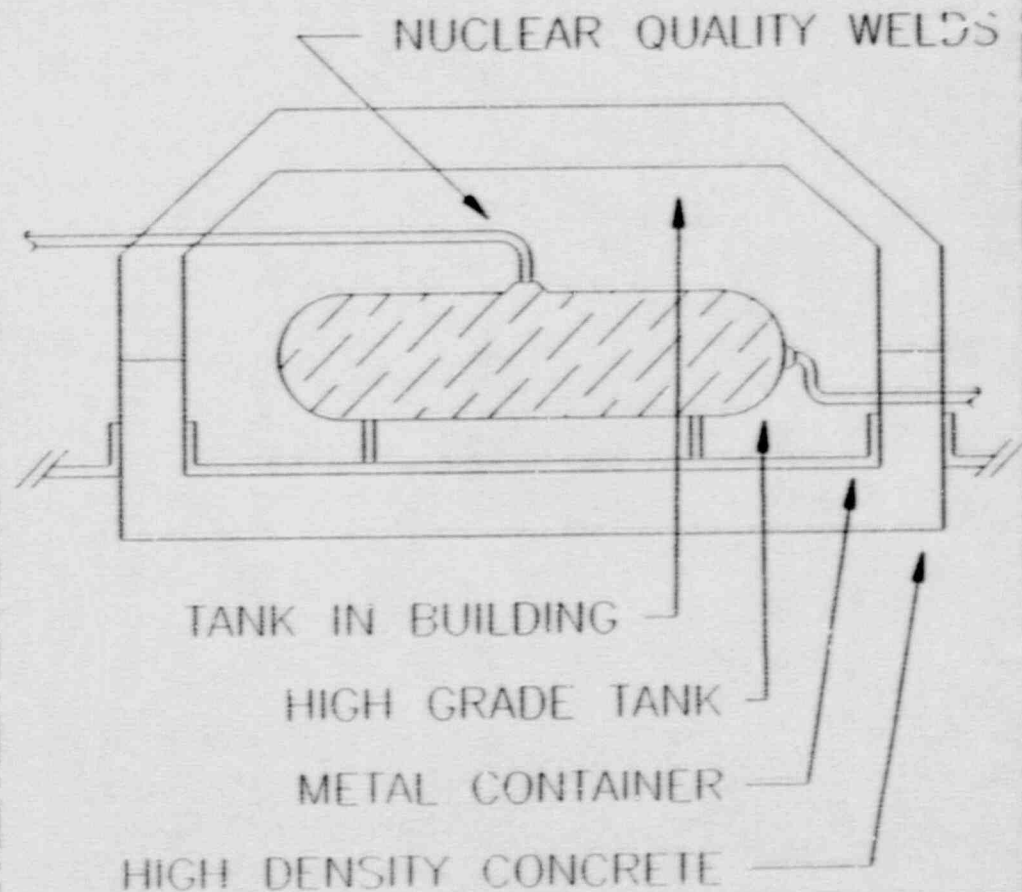
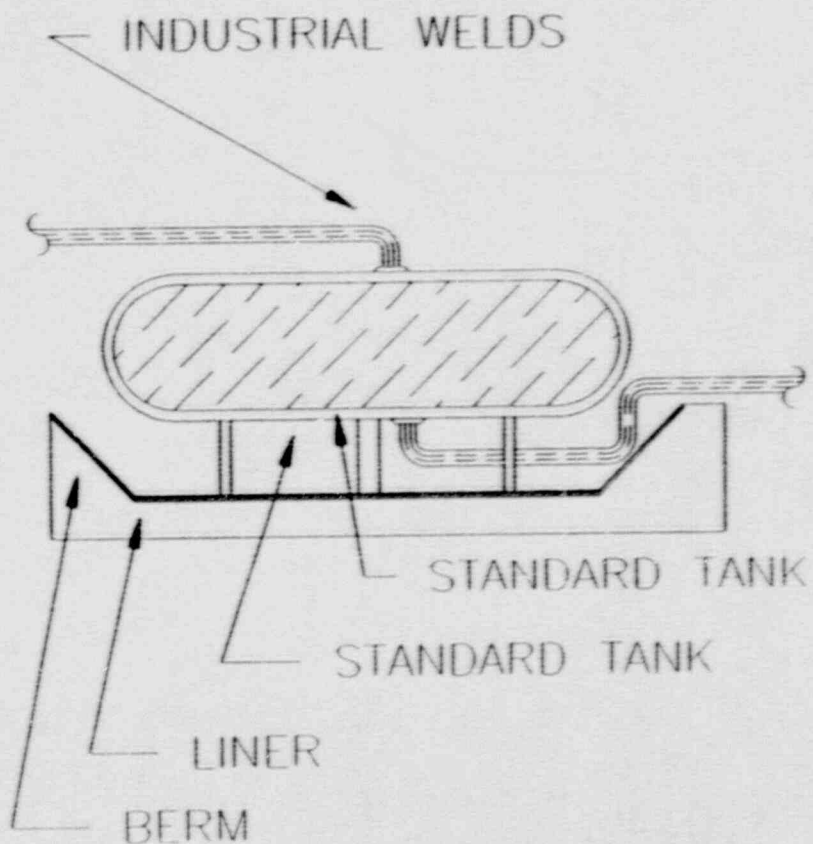
REGULATORY REQUIREMENTS



