



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

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

C.L. "Butch" Otter, Governor  
Curt Fransen, Director

March 12, 2015

**CERTIFIED MAIL #7010 3090 0002 3445 4174**  
**RETURN RECEIPT REQUESTED**

Ms. Teresa Perkins, Director  
Environment and Sustainability Division  
U.S. Department of Energy  
Idaho Operations Office (NE-ID)  
1955 Fremont Ave.  
Idaho Falls, ID 83415

RE: Idaho National Laboratory (INL) Notice of Non-Compliance Consent Order (NON-CO)  
Fifth Modification, EPA Identification Number ID4890008952

Dear Ms. Perkins:

Enclosed is a signed effective copy of the INL NON-CO Fifth Modification.

Thank you for your cooperation in this matter. If you have any questions, please contact Natalie Clough at (208) 373-0506.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian R. Monson".

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

BRM\NC\js INLNONCOSMod

Enclosure

cc: Darrell Early, Deputy Attorney General  
Erick Neher, Administrator, DEQ Idaho Falls Regional Office  
Rensay Owen, DEQ Idaho Falls Regional Office  
Scott Downey, EPA Region 10  
Dave Hutchison, CWI  
2015BCV84  
COF



- B. No later than March 13, 2015, DOE shall submit to the Department for review and approval a draft compliance schedule with the activity durations specified in Section IV.C below. Approval of the schedule shall be subject to the reasonable discretion of the Department. Within five (5) days of receipt of DOE's submittal, the Department shall: 1) notify DOE in writing the schedule is approved; or 2) notify DOE in writing of any deficiencies in the schedule. If the Department notifies DOE of deficiencies in the schedule, DOE shall submit a revised schedule within five (5) days of receipt of the Department's notice. Failure by DOE to develop a Department approved compliance schedule by April 3, 2015 may be considered a breach of the Consent Order and DOE shall be subject to a stipulated penalty in accordance with Section VII of this Fifth Modification. Upon approval by the Department, the new compliance schedule shall be incorporated herein and enforceable as a part of the April 3, 1992 Consent Order and this Fifth Modification.
- C. The compliance schedule shall include, at a minimum, deadlines for the actions set forth below:
- i. Initiation of waste treatment in the IWTU.
  - ii. A Schedule for System Backlog identifying the time required for processing waste currently in storage, corresponding to initiation of waste treatment identified in Section IV.C.i above, and the cessation of use of tanks consistent with Section IV.C.iii below.
  - iii. Permanently cease use of tank numbers WM-187, WM-188, WM-189, and WM-190.
- V. Consistency with INL Site Treatment Plan Consent Order. The initiation of waste treatment and backlog schedule identified in Section IV.C. above shall also be subject to approval under the terms and conditions of the INL Site Treatment Plan and Consent Order dated November 1, 1995, including any public participation requirements.
- VI. Penalty. DOE shall pay to the Department the sum of Six Hundred Forty-Eight Thousand Dollars (\$648,000) as a civil penalty for the Violations in the January 6, 2015 NOV. The Department may consider a proposal for one or more Supplemental Environmental Projects (SEPs) pursuant to Idaho Code § 39-4414 (1)(c) in lieu of the civil penalty required by this Section but is not required to accept such in lieu of penalty payment. The Department reserves the right to accept in whole or part or reject in whole or part any portion of the SEP Proposal and to otherwise determine the value of the SEP Proposal as partial or complete satisfaction of the civil penalty set forth in this Section. DOE shall pay this civil penalty, or submit a SEP Proposal for review and approval in accordance with Section IX of the Consent Order, to the Department within sixty (60) days of the effective date of this Fifth Modification.
- VII. Stipulated Penalties. DOE's failure to submit on time an approvable compliance schedule as required by Section IV of this Fifth Modification, or to complete on time any action required by Sections IV.C (i – iii) of this Fifth Modification, shall be a breach of the April 3, 1992 Consent Order and this Fifth Modification, and DOE shall be subject to a stipulated penalty, as follows:

- A. DOE shall be subject to a stipulated penalty of One Thousand Two Hundred Dollars (\$1,200) for each violation for each non-empty tank for each day that DOE fails to achieve compliance with the requirement violated (up to a total of Thirty-Six Hundred Dollars (\$3,600) per day per violation) for the first one hundred eighty (180) days after the due date of the requirement.
- B. Thereafter, DOE shall be subject to a stipulated penalty of Two Thousand Dollars (\$2,000) for each violation for each non-empty tank for each day that DOE fails to achieve compliance with the requirement violated (up to a total of Six Thousand Dollars (\$6,000) per day per violation) until the requirement is met.
- C. The Department shall give DOE written notice of the alleged violation of the Consent Order for which the Department will seek a stipulated penalty. The notice shall describe the alleged violation and demand payment of the penalty.
- D. Upon receipt of such notice from the Department, DOE shall reply in writing within fifteen (15) days. The reply shall: (1) explain the reason for the alleged violation and the proposed means and estimated time required to remedy the same; or (2) state why DOE believes the Department's claim is inappropriate.
- E. The Department shall thereafter respond to DOE's reply by notifying DOE whether DOE is in violation of the Consent Order and must pay the stipulated penalty as provided in Section X of this Fifth Modification. DOE shall pay this stipulated penalty, or submit a SEP Proposal as provided by Section VII.I, to the Department within sixty (60) days of DOE's receipt of the Department's final response.
- F. All stipulated penalties shall begin to accrue upon the day a violation occurs and shall continue to accrue through the day the violation is corrected or the Consent Order requirement is met.
- G. In the event that DOE misses serial requirements under Section IV.C of this Fifth Modification, the DOE shall not be liable for simultaneous separate stipulated penalties but shall be required to pay a single stipulated penalty throughout the duration of the violations.
  - i. By way of example and for the purpose of eliminating any ambiguity: If DOE misses the requirement of IV.C.i and does not cure the violation by the time the next requirement of IV.C.ii becomes due, DOE shall be liable for the stipulated penalty for the violation of IV.C.i which shall continue to accrue until such time as the violation of IV.C.ii. is cured.
- H. Stipulated penalties under this section shall not accrue if the reason for DOE's failure to meet the requirement was necessitated by an upset or breakdown condition in the treatment process that required treatment to be stopped in order to protect human health and the environment.
- I. The Department may consider a proposal for one or more Supplemental Environmental Projects (SEPs) pursuant to Idaho Code § 39-4414 (1)(c) in lieu of

the stipulated penalty required by this Section but is not required to accept such in lieu of stipulated penalty payment. The Department reserves the right to accept in whole or part or reject in whole or part any portion of the SEP Proposal and to otherwise determine the value of the SEP Proposal as partial or complete satisfaction of the stipulated penalty set forth in this Section.

- J. The payment of stipulated penalties shall not alter in any way DOE's obligation to complete the performance of the Consent Order and effective Modifications. DOE recognizes that failure to comply with the terms of this Fifth Modification, or any of the statutes and regulations, upon which it is based, may result in an action for any relief available to the Department.
- VIII. Termination of the IWTU. In the event DOE determines that operation of the IWTU is not feasible or protective of human health and the environment, then the DOE shall cease operation of the IWTU, terminate the IWTU project and comply with the conditions set forth below:
- A. DOE shall be subject to a stipulated penalty of Two Million dollars (\$2,000,000.00) in addition to any accrued stipulated penalties required by Section VII of this Fifth Modification. Upon termination of the IWTU project, accrual of stipulated penalties under Section VII above shall cease. The Department may, in its discretion, reduce the stipulated penalty provided in this section based upon the factors set forth in Idaho Code 39-4414 and the HWMA Civil Enforcement Penalty Policy.
  - B. The Department will consider a proposal for one or more SEPs pursuant to Idaho Code § 39-4414 (1)(c) in lieu of the stipulated penalty required by this Section but is not required to accept such in lieu of penalty payment. The Department reserves the right to accept in whole or part or reject in whole or part any portion of the SEP Proposal and to otherwise determine the value of the SEP Proposal as partial or complete satisfaction of the stipulated penalty set forth in this Section. DOE shall pay this stipulated penalty, or submit a SEP Proposal for review and approval in accordance with Section IX of this Consent Order to the Department within sixty (60) days of DOE's receipt of the Department's written demand for payment.
  - C. Within ninety (90) days of termination of the IWTU project, submit for the Department's review and approval, a proposed schedule for submission of a permit application for the alternative path forward for permanent cessation of tank use for tank numbers WM-187, WM-188, WM-189, and WM-190. Within thirty (30) days of receipt of DOE's submittal, the Department shall: 1) notify DOE in writing the schedule is approved; or 2) notify DOE in writing of any deficiencies in the schedule. If the Department notifies DOE of deficiencies in the schedule, DOE shall submit a revised schedule within thirty (30) days of receipt of the Department's notice. Approval of the schedule shall be subject to the reasonable discretion of the Department. Failure by DOE to develop a Department-approved schedule for submission of a permit application for the alternative path forward within one hundred eighty (180) days of termination of the IWTU project may be considered a breach of the Consent Order. Upon approval by the Department, the alternative schedule shall be incorporated herein and enforceable as a part of the April 3, 1992 Consent Order and this Fifth Modification.
- IX. Department Review and Approval Process for SEP Proposals. Unless otherwise set

forth specifically herein, the following document submittal and review process (Submittal Review Process) shall be followed regarding SEP submittals required by this Fifth Modification for which Department approval is required. This process shall be followed until the Department approves the document or the document review time frame has expired. Upon approval by the Department, documents shall be incorporated herein and enforceable as a part of the April 3, 1992 Consent Order and this Fifth Modification.