WVDP EQUIVALENCY



WVDP PROPOSED EQUIVALENCY



EPA/NYSDEC TECHNICAL BRIEFING

ALARA

ALARA - THE WVDP OPERATES UNDER THE BASIC PRINCIPLE OF ALARA. RADIATION EXPOSURE IS NOT RECOGNIZED WITHIN THE HAZARDOUS WASTE REGULATIONS AND IS "UNIQUE WITH RADIOACTIVE MATERIALS". IT NEEDS TO BE FACTORED INTO REGULATORY COMPLIANCE IN THE FOLLOWING AREAS:

- INSPECTION BY PERSONNEL VS REMOTE DETECTION
- REQUIRED AISLE SPACE VS SHIELDING FROM DRUMS
- MARKING OF CONTAINERS VS AREA MARKING
- ADMINISTRATIVE REQUIREMENTS VS ACTUAL EXPOSURE

EPA/NYSDEC TECHNICAL BRIEFING

EXTENSIONS

THERE ARE THREE TYPE OF EXTENSIONS THAT THE WVDP IS REQUESTING:

- 1) EXTENSION DUE TO SAMPLE CHARACTERIZATION:
EXTENSION OF THE 30 DAY IMPLEMENTATION CLOCK
FOR OBTAINING SAMPLES AND ASSOCIATED ALARA
ISSUES, AND REVIEWING HISTORICAL PROCESSES
FOR DETERMINATION OF MIXED WASTE STATUS.
At EPA license
- 2) EXTENSION DUE TO SITE EIS AND CLOSURE:
THIS EXTENSION WILL ACCOMMODATE THE PROJECT'S
REQUIREMENT TO PERFORM AN EIS FOR SITE CLOSURE
VS THE RADIOACTIVE MIXED WASTE PERMIT REQUIREMENTS
(PART B) FOR INCLUDING A CLOSURE PLAN AS PART OF
THE PERMIT.
- 3) EXTENSION FOR FORMULATING AND IMPLEMENTING RMW
PLANS, PROCEDURES, AND TRAINING.

EPA/NYSDEC TECHNICAL BRIEFING

LAND DISPOSAL RESTRICTION

THERE ARE TWO COMPLIANCE ISSUES INVOLVED WITH LDR:

- 1) BEST DEMONSTRATED AVAILABLE TECHNOLOGY (BDAT)
REGULATORY RULING THAT THE TECHNOLOGY BEING USED
FOR SOLIDIFICATION AND VITRIFICATION OF MIXED
RADIOACTIVE WASTE IS BDAT FOR THE PROJECT'S
RMW STREAMS.**
- 2) STORAGE OF LAND BAN MATERIALS
CONTINUED STORAGE OF LDR - RMW UNTIL IT IS
TREATED, AND RENDERED NON-HAZARDOUS.**

EPA/NYSDEC TECHNICAL BRIEFING

CHARACTERIZATION OF SWMU'S

THE CHARACTERIZATION OF SWMU'S FOR EIS
PURPOSES AT THE WVDP WILL INCLUDE:

- INDEPTH REVIEW OF OPERATING HISTORIES
- OVERLAND GAMMA RADIATION SURVEY OF 230 ACRES
- SURFACE GEOPHYSICS (OPTIONAL)
- SURFACE SOIL SAMPLING
- SEDIMENT/SLUDGE SAMPLING
- SUBSURFACE SOIL SAMPLING
- GROUNDWATER MONITORING
- ANALYSIS OF MEDIA/UNIT SPECIFIC INDICATOR
PARAMETERS INCLUDING RADIOLOGICAL AND
OTHER CHEMICAL SPECIES

EPA/NYSDEC TECHNICAL BRIEFING

THE WVDP EIS SITE CHARACTERIZATION

THIS PROGRAM INCLUDES:

- FACILITY PROGRAMS (e.g., SWMU CHARACTERIZATION)
- SITE PROGRAMS (STREAM EROSION; WATER RESOURCE STUDIES)
- REGIONAL PROGRAMS (e.g., DEMOGRAPHIC STUDIES)