- A. The SEP Proposal shall contain a detailed description of the proposed actions, a schedule by which the actions are to be completed, and an estimate of the costs associated with each action so proposed.
- B. Within thirty (30) days of receipt of DOE's submittal, the Department shall: 1) notify DOE in writing the document is approved; 2) notify DOE in writing of any deficiencies in the document or any proposed modifications to the proposals; or 3) notify DOE in writing of the Department's extension of the Department's review and comment period for an additional thirty (30) days. If the Department notifies DOE of deficiencies in the document, DOE shall submit a revised document within thirty (30) days of receipt of the Department's notice.
- C. The Submittal Review Process shall be repeated until the Department notifies DOE the document is approved. However, DOE documents must meet the requirements of this Fifth Modification, as determined by the Department, within one hundred eighty (180) calendar days from the due date for the first submittal of the document. DOE's failure to develop a Department approved document within such time frames may be considered a breach of this Fifth Modification.
- D. If the Department extends its review and comment period beyond the initial thirty (30) day period described above, the time frames within which DOE documents shall meet the requirements of this Fifth Modification shall be extended an equivalent number of days.
- E. If the date on which a submittal or other communication is due falls on a Saturday, Sunday or federal holiday, the deadline for such submission shall be the next business day.
- F. In the event the Department accepts the SEP Proposal, said proposal shall be incorporated into the April 3, 1992 Consent Order and this Fifth Modification and shall be fully enforceable as a binding agreement between the Parties hereto as though originally set forth herein.
- G. In the event the Department rejects the SEP Proposal, DOE shall become immediately obligated for payment of any applicable, not previously satisfied, penalty set forth in Sections VI, VII, and/or VIII hereof.
- H. As part of the SEP Proposal, DOE shall certify that it is not otherwise required, by virtue of any local, state, or federal regulation, order, decree, permit, or other law or agreement, to develop or implement the SEP Proposal or any portion thereof. DOE shall further certify that it has not received, and is not presently negotiating to receive, a credit for the SEP(s) as part of any other enforcement action or any grant from any state, federal, or local entity.

- I. DOE agrees that any public statement, oral or written, making reference to the SEP Proposals shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Idaho Department of Environmental Quality for alleged violations of the requirements of the Hazardous Waste Management Act."
- J. Until completion of the SEP(s), DOE shall provide the Department with a SEP Progress Report every three (3) months after receipt of the Department's approval of the SEP(s). The SEP Progress Report shall provide a description of the SEP activities DOE performed in the prior three (3) months and a description of the SEP activities DOE expects to perform in the next three (3) months.
- K. Not later than thirty (30) days after completion of the implementation of the SEP(s), DOE shall provide the Department with a written statement documenting the SEPs have been implemented and completed in accordance with the terms and conditions of this Fifth Modification. The statement shall be accompanied by appropriate documentation (such as invoices, receipts, or tax statements) to verify the amount of the expenditures made and any documentation which can be used by the Department to verify the acceptable implementation and completions of the SEP(s).
- X. Penalty payments made pursuant to this Fifth Modification shall be made by electronic transfer of funds or by check payable to the Idaho Department of Environmental Quality. This payment shall be deposited by the Department or its representative into the Hazardous Waste Emergency Account created by Idaho Code § 39-4417. Please send the penalty payment to the following address:

Accounts Receivable  
Fiscal Office  
Idaho Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255

- XI. All communication required to be sent to the Department shall be addressed to :

Brian R. Monson  
Hazardous Waste Program Manager  
Waste Management and Remediation Division  
Idaho Department of Environmental Quality  
1410 N. Hilton  
Boise, ID 83706-1255  
(208) 373-0490

- XII. All communication required to be sent to DOE shall be addressed to :

Nicole Hernandez  
U.S. Department of Energy  
Idaho Operations Office (NE-ID)  
1955 Fremont Ave., MS. 1222

Idaho Falls, ID 83401-1216  
(208) 526-8949

- XIII. Except as specifically set forth herein, nothing in this Fifth Modification shall be deemed to affect any other agreement establishing deadlines for the treatment of waste located at the INL.
- XIV. 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 to this agreement.
- XV. The effective date of this Fifth Modification to Consent Order shall be the date of the signature by the Director of the Idaho Department of Environmental Quality.

SO AGREED:

DATE 3/2/2015 SIGNED:   
RICHARD B. PROVENCHER  
MANAGER  
U.S. DEPARTMENT OF ENERGY  
IDAHO OPERATIONS OFFICE (NE-ID)

DATE 3/3/15 SIGNED:   
CURT A. FRANSEN  
DIRECTOR  
IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY