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Also posted on www.regulations.gov

**RE: Comments for the record in Docket ID No. EPA–R10–RCRA–2018–0298**

Dear Ms. McCullough,

The Environmental Defense Institute (EDI) appreciates this opportunity to comment on Idaho's application to the EPA for authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The EPA has inadequately reviewed Idaho's application and yet has determined that these changes satisfy all requirements needed to qualify for final authorization and is proposing to authorize the State's changes.

EDI finds that the EPA's determination that Idaho's application to revise its authorized program meets the statutory and regulatory requirements established by RCRA is again misguided. EDI has previously submitted numerous objections to Department of Energy's (DOE) Idaho National Laboratory (INL) violations of RCRA, HSWA and other environmental statutes; and the Idaho Department of Environmental Quality (IDEQ) failure to take enforcement action on DOE's INL Radioactive Waste Management Complex/Subsurface Disposal Area disposal permits and numerous other oversight failures over decades. See End Notes [1] [2] [3] [4] [5]

EPA proposes that it "retains authority under RCRA sections 3007, 3008, 3013, and 7003, which includes, among others, the authority to:

- "Conduct inspections, which may include but is not limited to requiring monitoring, tests, analyses, and/or reports;
- "Enforce RCRA requirements, which may include but is not limited to suspending, terminating, modifying, and/or revoking permits; and
- "Take enforcement actions regardless of whether Idaho has taken its own actions. The action to approve these revisions will not impose additional requirements on the regulated community because the regulations for which Idaho is requesting authorization are already effective under State law and are not changed by the act of authorization." [1]

[1] Federal Register / Vol. 83, No. 172 / Wednesday, September 5, 2018 / Proposed Rules

The above EPA statement sounds impressive, however for decades the agency has completely failed to implement these policies in Idaho at INL. Until such time EPA actualizes these policies Idaho will continue to allow DOE to contaminate and pollute our environment in violation of RCRA/HSWA and other environmental laws. Clearly, EPA takes a different regulatory enforcement stance with respect with a sister federal agency, i.e., (DOE).

It's important to note (as an example) that DOE/INL requested from EPA concurrence to reduce aquifer monitoring frequency at the INL Radioactive Waste Management Complex (RWMC) beginning in Fiscal Year 2013. EPA responded by stating: that they "reviewed the request to reduce aquifer monitoring at the RWMC from semi-annual to yearly sampling. EPA approves of DOE's request." Daryl Koch IDEQ/FFA/CO Manager Waste Management & Remediation Division also concurred with limiting groundwater monitoring. DOE relies on hazardous/ radioactive contaminate "dispersion mixes with groundwater" that result in lower water testing to give a false impression of the contaminate problem. For DOE, "Dilution is the solution to pollution," that EPA (as demonstrated above) supports.

Groundwater monitoring is the only way groundwater contaminate migration can be tracked. It's unconscionable that these regulatory agencies – likely fearing public knowledge of the extent of this hazard – via Freedom of Information Act/Public Records Requests – would find out. "Don't monitor what your trying to hide" from the public that relies on this sole source aquifer under INL. Earlier DOE reports show both listed mixed hazardous/radioactive water and air contaminate migration. Despite this dump being an active CERCLA cleanup/remediation site EPA/IDEQ allows DOE to continue dumping more radioactive waste in it in violation of Land Disposal Regulations.

EDI's August 2018 "Review of the Mixed Hazardous Radioactive CERCLA Waste Cleanup Policy at the Radioactive Waste Management Complex Subsurface Disposal Area (RWMC/ SDA) Department of Energy's (DOE) Idaho National Laboratory (INL)" is exemplar of EPA/IDEQ's unwillingness to cite DOE's violation of basic RCRA and HSWA statutes. This report [2] lays out how the CERCLA cleanup process and the policy decisions that went into how DOE is compromising Idaho's water future. How did we get to where we are today and why DOE is leaving hazardous nuclear waste buried at the INL and calling it "clean enough"? DOE's decision – approved by EPA - to leave 90% of the buried waste in the dump and violate the 1995 Settlement Agreement and Federal Court Consent Order with the State of Idaho is a crucial threat to our states' safe water future by failing its commitment to cleanup its nearly 70 year nuclear legacy waste. DOE's priority to spent >$1 trillion on building new nuclear weapons rather than spent only $ ~600 million to cleanup the huge environmental disaster from the last nuclear production legacy. This represents the warped priority and values the federal government – including EPA - places on Idaho's water future that is unconscionable by any health and human rights standards.

This report also reviews both the EPA/IDEQ policy setting Environmental Supplement Analysis for the Treatment of Transuranic Waste and the Record of Decision for the RWMC because they both cover the same policy area and contain the same fundamental flaws related to the DOE's mismanagement of the RWMC. EDI's primary focus is on the existing legacy waste, the

[2] http://www.environmental-defense-institute.org/publications/RWMCCERCLA4.pdf

problems with the "Accelerated Retrieval Program" intended to remediate the dump (illegally leaving mixed hazardous/radioactive waste in-place) and the importation of additional TRU waste to INL from other DOE nuclear sites.

At risk is the underlying Snake River sole source aquifer that most of Idahoans are and will be dependent on for millennia. Radioactive and hazardous waste continues to migrate from this buried waste contaminating the aquifer; so without a comprehensive cleanup required by law DOE is compromising Idaho's future in order to save money for more nuclear weapons. Mixed radioactive waste is the most hazardous and biologically dangerous material in the world. When DOE wants to treat it with less environmental protection (when miniscule particles can cause death) than garbage, the public must take action to ensure an appropriately adequate cleanup even when current state leadership no longer will confront DOE like former Governors' Andrus and Batt.

DOE continues to demonstrate a consistent pattern of violations of environmental laws, hazardous waste regulations and the 1995 Settlement Agreement Federal Court Consent Order. The following are examples:

1. Changed the definition of what waste is to be removed from the RWMC/SDA from "all TRU and Low-level Alpha" (*a*LLW) [3] to only "stored TRU" and continuing to allow *a*LLW (formerly TRU) to remain buried at the SDA stipulated in the 1995 Settlement Agreement and Consent Order for removal;
2. Even the *a*LLW "stored" on Pad A originally classified as TRU (>10 nCi/g) * is left in place;
3. Offers no independent data confirming what waste left in the SDA is not TRU and that the alpha detection methods used in ARPS can accurately detect TRU;
4. Violates Land Disposal Regulations (LDR) in: IDAPA 58.01.05.009 and 58.01.05.011; 40 CFR 265.13 and 268.7; and NRC under 10 CFR part 61 to include:
    a. Leaving SDA surface waste pile on Pad a waste in place;
    b. Leaving 90% of SDA buried mixed hazardous/radioactive waste in place;
    c. Once a waste dump is remediated, all the contaminated material –including soil – is considered a new waste and thus must be managed according to RCRA/NRC Land Disposal Regulations;
5. Continues SDA burial in the "Active LLW" in a flood zone in violation of Land Disposal Regulations;
6. Use economic leverage as largest employer to capture State leadership, EPA and IDEQ to compromise policy and commitments to former Governors' Andrus, Batt 1995 Settlement Agreement and the public to cleanup buried nuclear waste that continues to contaminate the underling Snake River Aquifer.

[3] Alpha Low-Level Waste (αLLW): Waste that was previously classified as transuranic (TRU) waste but has a transuranic concentration lower (>10 nCi/g) than the currently established limit for transuranic waste (>100 nCi/g). Alpha low-level waste requires additional controls and special handling (relative to low-level waste). This waste stream cannot be accepted for onsite disposal under the current waste acceptance criteria; therefore, it is special-case waste. Plutonium-238, 239, 240, 241, Amercium-241and 243 and Neptunium are examples of transuranic elements that can be present in alpha Low-Level waste. Radiation exposures caused by inhalation of plutonium are 6.7 million times greater than equivalent exposures of depleted uranium—internal exposure of only 1 microgram of plutonium exceeds the allowable exposure limits established by DOE.

## I - A. Historical Climate of Non-Enforcement Breeds Violations [4]

This section focuses on the long-term "hands-off" EPA/IDEQ regulatory climate at the Department of Energy (DOE) Idaho National Laboratory (INL) waste treatment operations. The consequence of this regulatory vacuum is that there is nearly non-existent enforcement of environmental laws on the most dangerous and hazardous operations in the world treating high-level radioactive waste. Non-enforcement of environmental laws in this context means no federally mandated hazardous waste permits that otherwise would impose operating, pollution, and reporting criteria are being imposed to ensure ongoing compliance with all applicable laws. Out of sheer desperation the Environmental Defense Institute as public interest organization, is forced to take these egregious violations to court in order to force the federal government to comply with its own environmental laws. The scope of this report is limited to the last decade of mixed hazardous and radioactive waste treatment operations at the INL.

The largest contributors to air pollution from mixed hazardous chemical and high-level radioactive waste treatment operations at the Idaho Chemical Processing Plant (ICPP) now called INTEC include (but are not limited to) the New Waste Calciner Facility (Calciner), the High-level Liquid Waste Evaporator, the Process Equipment Waste Evaporator, and the Liquid Effluent Treatment and Disposal Evaporator. The Waste Experimental Reduction Facility (WERF) and the Specific Manufacturing Capacity (SMC) hazardous chemical and radioactive incinerators also generate considerable emissions. This report focuses primarily on these operations because they generate the vast majority of pollution emissions to the atmosphere.

The Environmental Defense Institute, Keep Yellowstone Nuclear Free, and Attorney David McCoy (Plaintiffs) filed a Notice of Intent to Sue DOE, Environmental Protection Agency (EPA), and the State of Idaho over the Calciner operation that resulted in a temporary stand down of the incinerator pending an INL High-level Waste Environmental Impact Statement (EIS) finding. One of the EIS preferred alternatives is to restart the Calciner and continue to convert the Tank Farm high-level waste into a solid. Given this likelihood of the Calciner restart, this report discusses the regulatory problems with the Calciner. A separate pending EIS may also find INL the best site to resume reactor spent nuclear fuel reprocessing for plutonium production that DOE claims is needed for the space program. This means existing non-compliant waste treatment operations will continue to be utilized if this plutonium production mission lands at INL.

None of these above mentioned WERF, SMC, or ICPP operations has ever been permitted under federal hazardous waste treatment statutes primarily because none can comply with the Resource Conservation Recovery Act (RCRA), Clean Air Act (CAA), Toxic Substances Control Act (TSCA), or the Maximum Achievable Control Technology (MACT) standards for federal hazardous waste treatment, and yet the State of Idaho, and the Environmental Protection Agency (EPA) failed to force compliance or closure of these extremely dangerous operations. The

[4] David McCoy, JD. and Chuck Broscious February 5, 2001, Petition "Issues Presented to United States Environmental Protection Agency, Inspector General on Idaho National Engineering and Environmental Laboratory now called INL Violations of Environmental laws.

regulators allowed "DOE to continue operations under Interim Status" that this report will show expired a decade ago. Given this laisse-faire attitude by the regulators, DOE has no incentive to comply with the law. To put this into perspective, common municipal garbage incinerators receive extensive regulatory oversight to insure prescribed operational compliance, yet INL waste treatment operations of the most hazardous materials known to human kind (in the same category as nerve gas used in chemical warfare) receive next to no enforcement of environmental law. It is like the cop giving INL Manager a parking ticket, while knowingly allowing her to drive away in a stolen vehicle.

In another Notice of Intent to Sue by the same Plaintiffs (EDI, KYNF, and McCoy) forced DOE to permanently shutdown the Waste Experimental Reduction Facility (WERF) mixed hazardous and radioactive waste incinerator because of non-compliance with environmental laws. Within a month or filing the Notice of Intent to Sue, DOE announced the permanent closure of the WERF incinerator. The Plaintiffs also filed a formal legal request to EPA and DOE's Inspector Generals on August 8, 2000 requesting an investigation of the State of Idaho Department of Environmental Quality and EPA Region X and the Department of Energy Idaho Operations Office concerning violations of RCRA, TSCA and CAA permitting procedures at INL. As of this writing neither agency has responded to this request.

This report offers a limited discussion on the issue of non-enforcement and non-compliance of the Clean Air Act (42 U.S.C. ss 7604), and the Toxic Substances Control Act (15 U.S.C. ss 2605). Discussions on the New Waste Calciner Facility (Calciner) and other mixed hazardous high-level radioactive waste treatment plants are offered here as examples of broader previous fundamental non-compliance problems at INL. The limited scope of this report precludes a comprehensive analysis of all environmental violations currently occurring at INL. DOEs ability, as a federal agency, to violate these environmental laws with impunity, literally removes the general public's only protection against non-consensual harm short of litigation, which only occurs after the harm has already been inflicted. DOEs egregious release of hazardous chemicals and radioactivity jeopardizes the health and safety of workers and communities living downwind of the INL. Additionally, DOE and the regulatory agencies conspired to conceal information from the public that would expose the truth about these illegal operations. Considerable effort was required by the Environmental Defense Institute and Attorney David McCoy through Freedom of Information Act and State of Idaho Public Information Requests to compile the documentation for this report. DOE and its contractor representatives meet every quarter with State officials to discuss RCRA compliance issues. The public has been blocked from these meetings in violation of the State's Open Meeting Law (I.C. ss 67-2342), Federal Open Meetings statute (5 U.S.C. ss 552(b)), and Federal Advisory Committee Act statutes (5 U.S.C. Appendix II, A7 3(2)).

Clearly, INL is not unique, because at every DOE facility throughout this country a similar scenario exists. For example, a citizen suit against DOE's Los Alamos National Laboratory convinced the Federal District Court for New Mexico that DOE was falsifying radiation release reports required under the Clean Air Act. Subsequently, the Court issued a Consent Decree that imposed a court supervised independent monitoring program to ensure compliance with the law. [See Concerned Citizens for Nuclear Safety v. DOE, Consent Decree, Civ. No. 94-1039 M, filed March 25, 1997]

The disclosures in this report must also be heeded by the Centers for Disease Control (CDC), which conducted an INL Dose Reconstruction Health Study to determine the radiation dose to affected populations around the INL site. Currently, CDC used DOE's stack emission reports without questioning the reliability of the data, despite the preponderance of evidence documenting the fact that the INL stack emission reports are fictional creations similar to those found at Los Alamos prior to the civil suit.

The Calciner and other high-level waste treatment operations have no RCRA permit, are in violation of the Clean Air Act, NEPA, and the APA and have experienced numerous accidents affecting human health and the environment. EPA, the State Department of Environmental Quality (Department) and DOE have failed to exert proper administrative controls over the Calciner and evaporator facilities, including, but not limited to: failure to establish operating parameters; failure to comply with permit requirements; operating an unpermitted hazardous waste facility; failing to adequately monitor; failing to report violations; allowing an unpermitted facility to discharge radioactive and hazardous waste pollutants into the atmosphere and environment; operation of the Calciner and evaporators beyond design criteria; and conversion of the Calciner to a plutonium incinerator without adherence to NEPA. For these reasons the operation of the Calciner and high-level mixed waste evaporators are an imminent and substantial endangerment to human health and must be immediately terminated.

This report is a compilation of analysis generated jointly and separately by Attorney, David McCoy (California Bar Number 170737) and Chuck Broscious for the Environmental Defense Institute. For more information on this subject, including a more detailed analysis of ICPP high-level radioactive waste permit violations, request a copy of ICPP Emissions Report or see EDI's website at; http://environmental-defense-institute.org

**B. Violations of the Clean Air Act**

The operation of the New Waste Calcine Facility (Calciner) without a RCRA permit is a failure of the EPA, Department of Environmental Quality (Department) and DOE to exert administrative controls over the Calciner and to comply with all Federal and State requirements for a hazardous waste facility, which engages in activities, which has resulted in or may result in the discharge of radioactive and other hazardous air pollutants. 42 U.S.C. 7418 (Control of Pollution from Federal Facilities) provides in pertinent part as follows:

"a) General compliance. Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, and each officer, agent, or employee thereof, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity." The preceding sentence shall apply "(a) to any requirement whether substantive or procedural (including any record keeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever)..."

**The Calciner failed to comply with National Emission Standards for Hazardous Air Pollutants - Radionuclides (NESHAP) from DOE facilities set forth at 40 C.F.R. ' 61.90-61.97.** The Calciner used two stacks to vent emissions. One stack is the (CPP-659-33 HVAC) stack and the other is the common INTEC Main Stack (CPP-708). The 1998 INL NESHAP Annual Report required by 40 CFR 61.94(b) states: Particulate emissions from the calcining off-gas are continuously monitored through the main stack. Emissions from the New Waste Calcining Facility processing cells are continuously compliance monitored on the (CPP-659-33) HVAC stack." (p. 7-8). If particulate emissions go out the HVAC stack then those emissions would not be detected. There is no data provided that support particulate emission data being continuously monitored at both stacks. Prior to 1997, the HVAC stack was not continuously monitored despite legal requirements. [98NESHAP@12].

The Calciner HVAC stack is only continuously monitored for Americium-241, Cesium-137, and Plutonium- 239. The Main Stack is continuously monitored for eleven nuclides; however neither stack is monitored for gross alpha or gross beta/gamma. **Iodine-129 and tritium in the Main Stack are only "estimated based on process knowledge and engineering calculations."** [98 NESHAP; DOE/ID-10342(98) @25] There is an apparent violation of reporting requirements submitted for the Main Stack that are not provided for the HVAC Stack which exhausts HEPA Filter Waste Treatment and Debris Treatment operations located in NWCF (CPP-659).

There are no descriptions in the INL NESHAP Report of the actual monitoring instruments and how they operate, calibrating frequency, or any methodology on emission data collection or quality assurance process. There is no definition of what "continuous monitoring" means. Does it mean real time or does it mean periodic grab samples. If periodic grab sampling is used, is it once a hour/day/month or year? There is no discussion of the DOE admission in the High-level Waste EIS (p. 2-2) with respect to Technical constraints, which have hindered DOE's efforts to sample off-gas emissions from the New Waste Calcine Facility.

During a phone conversation on 8/30/99 between Chuck Broscious of EDI and Idaho Department of Environmental Quality (IDEQ), officials informed Broscious that DOE is not performing continuous real time monitoring at the Calciner, but only taking periodic grab samples in the 10 parts per million (ppm) range. DOE analysis needs to be in the 10 parts per billion (ppb) range. IDEQ further alleged that DOE is also not monitoring for particulate emissions, which means that alpha emitters like plutonium, are not monitored. IDEQ informed Broscious that the stack environment of the Calciner is so toxic that instruments are destroyed by corrosion very rapidly.

During a March 15, 2000 conference call between Gerry Spence et al. and EPA Deputy Administrator Chuck Finley et al., the question of the April 2, 1992 cesium-137, antimony-125, and ruthenium-106 release, EPAs Jerry Leitch stated that the incident "was not considered a monitored violation of the NESHAPs." As previously noted [see Judge Ryan's Opinion, supra in Andrus v. DOE] this incident contaminated 40 acres of land on and off the Calciner site, and could not credibly be considered a non-violation. This points to systematic monitoring inadequacies that the Department and EPA have yet to require DOE to correct.

The INL 1998 NESHAP Report notes: "New Waste Calciner Facility HVAC Stack (CPP-659-003).... was redesignated as requiring continuous monitoring under 40 CFR 61.93(b) in 1997." This constitutes a violation of pre-1997 emission reporting requirements. Given the extreme hazards, which threaten public safety and the environment from operation of the radioactive waste treatment, this is a significant reporting violation.

The 1998 Report does not mention the numerous INL and Calciner incidents in 1998, including the December 22, 1998 incident where six workers were contaminated and then spread the contamination outside of the Calciner facility to other buildings within the INTEC 200 acre compound.

The 1999 INL NESHAP Report reviewed by Keep Yellowstone Nuclear Free found gross errors in the calculations for Iodine-129 and tritium (radioactive water). Not only are the monitors turned off (as documented below), but also the DOE air contamination numbers that they do report are not accurate. The basic calculations for those radioactive chemicals were wrong and the estimated doses to the public are also wrong as a result.

Idaho Department of Environmental Quality (IDEQ), as the agency to apply and enforce the proper operating standards to the Calciner, left it up to the DOE to determine what the appropriate standard for issuing a permit would be. A 10/20/97 IDEQ letter stated, "...the DOE must clearly identify whether a permit for the NWCF will be sought under the provisions of 40 CFR Part 264, Subpart X or Subpart O." It was clear from this statement, however that IDEQ knew that 40 CFR 264 and not 40 CFR 265 Subpart P was the applicable standard, although IDEQ chose not to enforce that standard. IDEQ did not revisit the issue of the Calciner illegally burning inorganic wastes.

On March 23, 2000, more than eight years after the 1991 submission of the Part B application for the Calciner (NWCF), the EPA sent a letter to the IDEQ indicating that the NWCF was subject to the Clean Air Act NESHAP standards for Hazardous Waste Combustors, contrary to DOE's belief. The EPA stated that the NWCF met the definition of an incinerator in 40 CFR 260.10. Thus, IDEQ had allowed the NWCF to operate under the wrong standards. It took EPA over eight years to inform the IDEQ of this. During this period the Calciner emitted tons of hazardous and toxic wastes including heavy metals, radionuclides and greenhouse gasses to the atmosphere in violation of RCRA and the Clean Air Act.

The March 23, 2000 EPA letter rejects DOE's attempt to exclude the Calciner from regulations "as an affected source subject to NESHAPs standards for Hazardous Waste Combustors." "With regard to NWCF [Calciner], EPA has determined that this unit is an affected source subject to 40 CFR ss 63.9. Subpart EEE, NESHAPs, Standards for a Hazardous Air Pollutants for Hazardous Waste Combustors Standards, apply to hazardous waste burning incinerators." The NWCF meets the definition of incinerator in 40 CFR Part 260 Y." [Hardesty, D.E., EPA Manager Federal and Delegated Air Programs Unit letter to Ralph Russell, DOE/Idaho, March 23, 2000] The NWCF went into operation in 1982 and eighteen years later DOE still avoided legal requirements by not classifying the Calciner as an incinerator subject to stringent regulatory operating emission standards, and EPA is taking no substantive enforcement action.

Again, it took EPA eighteen years to issue a Complaint against DOE contractor Lockheed Martin WERF incinerator for A violations of Section 15 of the Toxic Substances Control Act, 15 U.S.C. ss 2614, by failing to comply with the regulations at 40 CFR Part 761, which were promulgated pursuant to Section 6 of TSCA, 15 U.S.C. ss 2605, and pertain to the use and disposal of polychlorinated biphenyls (PCBs). [EPA Complaint, Docket No. TSCA-10-2000-0025, January 25, 2000] EPA acknowledges in the Complaint that violations go back to at least 1994, yet no action was taken until six years later, and even then it was just a "slap on the wrist" fine. The WERF failed two "trial burns" required for a RCRA Hazardous Waste Permit performance standards test, yet no action was taken to shut down the incinerator since it started operations in 1982.

**C. DOE Internal Documents Confirm Non-compliance with Clean Air Act**

DOE internal documents gained through Freedom of Information Act requests acknowledge that ICPP radioactive Iodine stack monitors were shut off since 1993 in violation of federal Clean Air Act regulations. (40 CFR 61 Subpart H Section 61.94(b) (9))

Iodine-129 is a well-known carcinogen that has a toxic half-life of 16 million years and therefore is a heavily regulated pollutant. State and federal regulators with a legal mandate to oversee Clean Air Act compliance have again demonstrated incompetence, or complicity since it is believed EPA, and Idaho Department of Environmental Quality (IDEQ) have a copy of these reports. IDEQ is the state agency, and EPA is the federal agency authorized to enforce environmental laws.

The DOE reports show that Iodine-129 from the Idaho Chemical Processing Plant (now called INTEC) main stack constitutes up to 50% of the radiation dose to the public from the entire INL site. The Clean Air Act requires that any single contaminant with even the potential of 10% of the dose to the public must be continuously monitored and reported. These annual National Emissions Standard for Hazardous Air Pollutants (NESHAP) reports require DOE officials and their contractors to sign a "Certification Statement" which states in part: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete." The following 1996 internal INL "Air Legacy Issues" report acknowledges turning off air monitors for I-129, since 1993 as well as other permitting and reporting violations.

IMPLEMENTATION OF REQUIREMENTS: For much of the last 3 years, INL has chosen to not operate the ICPP Main Stack Iodine-129 monitor based on a "literal" reading of the NESHAPs regulations. (NESHAPs require continuous monitoring of those constituents which represent 10% or more of the **potential** INL dose.) I-129 from the ICPP Main Stack represents the single largest **actual** dose contributor at the INL (at times, 50% of the site dose). It is our belief (and that of ORNL personnel) that the current monitoring policy for I-129 on the CPP Main Stack is not consistent with the **intent** of the regulations and represents a significant liability. (Even if defendable in court, it is difficult to explain to the public why it is a good idea to "not operate an already installed monitor" for the largest dose contributor on the INL.) (Note that the "I-129 monitor is now on-line for the startup of the High Level Waste Evaporator, but future intent is to take it off-line again.)" [emphasis in original]

TEST AREA NORTH (TAN)-SPECIFIC MANUFACTURING CAPABILITY (SMC) [Air] PERMIT TO CONSTRUCT (PTC): The TAN-SMC area has two PTC and the TAN-603 Boilers PTC which contain errors and problem areas. Cognizant of these errors, the INL committed (in the Operating Permit Application) to modify these two PTCs to correct the deficiencies, operational restrictions. Because of plans to make these PTC Modifications (making many of the current applicable requirements obsolete) little additional effort has been made to confirm implementation of all the requirements. The Applications to modify these PTCs have not yet been completed or submitted to the IDEQ. Until these two PTCs are amended by IDEQ, INL liabilities likely continue to exist. [DOE would not allow the IDEQ to go on site in 1999 to inspect equipment in use at TAN-629. Exhaust stacks were also not adequately monitored.

OPERATING PERMIT APPLICATION: As part of the INL Air Operating Permit Application, a certification statement was attached attesting to the truth and accuracy of the content. Because of the complexity and magnitude of the document, errors can be found in description and implementation documentation. Because of the subjective nature of the compliance, these errors could be construed as attempts to misrepresent the regulator. "Potential exists that not all Release Points are identified or accounted for in the Application Implications on future operations of these sources (if unaccounted for) is unknown."

PERMITTING: It is not uncommon to learn (after the fact) of project scope changes of magnitudes such that submittal information (upon which the final determination is/was made) is no longer true or enveloping. This has occurred on the ICPP Pilot Plants PTC, the FSA Rack Reconfiguration PTC, the CPP-630 bulb crusher Categorical Exclusion, and possibly the internal determination for the Fuel Canning Facility at CPP-603. This could be construed as attempts to mislead the regulator, nullifying the subject PTCs and/or subjecting the facility to fines. The INL does not appear to have a good mechanism to assure completeness/accuracy in its applications or hold a project to its stated scope.

NESHAPs RADIOLOGICAL PROGRAM: 40 CFR 61 Subpart H requires the INL to limit the Annual Effective Dose Equivalent to 10 mrem or less. To do this, **each** of LMITCO's 100+ radiological sources must (1) determine actual annual radionuclide emissions per 61.93(a), and (2) satisfy continuous compliance monitoring or periodic confirmatory measurements (PCM) per 61.93(b). **"The consistency with which this occurs for each of the affected sources at the INL is poor. As noted by ORNL personnel, the INL has no way of ensuring a consistent or compliant NESHAPs program with the responsibilities to determine releases and perform PCM spread out among all facilities owners.** ORNL recommends consolidation of these responsibilities and activities similar to the manner in which the Environmental Monitoring group functions**. Potential exists that not all Radiological Air Release Points' are identified or accounted for in the Program or the annual Report.** [Quality Assurance] QA for the WERF Category I sources has documentation inadequacies. Disagreement with QA personnel has slowed resolution, but path forward is now well defined." [emphasis added]

COMPLIANCE RECORDS: "It is highly unlikely that all Air compliance records are consistently maintained in a controlled, retrievable fashion that would meet INL Quality Standards." [INEL Notegram,"Air Legacy Issues" Report, July 25, 1996 to C.L. Tellez, MS 3428 from M.E. Feldman, MS 3427 and T.A Solle, MS 3428]

An internal report generated in 1996 titled *INEEL Environmental Compliance Inventory* compiled by DOE's lead Management and Operations (M&O) then contractor, Lockheed Martin states the following:

"The CPP Main Stack is one of 5 sources at the INL which have unabated potential doses in excess of 0.1 mrem/yr., thereby requiring continuous monitoring of rad releases per NESHAPs. Since I-129 has been the single largest actual dose contributor for the INL over the past several years it should be monitored to ensure compliance. **Operation of the I-129 monitor has been unfunded and has not operated for most of the last 3 years due to the fact that CPP Main Stack I-129 releases do not exceed the regulatory threshold of 10% of the unabated potential dose. An INL policy is needed which will assure this monitor remains funded and operational so that the I-129 contribution to INL site dose can be adequately determined and reported."** [page 2.1.6] For the ICPP High-level Liquid Waste Evaporator the report states: "it was confirmed that H-3 [radioactive tritium] concentrations had exceeded the limits specified by IDEQ [Department of Environmental Quality]." [Page 2.1-5] "The NWCF [Calciner] does not have mechanisms in place to fully satisfy the requirements (minimum data availability, CEMS "Out-of-Control" corrective actions, back-up means for determining NOx [nitrogen oxide] releases record keeping, reporting, etc.) of 40 CFR 60 Appendix F nor all aspects of QAPjP-043 implemented." [Page 2.1-8] "The INL has not defined the requirements and responsibilities for determining and reporting actual annual radiological releases. Environmental Affairs personnel primarily perform this activity at year-end. "Few INL facility personnel take an active role in evaluating actual releases, and a number of facilities take no actions during the course of the year to ensure adequate data is available." [page 2.1-8] CPP-659 (Calciner) monitoring system "will not meet the criteria specified in the current ANSI standard (nor is approved alternative required by NESHAPs. Estimates indicate this stack now exceeds the trigger level for which continuous monitoring is required." [Page 2.1-9] "The INL has not defined the requirements and responsibilities for performing Periodic Confirmatory Measurement (PCM) of the unabated potential radiological releases for affected facilities to ensure that appropriate monitoring is in place for significant sources. Required by NESHAPs, this activity is currently conducted largely as a paper exercise by Environmental Affairs personnel at year-end. Few INL facilities are aware of the requirement to perform PCM, and fewer take measures during the course of the year to accurately determine their unabated potential releases. This may result in prolonged use and operation of a radiological release point with inadequate monitoring capabilities. (See 61.93 (b). [Page 2.1-10] [Environmental Compliance Inventory of the Idaho National Engineering Laboratory, Volume 1 ECI Results December 1996, INEL-96/0389, Lockheed Martin] [emphasis added]

In a June 2000 "trial burn" report titled [New Waste Calcine Facility] *NWCF Calciner Emissions Inventory Final Report for Test Series 1, 2, and 3* by DOE then contractor Bechtel BWXT Idaho [INEEL/EXT-2000-00114] states: "In addition to the off-gas measurement characterization of the Calciner influent streams and other effluent streams was also performed. **First of a kind data on RCRA hazardous pollutants in the wastes and streams associated with the NWCF Calciner were obtained.** Characterization data on the tank farm wastes and NWCF Calciner streams are required to support decisions on how the wastes should be handled regardless of whether the Calciner is the process employed for future treatment of INTEC wastes." [Page v, emphasis added] This statement of "first of a kind" is as clear an indictment of

decades of previous ICPP operations that never even tried to collect emissions data to determine RCRA compliance.

The above noted Calciner Trial Burn report acknowledges another DOE contractor (Radian Corp.) 1991 attempt to measure Calciner off-gas found the emissions were so toxic that no reliable data was collected. The Radian reports states:
"Radian concluded from the laboratory study that the higher-than typical levels of NO2 (around 20,000 ppmv) oxidized both the VOC and SVOC analyses and the organic resins sorbents used to collect the samples. Reactions with the analytes resulted in erroneous measurement, while severe oxidation, or even ignition, of the resin sorbents occurred in the same instances. The high levels of NO2 also caused significant corrosion and increased maintenance requirements of the laboratory analysis equipment. Technical problems were even noted when laboratory-blended simulated NWCF Calciner off-gas was diluted with air to levels comparable to the INTEC main stack (400 ppmv)." [page 5]

This Calciner report goes on to acknowledge volatile organic emissions of benzene, acetone, methylene chloride, and semi-volatile heavy metals like mercury that clearly require a Toxic Substances Control Act (TSCA) permit (15 U.S.C. ss 2615(a)(Subsection 16(a)) that DOE continues to obfuscate filing. [page 45] Sampling data show high concentration levels of chromium, cadmium, and mercury in the feed that ends up in the scrub solutions in near equal concentrations that are then sent to unpermitted evaporators like the Process Equipment Waste Evaporator (PEWE) or the Liquid Effluent Treatment and Disposal (LET&D). [page 76] One hundred and twenty-eight individual hazardous waste constituents are listed for the PEW feed/storage and treatment tanks in the Revised #19 RCRA Part A Permit Application, nearly all of which come under TSCA regulations (40 CFR ss 712.30) thus requiring a separate TSCA Permit (15 U.S.C. ss 2615 et seq.) The listed hexavalent chromium in the PEW waste list must be managed under TSCA (40 CFR ss 749.68), which again DOE has ignored.

A 1998 letter from DOE Headquarters Office of Enforcement and Investigation to INL lead Management and Operations (M&O) contractor Lockheed Martin notes numerous Noncompliance Tracking System (NTS) states violations:
"With the requirements of 10 CFR 830.120 Quality Assurance Requirements. The NTS report addresses a repetitive problem of maintaining the operability of radiation monitoring instrumentation and systems referenced in nuclear facilities authorization basis documents. The repetitive problem was identified by LMITCO on February 27, 1998, and reported to DOE on March 31, 1998." "The evaluation identified a potential deficiency of not maintaining the operability of radiation monitoring instrumentation and systems which would be a violation of your Operation Safety Requirement (OSR) and Technical Safety Requirements (TSR)." "We have concluded that they constitute repetitive noncompliance with their requirements of 10 CFR 830.120 (C) (2(I)," "Work Processes. We recognize that this repetitive problem was identified as one outcome of currently ongoing corrective actions." "Based on our evaluation of the six occurrences as a group, it appears that these occurrences describe an attitude indifference toward and a lack of awareness of OSR/TSR requirements, thereof importance, implementation, and associated procedures. This attitude is not only apparent for workers at the operation level but also for facility mangers and other management staff. "Ineffective implementation of the corrective actions or subsequent similar repetitive breakdowns in radiation monitoring

instruments and systems that have the potential to adversely affect nuclear safety, however, will be evaluated for appropriate enforcement action."

"**Non-operability Occurrences of Radiation Monitoring Instruments and Systems**; (1) Idaho Chemical Processing Plant (ICPP), June 19, 1997: Flow instrumentation for online stack monitor was removed from service without verification that other system was on line. (2) Nuclear Material Inspection and Storage Facility, 7/22/97: Operational checks of criticality alarm systems, were performed with inappropriate QA level, procedures. (3) 7/28/97; Alarm set point of Criticality Alarm System (CAS) was set above the set point in the associated Safety Analysis Report. (4) Test Reactor Area, November 1997; One of two required stack monitors was taken out of service without notification of operations management and without verification that alternate monitoring had been established. (5) Specific Materials Capability, Material Development Facility, December 2, 1997; Filter change out for radiation monitoring system was performed monthly instead of weekly as specified in the associated Technical Specification Requirements. (6) Advanced Test Reactor, Digital radiation Monitoring System, December 4, 1997: Nineteen radiation alarm monitors did not actuate the local or remote alarm when tested but were otherwise operable. [K. Keith Christopher, Director, Office of Enforcement and Investigation, August 4, 1998, letter to John Denson, Lockheed Martin Idaho Technologies, Subject Enforcement Letter]

A December 2000 Enforcement letter from DOE Headquarters Office of Price-Anderson Enforcement to INL lead M&O contractor Bechtel, states that the monitoring deficiencies identified earlier in the above citation with previous M&O contractor Lockheed Martin remain uncorrected. This Enforcement letter to Bechtel:
"…refers to a recent investigation by the DOE regarding noncompliances with requirements of 10 CFR 830.120 (Quality Assurance Rule) occurring at the INL. The investigation reviewed five issues reported into the Noncompliance Tracking System (NTS) by Bechtel BWXT Idaho, LLC (BBWI)." "Two of the NTS reports involved specific events that occurred before October 1, 1999, when BBWI began operating the INL but was responsible for implementing corrective actions. The remaining three reports involved programmatic breakdowns that continued to occur after BBWI assumed contractor operator status at INL." "**Our investigation determined a broad range of quality assurance deficiencies continues to exist at the INL."** "… the adequacy of corrective actions could not be determined in some areas because BBWI did not perform a root cause analysis of these issues. The quality deficiencies are significant and would typically warrant an enforcement conference. DOE recognizes that some noncompliances existed prior to October 1999, and were discovered by BBWI after is assumed operation of INL. Nonetheless, some of the programmatic issues continued to occur after October 1999 as evidenced by the quality implementation assessment findings." "For example, BBWI identified problems with the maintenance of quality records at the Idaho Nuclear Technology and Engineering Center (INTEC) in September 1999. BBWI did not recognize the significance of the problems or use the results of its self-assessment for quality improvement purposes until the DOE Idaho Operations Office completed its assessment in February 2000, which documented deficiencies with quality records. Then, BBWI delayed until May 2000 to report the problem into the NTS. [Christopher, R. Keith, Director, Office of Price-Anderson Enforcement, December 7, 2000 letter to Bernard L. Meyers, President Bechtel BWXT Idaho.]

The two above cited "Enforcement Letters" indicate that the emissions monitoring deficiencies apparently have yet to be corrected. Calciner campaigns since 1990 included: #3 (12/90 to

11/93); #4 (5/97 to 5/99); #5 (1/99 to 6/99); #6 (3/00 to 5/27/00). The High-level Liquid Waste Evaporator stated operation in ~1996. During this last decade the Process Equipment Waste Evaporator (PEWE) and the Liquid Effluent Treatment and Disposal (LET&D) Evaporator ran full time both generating considerable emissions, and thus mandating continuous radionuclide and hazardous materials monitoring. The INL High-level Waste Environmental Impact Statement notes that PEWEs bottoms tank storage represents a potential for a "criticality event releasing significant radioactivity to the atmosphere." [5-206] Additionally, the PEWE bottoms tank contents are pumped back to the High-level Tank Farm, so DOEs assertion that the PEWE does not process high-level waste is bogus.

### D. Court Orders and Independent Reviews Mandate Change in DOEs Method of Operation

A successful lawsuit brought by Keep Yellowstone Nuclear Free and the Environmental Defense Institute, et al. against DOE prevented the construction of the plutonium incinerator portion of the INL Advanced Mixed Waste Treatment Facility. Part of the Settlement of the suit stipulated the creation of a Blue Ribbon Panel that recently found that available non-incineration treatment technologies must replace the DOE preference for incineration. Other successful citizen suits shutdown incinerators at DOE's Rocky Flats Plant, Los Alamos National Laboratory, and Lawrence Livermore National Laboratory for radioactive and chemical emissions violations. A fourth successful lawsuit by Concerned Citizens for Nuclear Safety filed April 2, 1996 against DOE's Los Alamos National Laboratory site for radioactive emissions violating the Clean Air Act (40 CFR ss 61.90-61.97 (subpart H)) resulted in a court ordered independent monitoring program to ensure compliance. In the initial Memorandum Opinion and Order, the Judge states:

"Nowhere present in DOE's response is an explanation of why it has taken so long to comply with the radionuclide emissions and monitoring requirements and why it will apparently take at least another two and a half years to achieve compliance. Nowhere does DOE assert that compliance with Subpart H is cost-prohibitive, technically challenging or problematic in any way." "DOE merely protests that Plaintiffs exaggerate the safety risk of LANL's admitted non-compliance with what it characterizes as "technical" regulatory requirements. To the contrary, Plaintiffs [CCNS], and all the citizens of New Mexico, quite properly expect LANL to be utterly scrupulous in its observance of federal environmental regulations. DOE has not cited any authority which requires citizens" groups to defer to the voluntary compliance agreement between DOE and EPA. This agreement essentially represents EPA's promise not to sue: it cannot similarly bind the Plaintiffs." "In short, this court is left with no alternative other than to grant Plaintiffs' motion for partial summary judgment." [Concerned Citizens for Nuclear Safety v DOE, Memorandum Opinion and Order, filed April 2, 1997]

In the above CCNS v. DOE suit, the Court's Consent Decree stipulated an independent auditing program between 1997 and 2003 that DOE is required to fund up to $700,000. In addition the Court awarded CCNS $150,000 in attorney and expert witness fees. The court also stipulated enhanced Independent Audits required by the Federal Facility Compliance Act based on April 2, 1996 Court granted partial summary judgment to Plaintiffs which cited "DOE's admission that 31 of 33 major stacks and associated quality assurance programs were not in compliance with Subpart H at the time Plaintiffs failed their motion for partial summary judgment." [See Concerned Citizens for Nuclear Safety v. DOE, Consent Decree, Civ. No. 94-1039 M, filed March 25, 1997]

Exhaustive and highly credible scientific reviews have independently cast light on the hazard of DOE's Highly Efficient Particulate Arresters (HEPA) filter control systems at these DOE sites. Institute for Energy and Environmental Research's (IEER) *Radioactive and Mixed Waste Incineration* report cites the findings of Lawrence Livermore National Laboratory internal review panel recommendations against a proposed mixed waste incinerator in California.

"We have never been comfortable with the EPA's position that incineration of mixed waste to eliminate its chemical toxicity should be the first procedural step and burial of its radioactive residuals the second step. This approach commits to the volatilization of important radionuclides, including tritium, carbon-14, and several isotopes of iodine. Furthermore, the incineration of non-volatile nuclides, including those of uranium and plutonium, leads to a finite, although exceedingly small, probability of radioactivity being emitted from the incinerator's stack. We view incineration as a violation of the cardinal principle of radioactive waste management; namely, containing radioactivity rather than spreading it." [*Radioactive and Mixed Waste Incineration*, D Kershner, et al., Institute for Energy and Environmental Research, June 1993] [IEER (b) @1]

IEER's report also cites an EPA study of DOE mixed waste incinerators that showed that exposure of the public to tritium and plutonium-239 from this incinerator's emissions could exceed the federal standards for off-site radiation doses, in the latter case by more than 10 times. [IEER (b)]

"The most difficult elements to contain are the highly volatile radioactive elements, namely tritium, carbon-14, and several isotopes of iodine. Pollution control systems typical of most incinerators have no effect on these radionuclides, allowing the total input to the incinerator to exit out the stack, unless special filters are employed." "The vast majority of less volatile radionuclides such as plutonium and cesium-137, which tend to condense onto particles remain in the ash or filters following combustion. Radioactive particles that do escape filters, however, are small in diameter and can be carried by winds over long distances. Due to their small size, fine particles (radioactive or otherwise) can more easily be inhaled and lodge in the sensitive inner lining of the lungs than larger particles. Since incineration can disperse radioactive elements, especially those not amenable to filtering it can increase near-term population doses compared to securely storing the wastes." [IEER (b) @21]

DOE then contractor Westinghouse Nuclear internal report states: "Iodine-129 is one of the most environmentally significant radioisotopes emitted from nuclear fuel reprocessing and waste solidification facilities, and all facilities subject to EPA regulations must isolate at least 99.75% of the I-129 in the spent fuel from the environment. The results of an I-129 process distribution study at the ICPP indicated that a significant fraction of the I-129, not volatilized during fuel dissolution, eventually reached the Intermediate Level Waste Evaporator." [WINCO-1001 @ 1] Unfortunately, the evaporator does not have the control mechanism to retain the I-129 [Ibid] nor do the filtration systems have the ability to filter out the I-129. [Iodine-129 Control Monitor for Evaporation of Off-Gas Streams, Westinghouse Idaho Nuclear Co., March 1984] Clearly, this facility is not meeting EPA's 99.75% standard. Other species of iodine, which have been volatilized into gaseous aerosols, would also likely be escaping at the same rates. The discharge of radioiodine to the environment from nuclear fuel reprocessing plants is of particular interest due to the ability of iodine to enter the food chain and subsequently concentrate in the human thyroid. Iodine-129 is the isotope of interest during fuel dissolution and waste solidification since its 16-million-yr half-life makes I-

129 a permanent contaminant of the environment. The most significant I-129 releases are during waste solidification. [ICPP-1187 @16]

**E. National Emission Standards for Pollutants**

Pursuant to Section 112 of the Clean Air Act, 42 U.S.C. ss 7412, the Administrator of the Environmental Protection Agency has promulgated 40 CFR Part 61, Subpart A B General provisions and 40 CFR Part 61, Subpart H B National Emission Standards for Emissions of Radionuclides, for DOE facilities. Effective December 15, 1989, these standards apply to operations at any facility owned or operated by the DOE that emit any radionuclide other than radon into the air.

The standards, at 40 CFR ss 61.92, provide that emissions of radionuclides to the ambient air from DOE facilities shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 10 mrem/yr. The standards, at 40 CFR ss 61.93, prescribe the required emission monitoring and test procedures to be followed. At 40 CFR ss 61.94, the standards set out the compliance and reporting requirements, including a requirement that an annual report containing the monitoring results shall be submitted by each facility by June 30. The annual report shall be signed and dated by the public official in charge of the facility. The public official shall certify, under penalty of law, that the submitted information is true, accurate and complete. DOE at its INL facility has been and continues to be in violation of all the standards set out above.

The standards, at 40 CFR ss 61.05(c), require that "ninety days after the effective date of any standard, no owner or operator shall operate any exiting source subject to that standard in violation of the standard, except under a waiver granted by the EPA Administrator under this part or under an exemption granted by the President under Section 112(c) (2) of the Act." 42 U.S.C. ss 7412(i)(4), 1990 Clean Air Act Amendments, INL has been operating in violation of the relevant standards for far in excess of ninety days after the effective date of the standards delineated above, without either a waiver from the EPA Administrator or an exemption form the President. INL is not entitled to either a waiver or an exemption.

On February 7, 1997 EPA issued a notice to DOE stating: "INL did not receive a permit to construct from IDEQ for the New Waste Calcination Facility prior to August 7, 1977 INL may have violated 40 CFR ss 52.21(i), (j), and (k) for constructing a air source of nitrogen oxide emissions without a permit, failing to install best available control technology, and failing to conduct an air quality analysis, respectively."

On March 23, 2000, EPA issued a Notice to DOE/INL where the WERF, Advanced Mixed Waste Plant (AMWP), and the Calciner were inappropriately classified under 40 CFR ss 63 when they should have been classified as incinerators. On January 26, 2000 EPA issued a Complaint [Doc. No. TSCA-10 2000-0025] which notified DOE that it had "violated section 15 of TSCA, 15 U.S. C. ss 2614, by failing to comply with the regulations at 40 CFR Part 761, which were promulgated pursuant to Section 6 of TSCA, 15 U.S.C. ss 2605 and pertain to the use and disposal of polychlorinated biphenyl is (PCBs)." EPA again issued a complaint [Doc. No. TSCA-10-2000-0025] that found DOE in violation of 40 CFR ss 761.180(a).

DOE effectively ignored all of the above notices by continuing operations challenged by environmental regulators. Upon independent investigation, EDI has found that DOE at its INL facility has, without limitation, violated the air emissions standard contained in 40 CFR Part 61, Subparts A and H, as set out below:

"1.) INL has failed to evaluate every release source from an operation which uses radionuclides by using the approved EPA commuter model to determine doses received by the public, as required by 4 CFR ss 61.93(a).

2.) INL has failed to carry out a comprehensive inventory of release points necessary to identify each point that has the potential to deliver more than 1% of the effective dose equivalent standard, as required by 40 CFR ss 61.93(b)(4). The evaluation of emissions potential is to be performed by estimating the dose without taking any credit for any emissions controls on the effluent stream. The results of this modeling are needed to determine which release points must be monitored continuously, in compliance with ss 61.93(b), and which release points must be monitored periodically to confirm continuing low emissions.

3.) INL has failed to install stack monitoring equipment on all its regulated point sources, in accordance with 40 CFR ss 61.93.

4.) INL has failed to conduct and comply with the appropriate quality assurance programs, pursuant to 40 CFR ss 61.93(b) (2(iv).

5.) INL has not adhered to the "compliance and reporting" requirements. It has failed to calculate the highest effective dose equivalent in accordance with the standards described in subparagraphs (a) through (d) above, and as required by 40 CFR ss 61.94.

6.) INL has failed to file a true, accurate and complete annual report as required by 40 CFR ss 61(b) (9). The failure to inventory all release points, the lack of monitoring equipment on all of its regulated sources, the absence of appropriate quality assurance, and the failure to include the appropriate data and to perform the appropriate computer modeling make the annual report incomplete and inaccurate."

The standards, at 40 CFR ss 61.94, require that the public official in charge of the DOE facility sign the following declaration: AI certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. [See 18 U.S.C. 1001]

The bottom line is that the annual NESHAPS reports submitted by INL falsely represent the releases to the environment because monitoring instruments were not in place or "trial burns" demonstrated non-compliance.

## II. State of Idaho Enforcement of RCRA

### A. EPA Fails Oversight of State RCRA Primacy

During EPA's oversight of Idaho Department of Environmental Quality (IDEQ) status as the RCRA authority for Idaho, IDEQ has shown: (1) failure to analyze applicable standards for permitting; (2) failure to exercise control in requiring permits; (3) repeated issuance of permits that do not conform to RCRA; (4) failure to comply with public participation requirements; (5)

failure to act on violations of permits and other program requirements; (6) failure to seek adequate enforcement penalties to prevent the operation of un-permitted facilities; (7) failure to inspect and monitor activities subject to regulation; and, (8) failure to comply with the terms of the Memorandum of Agreement under 40 CFR 271.8. (See also, 42 U.S.C. 6926 (e); 40 CFR 271.22 and 271.23).

40 CFR Sec. 271.22 provides the criteria for the EPA withdrawing approval of State programs. The Administrator may withdraw program approval when a State program no longer complies with the requirements of this subpart, and the State fails to take corrective action. Such circumstances include the following:

1. When the State's legal authority no longer meets the requirements of this part, including: 1.) Failure of the State to promulgate or enact new authorities when necessary; or 2.) Action by a State legislature or court striking down or limiting State authorities.
2. When the operation of the State program fails to comply with the requirements of this part, including: 1.) Failure to exercise control over activities required to be regulated under this part, including failure to issue permits; 2.) Repeated issuance of permits which do not conform to the requirements of this part; or 3.) Failure to comply with the public participation requirements of this part.
3. When the State's enforcement program fails to comply with the requirements of this part, including: a.) Failure to act on violations of permits or other program requirements; b.) Failure to seek adequate enforcement penalties or to collect administrative fines when imposed; or c.) Failure to inspect and monitor activities subject to regulation.
4. When the State program fails to comply with the terms of the Memorandum of Agreement required under Sec. 271.8.

**B. State Fails to Exercise Control in Requiring Permits**

IDEQ has allowed and continues to allow long term interim operation of facilities past November 8, 1992 without requiring RCRA permitting. Under 42 U.S.C. 6925) (2) (B) all interim facilities were either to have been issued a permit or denied a permit by November 8, 1992. 40 C.F.R. 264.1 (a) states that RCRA interim status does not constitute a permit.

Any permit issued under 42 U.S.C. 6925 (c) was to be issued "for a fixed term, not to exceed 10 years in the case of any land disposal facility, storage facility, or incinerator or other treatment facility." EPA and IDEQ have allowed INL units to run on interim status far longer than could be allowed even if the units had been fully permitted under RCRA.

In 1996 the Department of Energy furnished the IDEQ a list of units that were deemed unpermittable under RCRA. DOE stated the units "...will continue to operate under interim status and a consent order. A comprehensive supplement to the Part A will be provided for these units." The list included: 1.) CPP-603 Storage Tank; 2.) CPP-604 PEW Evaporators; 3.) CPP-604 Storage Tanks; 4.) CPP-659 NWCF ("Calciner"); 5.) CPP-659 NWCF Evaporator Feed Tank System; 6.) CPP-659 NWCF Storage and Treatment Tanks (VES-NCC-101, -102, -103, -108, -119, & -122); 7.) CPP 1618 LET&D Evaporators; 8.) Calcined Solids Storage Facility; 9.) ICPP Tank Farm.

Since IDEQ was informed by DOE that these facilities were "unpermittable," IDEQ had a duty under RCRA to order DOE to either submit permit applications or closure plans. IDEQ instead allowed continued operation of these facilities under interim status or consent orders. IDEQ ignores the violations of RCRA law by allowing the processed debris to be sent from facilities at INL to non-permitted RCRA operations such as the Process Equipment Waste Evaporators (PEWE), Liquid Effluent Treatment and Disposal (LET&D), and the High-level Liquid Waste Evaporator (HLLWE).

The June 6, 2000 Hazardous Waste Management Act/Resource Conservation and Recovery Act Work Plan for the Idaho National Engineering and Environmental Laboratory lists numerous facilities which continue to operate on interim status at INL. The entries include all of the above facilities stated in the 1996 DOE Donald Rasch memorandum as well as additional facilities. Operations of the Waste Experimental Reduction Facility (WERF) were allowed by IDEQ to continue without a RCRA permit although it was established that the WERF had unacceptable trial burns going back to 1986 and that DOE could not submit the information necessary to receive a RCRA permit. DOE has admitted that, "It is not possible to comply with all of the analytical and operational requirements necessary to permit the NWCF Calciner, evaporator and associated tanks and piping (40 CFR 264 and 270). DOE's report titled "Justification for the Continued Operation of the NWCF and Tank Farm Facility as HWMA Interim Status Units Through a Consent Order" states: "The tanks associated with the NWCF cannot be visually inspected and restricted access due to high radiation fields make it impossible to line the vaults and to permit these tanks as HWMA/RCRA storage units (40 CFR 264.191 and 264.193)." [page 2] IDEQ used interim status to circumvent the RCRA permit process where hazardous waste units could not qualify for a RCRA permit.

IDEQ failed to generate a list of all the facilities at the INL which are subject to RCRA permit requirements but which have not been permitted. Interim status facilities which have been deemed "unpermittable" by DOE are allowed to operate on interim status or under a consent order without submission of closure plan.

Interim status is used to continue operation of facilities which cannot comply with RCRA permitting requirements. It was decided to remove the D-Cell from the INL Part B permit application, but to continue to use it under interim status as a storage unit until it can be decided what will happen to the calcine currently stored there. Interim status is used to avoid the RCRA mandate that hazardous waste management facilities become permitted.

Where uncertainty as to whether a facility can be permitted, the DOE holds the facility outside the permit process preferring to add the facility in later as a modification until the EIS ROD is made. D-Cell was not included in the Part B permit application, but would be added into the final permit as a modification once the EIS ROD was finalized. This is a stalling tactic because once a determination is made not to pursue a Part B permit for a unit, that unit must begin closure.

**C. Failure to Analyze Applicable Standards for Permitting**

Although EPA applied the proper categorization of an incinerator to the Calciner in 1990, IDEQ failed to enforce the proper standards of operations of the Calciner under 40 CFR 264 Subpart O or 40 CFR 265 Subpart 0 which are applicable to incinerators.

Because IDEQ knew the Calciner could not comply with the 40 C.F.R. 264 Subpart O standards of operation regarding a trial burn and adequate characterization of waste feed and emissions, the EPA and IDEQ instead allowed the Calciner to be operated under 40 CFR 265 Subpart P as a "thermal treatment unit." Subpart P refers to facilities that thermally treat hazardous waste in devices other than enclosed devices using controlled flame combustion.

Allowing the Calciner to operate for years as a "thermal treatment" unit under 40 CFR 265 Subpart P provided a lower standard of requirements for operation in which IDEQ sacrificed public health and safety to operational needs. IDEQ failed to impose the following requirements and performance standards required by 40 CFR 264 Subpart O to the Calciner:

1. Trial burns were not conducted under restricted conditions (40 CFR 270.62);
2. Waste feed to the incinerator was not monitored to see if it was within physical and chemical composition limits specified by a permit (40 C.F.R. 264.345 (b));
3. No treatment of principal organic hazardous constituents (POHC) to the standard for each waste feed to be burned (40 C.F.R. 264.343 (b) (1);
4. No assurances as to design, construction and maintenance so that, when operated in accordance with operating requirements specified under 40 C.F.R. 264.345, a destruction and removal efficiency of 99.99% would be attained for each POHC;
5. No strict monitoring of the stack emissions; any type of waste could be burned because no permit existed to specify what wastes the Calciner was allowed to burn and no specificity existed regarding required operating conditions to burn those wastes;
6. No conditions or controls were established with respect to fugitive emissions, maintenance of combustion zone pressure lower than atmospheric pressure, combustion gas velocity, automatic cut off of waste feed or requirements to cease operation when changes in waste feed exceeded design limits;
7. No requirements for daily visual inspection of the incinerator and associated equipment (pumps, valves, conveyors, pipes, etc.), nor for leaks, spills, fugitive emissions, and signs of tampering;
8. No requirements for weekly testing of emergency waste feed cutoff system and associated alarms;
9. No requirements for monitoring and inspection data to be recorded with the records placed in an operating log (40 C.F.R. 264.73).

DOE was informed by IDEQ on 10/1/91 that the waste feed characterization and emissions characterization were issues requiring resolution. IDEQ waited six years until 11/20/97 before sending another letter to DOE referring to the 1991 permitting issues of waste feed and emissions characterizations requiring resolution pertaining only to the CPP 659 NWCF Calciner.

Even under the lower standards of Subpart P, the IDEQ did not enforce compliance with the waste and emissions characterization requirements, but allowed continued operations of the Calciner well after the time when it was decided that the waste and emissions could not be properly characterized. 40 CFR ' 265.13 provided that: "***Before*** an owner or operator treats,

stores, or disposes of any hazardous wastes, or nonhazardous wastes if applicable under Sec. 265.113(d), he must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with this part and part 268 of this chapter."

(Emphasis supplied).

The IDEQ's failure to demand the Calciner comply with RCRA before operations amounted to violation of hazardous waste laws by creation of an impermissible de facto waiver by the IDEQ that RCRA requirements be met, i.e., that a permit had to be either issued or denied by the IDEQ for the Calciner in a timely fashion. [42 U.S.C. 6925 (a)]

40 CFR 264.345 requires for incinerators to be operated in accordance with operating requirements specified in the permit. Because no permit was issued, there were no conditions previously set by the IDEQ in a permit under which to control the operation of the Calciner and related operations. Thus, the Calciner could not comply with operating requirements 40 C.F.R. ' 264.345 and performance standards set by 40 C.F.R. 264.343 and should not have been operated without a permit.

IDEQ allowed the Calciner to process inorganic waste in violation of 40 CFR 268.3 which prohibits combustion of the hazardous waste codes listed in Appendix XI of that part. Those codes include, but are not limited to, prohibition of combustion of waste which has resulted in emissions by the Calciner of toxic wastes such as arsenic, barium, beryllium, cadmium, chromium, lead and mercury.

On October 13, 1997, the DOE raised the issue that 40 CFR 268.3 would prohibit the calcination of inorganic wastes at the NWCF, if the NWCF were "perceived" as a combustion technology (which it is). The Calciner has burned many inorganic wastes, such as mercury, beryllium, nickel, lead which are covered by 40 CFR 268.3. 40 CFR 268.3, Appendix XI defines combustion as any thermal technology subject to 40 CFR 264 Subpart O. The DOE then proposed to the IDEQ that 40 CFR 268.3 did not apply to the NWCF since it was operating under 40 CFR 265 Subpart P. The DOE told the IDEQ "your concurrence on this matter is crucial prior to restarting calcination of high level waste to meet the conditions of the Settlement Agreement." DOE wanted the concurrence so that DOE could calcine sodium-bearing high-level waste.

IDEQ failed to enforce 40 CFR 268.3 in order to keep the Calciner operating, thereby sacrificing public health and safety. The IDEQ, without stating any legal basis or facts for its position, informed DOE that 40 CFR 268.3 is not applicable to current operation of the NWCF under 40 CFR 265 Subpart P. The IDEQ then went on to state, "However, when a final regulatory determination as to the applicability of 40 CFR, Subpart X or O associated with permitting is made, compliance with this and other regulations may need to be revisited."

IDEQ, as the agency to apply and enforce the proper operating standards to the Calciner, left it up to the DOE to determine what the appropriate standard for issuing a permit would be. A 10/20/97 IDEQ letter stated, "...the DOE must clearly identify whether a permit for the NWCF will be sought under the provisions of 40 CFR Part 264, Subpart X or Subpart O." It was clear

from this statement, however that IDEQ knew that 40 CFR 264 and not 40 CFR 265 Subpart P was the applicable standard, although IDEQ chose not to enforce that standard. IDEQ did not revisit the issue of the Calciner illegally burning inorganic wastes.

On March 23, 2000, more than eight years after the 1991 submission of the Part B application for the Calciner, the EPA sent a letter to the IDEQ indicating that the NWCF was subject to the Clean Air Act NESHAP standards for Hazardous Waste Combustors, contrary to DOE's belief. The EPA stated that the NWCF met the definition of an incinerator in 40 CFR 260.10. (Exhibit 12). Thus, IDEQ had allowed the NWCF to operate under the wrong standards. It took EPA over eight years to inform the IDEQ of this. During this period the Calciner emitted tons of hazardous and toxic wastes including heavy metals, radionuclides and greenhouse gasses to the atmosphere in violation of RCRA and the Clean Air Act including: WERF, PEWE, LET&D, HLLWE, Tank Farm, HEPA Filter Treatment, Debris Treatment, SMC Incinerator

**D. Failure to Act on Violations of Permits and Other Program Requirements**

IDEQ failed to require interim hazardous waste facilities treating mixed waste to obtain permits by November 8, 1992, and to require compliance with interim standards of 40 CFR Part 265 and 266. IDEQ failed to conduct an adequate inspection of the Specific Manufacturing Capability (SMC) including the Oxidation Station facility and Oxide Oven at the Test Area North (TAN). A Department of Energy worker, Clint Jensen, filed a Department of Labor complaint and admitted to the press that he was required to operate evaporators constructed from ovens that burned uranium chips, sludge and powders at the Specific Manufacturing Capability Project housed at the Test Area North ("TAN″) facility at the then called Idaho National Engineering and Environmental Laboratories ("INL"). This operation was carried on with the full knowledge of his supervisors at the INL to include; 1.) No RCRA permit for the operation of the oxidation oven and incineration of these materials was obtained by the DOE, the U. S. Army or its contractor Bechtel; 2.) Hazardous wastes were illegally stored, released to the environment and allowed to contaminate the TAN facility and possibly other facility workers in addition to Mr. Jensen; 3.) Radioactive spills were not documented and reported as they should have been.

Operations at the SMC facility involved use of RCRA regulated mixed waste, including but not limited to, uranium chips, machining oil, beryllium powders, volatile organic compounds, benzene. IDEQ failed to send IDEQ employees who could properly inspect the SMC and its operations. During an Air Quality Inspection on 9/23/99, the IDEQ failed to send employees with the proper security clearances to the SMC. The two IDEQ employees were denied access to the facility to await 4-6 month processing of clearances. IDEQ knew or should have known that employees who had adequate clearances should be sent to the SMC facility.

IDEQ has not issued a Notice of Violation to the DOE for the unpermitted RCRA activities taking place at the SMC. Under the Permit to Construct #023-00001, DOE did not inform the IDEQ of the operation of the oxide oven at the SMC. The information contained in the permit does not include the oxide oven as venting to TAN stacks including: WERF re-ignition of burner flame on September 17, 2000.

IDEQ failed to issue a notice of violation for no evacuation procedures; lack of operator training; requirement that an operator be present when the flame is burning in the chamber.

**E. Substituting interim status for fully permitted facilities**.

DOE did not receive a permit from IDEQ to construct the NWCF prior to August 7, 1977. INL violated 40 CFR 52.21 (I), (j) and (k) for constructing a major source of nitrogen dioxide emissions without a permit, failing to install best available control technology and failing to conduct an air quality analysis, respectively.

**F. Failure to Inspect and Monitor Activities Subject to Regulation**

DOE failed to comply with the intent of NESHAPs regulations. For much of three years prior to 1996 and possibly subsequent to 1996 the DOE failed to operate the installed ICPP Main Stack Iodine 129 monitor. I-129 constitutes at times 50% of the site dose. The I-129 monitor was placed on line for startup of the High Level Waste Evaporator, but may have been taken off-line subsequent to start up. IDEQ failed to inspect for or observe the shut off of the I-129 monitor.

40 CFR 61 Subpart H requires the INL to limit Annual Effective Dose Equivalent to 10 mrem or less. To do this, each of the 100+ radiological sources must (1) determine actual annual radionuclide emissions per subpart 61.93 (a), and (2) satisfy continuous compliance monitoring or periodic confirmatory measurement (PCM) per 61.93 (b). INL has no way of ensuring a consistent or compliant NESHAPs program with the responsibilities to determine releases and perform PCM spread out among all facility owners. Potential exists that not all "Radiological Air Release Points" are identified or accounted for in the Program or the Annual Report. Currently, INL air quality monitoring for emissions is based on estimates for sources consisting of primarily engineering calculations based on process knowledge and/or operational parameters. This practice allows for the possibility to significantly underestimate actual emissions. Actual emissions from the INL cannot be adequately monitored or calculated unless each of the 100+ facilities at the INL are actually monitored. IDEQ failed to seek adequate enforcement penalties to prevent the operation of unpermitted facilities. DOE simply considered the relatively small fines as a cost of doing business.

**G. Failure to Enforce Compliance with Public Participation Requirements**

The Council on Environmental Quality ("CEQ") recommends early and meaningful public participation when decisions potentially impact vulnerable communities, such as those which exist in southeast Idaho-- low income, minority and tribal populations. (CEQ, Environmental Justice: Guidance under the NEPA Dec. 10, 1997, at 12-13) (Also see http://ceq.eh.doe.govnepa/nepanet.htm)

The 1995 EPA Regulations for RCRA Expanded Public Participation, 60 Fed. Reg. 63,417-63,434 (December 11, 1995) require that DOE, as a prospective applicant for the permit must hold an informal public meeting ***before*** submitting an application for a RCRA permit. (40 CFR 124.31). Debris Processing Vol. 18 No RCRA Extended Public Participation Preapplication Hearing, yet, IDEQ processing material for the Part B Permit for Debris Processing began before requiring DOE to hold a preapplication hearing for the public. No equitable public participation.

IDEQ failed to require a public hearing prior to the submission by DOE of the Part B permit application as required by the RCRA Extended Participation Rule. Failure to adopt and/or timely implement the RCRA Extended Participation Rule. DOE has plans to submit a RCRA Part B Permit Application for the PEWE. No RCRA Extended Participation Rule public hearing has been held for the public. Although there is ongoing planning between the IDEQ and DOE with respect to permitting and technical issues and it is well known by IDEQ and DOE that permit submission has been required, no public participation hearing has taken place to inform the public of what DOE intends.

DOE has plans to submit a Part B Permit Application for the Liquid Effluent Treatment and Disposal (LET&D). No RCRA Extended Participation Rule public hearing has been held for the public. Although there is ongoing planning between the IDEQ and DOE with respect to permitting and technical issues and it is well known by IDEQ and DOE that permit submission has been required, no public participation hearing has taken place to inform the public of what DOE intends.

DOE has plans to submit a Part B Permit Application for the High-level Liquid Waste Evaporator (HLLWE). No RCRA Extended Participation Rule public hearing has been held for the public. Although there is ongoing plaining between the IDEQ and DOE with respect to permitting and technical issues and it is well known by IDEQ and DOE that permit submission has been required, no public participation hearing has taken place to inform the public of what DOE intends.

IDEQ defeats the intent of the Extended Public Participation Rule by reviewing numerous technical and permitting issues with the DOE in advance of submission of the Part B Application. DOE submits parts of the application to the IDEQ for review before the public is informed that DOE intends to submit. IDEQ, as the agency to apply and enforce the proper operating standards to the Calciner, left it up to the DOE to determine what the appropriate standard for issuing a permit would be. "10/20/97 IDEQ letter stated, A...the DOE must clearly identify whether a permit for the NWCF will be sought under the provisions of 40 CFR Part 264, Subpart X or Subpart O." It was clear from this statement, however that IDEQ knew that 40 CFR 264 and not 40 CFR 265 Subpart P was the applicable standard, although IDEQ chose not to enforce that standard. IDEQ did not revisit the issue of the Calciner illegally burning inorganic wastes.

On March 23, 2000, more than eight years after the 1991 submission of the Part B application for the Calciner, the EPA sent a letter to the IDEQ indicating that the NWCF was subject to the Clean Air Act NESHAP standards for Hazardous Waste Combustors, contrary to DOE's belief. The EPA stated that the NWCF met the definition of an incinerator in 40 CFR ' 260.10. Thus, IDEQ had allowed the NWCF to operate under the wrong standards. It took EPA over eight years to inform the IDEQ of this. During this period the Calciner emitted tons of hazardous and toxic wastes including heavy metals, radionuclides and greenhouse gasses to the atmosphere in violation of RCRA and the Clean Air Act. IDEQ, as the agency to apply and enforce the proper operating standards to the Calciner, left it up to the DOE to determine what the appropriate standard for issuing a permit would be. A 10/20/97 IDEQ letter stated, "...the DOE must clearly identify whether a permit for the NWCF will be sought under the provisions of 40 CFR Part 264,

Subpart X or Subpart O." It was clear from this statement, however that IDEQ knew that 40 CFR 264 and not 40 CFR 265 Subpart P was the applicable standard, although IDEQ chose not to enforce that standard. IDEQ did not revisit the issue of the Calciner illegally burning inorganic wastes.

Segmented review of application parts by IDEQ defeats the CEQ recommendations for early and meaningful public participation in the RCRA permitting process. The draft permit stage is too late to enter the process for the community because the facility and the permitting agency have already made all the major decisions and any comments the public might offer would have no real effect.

Secret RCRA Quarterly Permitting Meetings are being held between the DOE and IDEQ to facilitate permitting and technical reviews. These meetings exclude the public in violation of the Idaho Open Meetings Law. The secret meetings likewise violate 5 U.S.C. 552b for the open meetings requirements for federal agencies such as the DOE. DOE and IDEQ members at the Quarterly Meetings make decisions or gather information for recommendation for RCRA decisions which are pending before the IDEQ. The DOE is engaged in agency deliberations which determine or result in the joint conduct or disposition of official agency business.

The RCRA Quarterly Meetings are not open to public observation. The meetings are attended by persons from the IDEQ who either have authority to make decisions or recommendations for decisions to the IDEQ on the substantive, specific, and highly controversial public issues and matters of RCRA permitting of hazardous waste facilities, and the safety of the generation, treatment, storage, disposal and handling of hazardous waste including, but not limited to, toxic metals, organic chemicals and radionuclides.

**H. Failure to Comply with the Terms of the Memorandum of Agreement**

The EPA should conduct hearings regarding a withdrawal of authorization for IDEQ to administer RCRA because IDEQ is incapable of administering the program in accordance with the statute and has and is currently putting the lives of many people at risk. (42 U.S.C. 6926 (e); 40 CFR 271.22 and 271.23).

EPA should require IDEQ to halt the illegal scheme of operation of interim status facilities which cannot comply with RCRA permitting requirements. EPA should require that IDEQ publically identify all facilities at the INL which are still being operated on interim status, and the length of time such facilities have operated on interim status. EPA should require IDEQ to order all facilities at the INL operating under interim status to stand-down immediately until either a permit is obtained or an approved RCRA closure plan is implemented.

If no permit application is filed for facilities IDEQ should require that closure process be implemented for those facilities for which a permit will not be sought by the DOE. When permits are denied, closure plans must be immediately implemented as provided in RCRA.

## III. Public Participation

DOE and IDEQ Secret Meetings held as Resource and Conservation Recovery Act Quarterly Permitting Meetings in Violation of the Idaho Open Meetings Law and Federal Open Meetings Requirements 5 U.S.C. 552b.

The failure of the IDEQ to allow public attendance at the RCRA Quarterly Meetings, Notice of Violation Meetings, and Teleconferencing Meetings has created a secret process which violates the Idaho Open Meetings Law and the Federal Open Meetings Requirement 5 U.S.C. 552b. The IDEQ and DOE discuss issues of nuclear plant and facility safety, permit violations, damaged facilities, leaking radioactive and toxic wastes, worker exposures and dangerous releases of radiation to the environment and local populations without public scrutiny.

Matters which are pending before the IDEQ for permitting or Notice of Violation and penalties have been and are regularly discussed in seclusion between IDEQ regulators and the DOE/INL as proponents for facilitation of construction of proposed facilities, permits, extensions, and facility modifications.

Far ranging discussion of nuclear permitting, policy matters, new facilities and the facilitation of decisions adversely affecting the public health and safety have been hidden behind closed doors. Notice of the clandestine meetings of the IDEQ and DOE is not given to the public. The existence of the IDEQ/DOE/INL Committee and its members which meet at the Quarterly Meetings has not been made public. Materials used in the Quarterly Meetings have not been made public. Agendas of the Quarterly Meetings have not been made public. Minutes of the Quarterly Meetings have not been made public.

DOE is enabled to present plans and programs to the IDEQ representatives in order to preview reactions to the plans, obtain assistance, expedite plans and grease the procedural wheels with IDEQ regulators well in advance of any presentation of the DOE plans to the public. Preclusion of the public allows the DOE and IDEQ to be well ahead of public awareness and to deny the public to have a reasonable opportunity to be informed of or intervene in programs which the public might oppose at an early stage because of community safety concerns.

The exclusion and absence of representatives of the Idaho Press as vigilant watchdogs for the public interest is a further affront to the policy of the law to provide open meetings.

On October 11, 2000, David McCoy telephoned the Idaho Falls IDEQ and spoke to a staff person whom he asked when the next Quarterly Meeting would take place. McCoy stated that he wished to attend the next RCRA Quarterly Meeting. McCoy was informed that the Quarterly Meetings were not open to the public. McCoy was informed by the staff person that he should speak to the lead person for the Quarterly Meetings who was Robert Bullock in the Boise IDEQ Office. McCoy inquired as to whether any Minutes of the Quarterly Meetings were kept at the Idaho Falls Office and was informed that Minutes were not kept there. McCoy telephoned immediately thereafter and spoke to Mr. Bullock. McCoy asked him when the next Quarterly Meeting would be held so that he could attend the meeting. McCoy was informed by Mr. Bullock that the Quarterly Meetings are not open to the public. McCoy informed Mr. Bullock

that perhaps the situation should be discussed with Darryl Early, Assistant Attorney General at the IDEQ. Mr. Bullock informed me he would speak with Mr. Early and have him contact me.

On 8/18/00 McCoy telephoned Mr. Early's IDEQ Office and left a message to discuss the RCRA Quarterly Meetings. Mr. Early returned my call on 8/19/00. Mr. Early stated that the RCRA Quarterly Meetings were not open to the public because of the interpretation by the Attorney General that the definition of "governing body" contained in IC 67-2341 (5) excludes public agencies with no more than a single department head from the requirement of holding open public meetings.

In the Idaho Open Meeting Law Manual (at pp. 2-3) by the Office of the Attorney General of Idaho, Question no. 2 states as follows:

> "Does the Open Meeting Law apply to a public agency headed by a single individual as contrasted with a multi member body?
>
> **Answer:** "No. Section 67-2341 (5) defines a governing body to mean "the members of any public agency *which consists of two (2) or more members*, with the authority to make decisions for or recommendations to a public agency regarding any matter." (Emphasis in original.) By definition, the open Meetings Law applies only to a governing body which consists of two or more members and thus does not apply to a public agency headed by a single individual.

Of course, it should be noted that under the Idaho Administrative Procedure Act (A.P.A.) Section 67-5201, *et seq.*, "various state agencies must hold open public meetings when they adopt rules or when they determine certain contested cases. The open public meeting requirements of the A.P.A. apply regardless of whether the public agency is headed by a single individual or by a multi-member body."

The fundamental requirement and legislative purpose of the open meetings law is found in Idaho Code 67-2342(1):

"The people of the state of Idaho in creating the instruments of government that serve them, do not yield their sovereignty to the agencies so created. Except as provided below, all meetings of a governing body of a public agency shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by this act. No decision of a governing body of a public agency shall be made by secret ballot."

By the Attorney General's distortion of the meaning of the open meeting law, the people of the state of Idaho are wrongly and unnecessarily compelled to yield their sovereignty to the IDEQ, which is a department created by statute in the state of Idaho. The people have not delegated their authority to the IDEQ to decide what is appropriate for the people to know and what is not appropriate for the people to know. The people must rather remain informed so that they may retain control over the instruments they have created. (See Stockton Newspapers, Inc. v. Members of the Redevelopment Agency of the City of Stockton, (1985) 171 Cal.App.3d 95, 100; 214 Cal. Rptr. 561).

The position of the Attorney General for departments with a single director would defeat the purpose of the open meetings law because it would create an agency or department to which the

People of the State of Idaho would be compelled to yield their sovereignty. The Attorney General Manual cites no case law authority for the position stated with respect to a public agency headed by a single individual and there is no specific reference to the Department of Environmental Quality as not falling under the requirements of the Open Meetings Law. There is nothing contained within the definition of "public agency" to indicate that any exception to holding public hearings is carved out for a public agency that does not contain more than one member. (See 67-2341(4)). The term "members" is not defined in 67-2341, but apparently includes persons belonging to an agency who have either "authority to make decisions for or recommendations to a public agency regarding any matter." As will be shown below the analysis of the Attorney General is incorrect and there is no exception carved out for the Department of Environmental Quality.

"Meetings" include the receiving or exchange of information relating to make a decision or to deliberate toward making a decision. IC 67-2341 (6). Two components exist in the word "meeting," a procedural element identifying the group and context of its gathering or exchanging information and a substantive element identifying the purpose of the gathering "to make a decision or to deliberate toward a decision on any matter." "Deliberation" means "The receipt or exchange of information or opinion relating to a decision." IC 67-2341(2). Thus, the meeting concept is not confined to a requirement of taking formal actions alone; it also encompasses the collection and exchange of facts preliminary to final decisions. The IDEQ seeks to use nonpublic Quarterly Meetings as a way to conduct part of the decisional process behind closed doors.

The Department of Environmental Quality is a state department created by statute. (IC 39-102A et seq.) A "public agency" is defined in IC 67-2341(4) (a) as "**any** state board, commission, **department**, authority, educational institution or other state agency which is created by or pursuant to statute." (Emphasis supplied).

IC ' 67-2341(5) defines "governing body" as "the members of any public agency which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public agency on any matter." "Members" is not defined by the Open Meetings Law. The meaning of "members" must be interpreted in a manner consistent with the intent and purpose of the Open Meetings Law which is to ensure that public business is conducted openly. A dictionary definition of a member is one of the individuals composing a group. The members of the IDEQ would be the persons who compose that department. The IDEQ consists of more than two members. Members of the "governing body" are persons with the authority to make decisions ***or*** persons with the authority for making recommendations to a public agency for decision making. The "agency" (here a department) and the "governing body" are separate entities. Thus, "members" has a broader meaning than the sole administrator of an agency. Personnel of the IDEQ attending Quarterly Meetings are members of the IDEQ who clearly have the authority of the IDEQ to gather information and make recommendations to the IDEQ as a department with respect to the matters which arise and are discussed at the Quarterly Meetings.

**The existence of a public agency does not depend upon the definition of "governing body."** The public agency is a statutory creation. It is public agencies, such as the IDEQ, which conduct public business which the Open Meetings Law seeks to regulate by not allowing such agencies to formulate public policy without conducting open meetings. The Attorney General's Office seeks

to allow the IDEQ to meet in secret at the Quarterly Meetings by equating the department (IDEQ) with its [agency director] governing body.

The Attorney General incorrectly equates the term "department" with the IDEQ's "governing body." The IDEQ is a department which was created by statute and is thus to be regulated under the Open Meetings Law. The Attorney General has twisted the meaning of "a governing body of an agency" of two or more members in such a way as to defeat the purpose of the Open Meetings Law by carving out exclusion for an agency which has a single administrator at the agency's helm. The requirement of "two or more members" is in the statute rather simply to fulfill the requirement for a meeting as taking place between more than a single person.

The IDEQ, as a department which makes decisions and formulates policies owes its existence to its creation by statute, not to the number and hierarchical position of the agency's members. The Open Meetings Law is triggered when two or more of the members of the IDEQ meet, formally or informally, to make a decision or to gather or exchange information which will be used to make recommendations to a public agency (department) or to deliberate toward a decision on any matter. As shown below, the Quarterly Meetings are regularly attended by IDEQ administrators and/or staff persons who have the authority to make decisions for or recommendations to the department on numerous matters pertaining to the INL. The matters discussed at the Quarterly Meetings are to gather or exchange information or to make outright decisions in relation to matters pending before the IDEQ.

Exceptions to the application of the open public meeting rule are listed in IC 67-2342 -2345. The exceptions are narrow: deliberations of the board of tax appeals; meetings of the Idaho life, health insurance guaranty association and executive sessions. No exception is explicitly stated which would exclude any public person from meetings of the Department of Environmental Quality or any other state agency merely because that agency has a single person who is the administrator for the department. To establish such a rule would be contrary to the spirit and intent of the open meetings act in that it would establish agencies to which the people of the state of Idaho would yield their sovereignty.

In advance of each Quarterly Meeting, the dates and locations are established between IDEQ and DOE without any public notice. Agendas for the Quarterly Meetings are only distributed to members of the IDEQ and the DOE. The Distribution List for the Minutes of the Quarterly Meetings includes only members within IDEQ and DOE/INL. Members of the public would only obtain the Minutes by conducting a Public Information Review of the Administrative Record located in the Boise IDEQ office. The Minutes are replete with technical acronyms and jargon which make clear that the Minutes are not intended for public elucidation of issues discussed. The Minutes are printed only in the English language. No acronym list is provided and acronyms are often used without any explanation or description making the Minutes incomprehensible to ordinary members of the public. Public funds are expended for the IDEQ representatives to attend the meetings. The Quarterly Meetings are held in State of Idaho IDEQ facilities in Boise and Idaho Falls or at the INL facility itself.

The Quarterly Meetings between the IDEQ and DOE/INL have been held on an ongoing basis for many years. While there is no apparent authority in RCRA which requires Quarterly

Meetings to be held between DOE and IDEQ, neither is there authority that such meetings should exclude the public. On the contrary, RCRA regulations seek to expand the opportunities for earlier public involvement in decision making. In promulgating the 1995 Regulations for RCRA Expanded Public Participation, 60 Fed. Reg. 63,417-63,434 (December 11, 1995), the EPA stated:

> "Prior to the promulgation of today's rule, the permitting process did not formally involve the public until the permitting agency issued a draft permit or intent to deny a permit. In many cases, communities around RCRA facilities felt that the draft permit stage was too late to enter the process, that the facility and the permitting agency had already made all the major decisions by that point, and any comments the public offered would have no real effect. Insufficient opportunity for communities to become involved in environmental decision-making is a contributing factor to environmental justice concerns. The provisions in today's rule will address many of these concerns by expanding public participation and access to permitting information."

Given that southeastern Idaho is composed of numerous low income, minority and tribal groups, the necessity of adhering to this rule of preapplication meeting is essential to ensure environmental justice concerns. Opening RCRA Quarterly Meetings to the public would follow the intent of RCRA, even if RCRA is silent with respect to Quarterly Meetings.

**The DOE and EPA are violating the open meeting requirements of 5 U.S.C. ' 552b where deliberations of the RCRA Quarterly Meetings determine or result in the joint conduct or disposition of official agency business and the public is not allowed to attend those meetings.** Neither the DOE nor the EPA has not made any legally required prior determination that the requirements of the federal open meetings law should not apply to the RCRA Quarterly meetings. Such a determination and review of that determination are required by ss 552b before the DOE can exclude the public from observations of the RCRA Quarterly Permitting Meetings.

**IDEQ members at the Quarterly Meetings make decisions or gather information for recommendation for RCRA decisions which are pending before the IDEQ.**

The Quarterly Meetings are attended by persons from the IDEQ who either have authority to make decisions or recommendations for decisions to the IDEQ on the substantive, specific, and highly controversial public issues and matters of RCRA permitting of hazardous waste facilities, and the safety of the generation, treatment, storage, disposal and handling of hazardous waste including, but not limited to, toxic metals, organic chemicals and radionuclides. For example, at the February 1-3, 2000 Quarterly Meeting, lasting three days, IDEQ persons in attendance included David Luft, Bob Bullock, Brian English, Dinah Little, Vivian Hall, Beth McPherson, John Lawson, and Charlene Roberts. An incomplete sample of items on the February 1-3, 2000 Quarterly Meeting Agenda included:

* Barriers to permitting, a Facility Assessment Scope of Work and a draft PEWE [Process Equipment Waste Evaporator] Part B permit application preparation and submittal schedule;
* Introduction of proposed INTEC RD&D permit application;
* Discussion of Process Equipment Water Evaporator 101 training at the INL

* Waste Experimental Reduction Facility related issues [WERF is a nuclear waste incinerator];
*Calciner related issues [Calciner is a nuclear waste incinerator];
* VCO [Voluntary Consent Order] Status and interim actions on tanks in Test Reactor Area-641

The 2/1/00-2/3/00 Quarterly Meeting Minutes state that DOE asked if IDEQ would "require a complete closure plan be provided to IDEQ for small, isolated tank systems and individual tanks that held hazardous waste. After discussion with IDEQ upper management, the answer is, yes." With respect to other VCO items, "Agreements were made as to the revision of the action items."

With respect to the inconsistency between the June 1 and EIS dates for a final decision for permitting or closure of the Calciner, "IDEQ agreed to get upper management input as to how to best go about modifying or approving extensions..."

With respect to whether the WERF Waste Storage Building should be an interim status modification or a modification to a Part B Permit, "it was determined that the most appropriate course of action would be to modify the Part B permit application."

Eighteen documents listed on an Attachment Index were distributed between IDEQ and DOE/INL representatives for consideration and or discussion at the 2/1-2/3/00 Quarterly Meeting, including, but not limited to:
*Prioritized INTEC HLW (High Level Waste) Part A Permit Modifications;
*NCLI Discussion;
*CPP 1617 Activities Dated Feb. 1, 2000;
*Calciner Closure Approach Discussion;
*Tank Farm Closure Discussion "Go Bys;"
*Status of VCO Action Plans;
*Draft of 11K.1.b Report [No explanation of the meaning of this Report was provided by the Minutes.]

On 12/8/98 Quarterly Meeting attending IDEQ members toured various facilities of the INL, the INTEC, the RWMC (Radioactive Waste Management Complex), and Argonne National Laboratories-West. On December 9, and 10, 1998, Quarterly Meeting was held in Idaho Falls and some of the items for discussion for decision making included:
* the storage of unknowns;
*a Sodium Components Maintenance Shop (SCMS) storage capacity increase;
*separating out information about the Specific Manufacturing Capability (SMC/TAN) information in Volume 11 for the WERF into a new volume as a standalone document;
*Transfer of capacity from the Mixed Waste Storage Facility to the MWSF portable storage unit;
*IDEQ concerns about decreasing the frequency of fire extinguisher inspections being less stringent than Occupational Safety and Health Act (OSHA) and National Fire Protection Association standards;
*Conceptual plans for closure of the Tank Farm Facility;
*Contingency Plans and Emergency Plans and a presentation of their conflicts;

*The need to add 12 portable storage units to the WERF Waste Storage Building;
*Fire protection and emergency procedures;
*a decision to remove D-Cell from the Part B permit application, but to continue to use it under interim status as a storage unit;
*presentation of a draft plan to IDEQ by DOE for the New Waste Calcining Facility Off-Gas sampling effort;
*Transfer of usage of a Building Number WMF-634, to British Nuclear Fuels Limited for their use during the construction of the Advanced Mixed Waste Treatment Facility (AMWTF) and whether or not a permit would be needed for the transfer;
*Interim status permit Rev. 19- increase storage capacity at SCMS.

A 1998 lawsuit brought by Keep Yellowstone Nuclear Free; the Environmental Defense Institute; the Snake River Alliance Education Fund; the Sierra Club and the Jackson Hole Alliance contended that "DOE made its critical decisions about the Plutonium Incinerator behind closed doors and out of the public view, in violation of federal law." The minutes clearly demonstrate that as early as 1996 the DOE and IDEQ had secret discussions underway for what later became a highly controversial project for nuclear waste incineration, the Advanced Mixed Waste Treatment Facility (AMWTF). The April 10, 1996 minutes recited "... DOE's current plans for the Advanced Mixed Waste Treatment Facility (AMWTF). Fred Hughes presented a 5-year strategy to meet established milestones from the present to when the AMWTF comes on line. Activities would be accomplished within current funding boundaries using the revised TRU program strategy. The first shipment to WIPP is projected for FY98 when WIPP opens with at least 15,000 containers to be shipped by December 31, 2002."

In the minutes from October 23, 1996 the award of the Advanced Mixed Waste Treatment Facility contract is mentioned as being briefly discussed.

Without being able to maintain a public presence at the Quarterly Meetings the public is denied the opportunity to identify when a public hearing should be reopened for provision of insufficient information or identification of new information affecting the permit application record. The Meeting Summary of Actions/Agreements from September 2000 Quarterly Meeting contains numerous permitting topics. Item #6 is regarding the Volume 18 Debris Processing Part B Permit Status: AIDEQ stated that permitting for the Volume 18 units was delayed pending submittal of additional floodplain information and a letter requesting this information would be issued to DOE/BBWI. "The need for the 100-year overland flow analysis for INTEC RCRA units was also discussed." IDEQ was thus requesting significant floodplain information which had not been made part of the Volume 18 document record which was presented to the public as part of the RCRA Volume 18 for which McCoy and Environmental Defense Institute Executive Director Chuck Broscious had requested a public hearing held in July, 2000.

Without being able to maintain a public presence at the Quarterly Meetings the public was denied the opportunity to identify violations of 40 CFR Part 124 preapplication permitting procedures which were engaged in by the IDEQ and the DOE for Volume 14 Part B Permit. IDEQ enabled DOE to begin the Part B application process without furnishing the public a timely preapplication hearing required by 40 CFR Part 124. Volume 14 covers Calcine Solid Storage Facility, PEW (Process Equipment Waste) Evaporator, PEW Feed Storage and

Treatment Tanks and High Level Tank Farm. The September 2000 Quarterly Meeting Summary of Actions/Agreements Item #7 indicates the "Volume 14 update/status of IDEQ review- IDEQ has completed a preliminary review, comments to be transmitted by the end of September to DOE/BBWI." Item #8 indicates "Volume 14 public participation requirements - BBWI stated that the requirements for public participation will be met prior to the submittal of the full application, IDEQ encouraged holding the required public meeting early in the application process." IDEQ did not enforce its "encouragement." The DOE did not provide the required RCRA Expanded Public Participation Plan preapplication meeting to the public prior to its submission of Volume 14 Part B to the IDEQ. The June Quarterly Meeting Minutes at p. 12 reveal that the DOE held discussions with the IDEQ regarding the PEWE Part B permit application with submission of Section D to IDEQ for informal review by July 2000. Upon 12/6/00 telephonic information obtained from DOE Kirk Nielsen, DOE has also submitted a Section F to the IDEQ for Volume 14. The June 2000 Quarterly Meeting Minutes states, "The potential for conducting another session at the IDEQ was discussed, and it was agreed that a higher level session presenting an overview of the INTEC functions and units and challenges to permitting was more appropriate. The intent of this [July 17, 2000] session will be to familiarize upper-level IDEQ personnel with the INTEC and the type of information contained in the permit applications. Tentative plans are to set up this session in mid-July to coincide with the delivery/discussions of the PEWE Section D."

In the February 3, 1997 Quarterly Meeting, the IDEQ allowed the DOE to avoid the RCRA Expanded Public Participation Rule (40 CFR 124.31) requiring a noticed public preapplication hearing prior to submission of a RCRA Part B Permit application for Volume 18 radioactive Debris Processing. The original Part B application for Volume 18 had been submitted March 1996 and then withdrawn by DOE as noted in the April 24, 1996 Quarterly Meeting Minutes. A significantly different Part B application to include a miscellaneous unit as opposed to a containment building, debris treatment and HEPA filter leach process was not resubmitted until 1/6/97 after the period when the Expanded Public Participation Rule became effective in Idaho. The EPA Rule became final 12/11/ 1995 (60 FR 63417). The Rule was to become effective in Idaho on 12/1/96 according to the 3/3-3/4/96 Minutes of the Quarterly Meeting presentation to the DOE by IDEQ Pam Smolczynski presentation regarding the Rule. Also, as noted in the Idaho Board of Health and Welfare Minutes of June 19, 1997 at p. 9 John Brueck, Hazardous Waste Program Development Manager for IDEQ, explained that the federal expanded public participation rule "was adopted by reference in 1996." The INL Site Treatment Plan Meeting Minutes 1/29/97 state: "The IDEQ questioned if the submittal of the RCRA Part B Permit for the HEPA Filter Leach and Debris Treatment facilities were successfully met since the permits were submitted without first obtaining public input under the recently promulgated Public Participation Rule. This rule requires Interim Status facilities that are seeking a full RCRA Part B Permit to hold a public meeting prior to submittal of the RCRA Part B Permit application and to include any public comments as part submittal." As reflected in the Quarterly Meeting Minutes of 3/3-3/4/97, the violation of the preapplication hearing rule occurred by what appears to be an informal rulemaking process. The 3/3/97 minutes state:

"* A brief discussion regarding the Volume 18 [Debris Processing] submittal was held. DOE believes the submittal is not subject to the new Rule, even though the original submittal was withdrawn;

*Any new application submittals will be subject to the new Rule."

If allowed, public attendance at the Quarterly Meeting of November 16, 1995 (Meeting Minutes at p. 4) could have alerted the public to the fact that the Waste Experimental Reduction Facility ("WERF") "is the first combustion unit on the facility to be evaluated" and that the cumulative risk from all thermal treatment units on the INL had never been calculated. The public could have been informed that it was unknown if the total risk from all units was unacceptable or not and the DOE had not yet been required to make whatever changes were necessary to reduce the risk to acceptable levels. The Public could have learned that; "It is not likely that waste characterization through process knowledge will be adequate for incineration and/or performance based treatment technologies."

At the 11/16/95 meeting the DOE presented the IDEQ with a draft of the Trial Burn Plan for the WERF. The public could have been informed of the inadequacy of the draft trial burn plan which failed to call for both low and high temperature burns. Without the high temperature burn the products of incomplete combustion (PICs) could not be determined which include fiendishly toxic substances such as dioxins/furans. Other concern included metals analysis, chlorine loading and BTU loading (BTU per box to prevent puffs of PICs with high BTU wastes).

Discussions were held regarding disposal of hazardous wastes at the Radioactive Waste Management Complex and whether this facility was suitable as a Subtitle D landfill.

February 8 & 9, 1996 Minutes state that (at p. 2) "Brian English commented on the *permitting process* and the importance of maintaining compliance with an issued permit being a **top** priority. ANL-W was non-compliant for about two years prior to submitting the permit modification request."

The July 10-11, 1996 minutes indicate the serious magnitude of 28 floor cracks at the Waste Storage Facility (WSF) storage modules. "The adequacy/frequency of inspections in light of containment system integrity, pinholing containers and precipitation puddling was discussed."

7/10-11/96, Don Rasch, of DOE, discussed "the possibility of creating a pulp and paper type of exemption" to the EPA Maximum Achievable Control Technology rule which applied new air emissions standards to DOE incinerators and facilities.

7/10-/11/96, inspection issues were discussed regarding the inability to "satisfy container inspection requirements within hot facilities."

Public observance of wrongful DOE conduct and IDEQ complicity is avoided by the secret quarterly meetings. The February 8 & 9, 1996 meeting minutes show violation of RCRA law in that DOE admitted to IDEQ that "... DOE is going ahead with the closure process of several units/areas even though the submitted plans have not actually been approved by IDEQ. Randy Steger [IDEQ] indicated that IDEQ does not have a problem with DOE doing this with tanks, but that there is a problem with areas that have residual contamination. Bob then pointed out that the TAN-647 Sodium Storage Unit is an example of a unit having interim status that is now being used for no-RCRA storage purposes. It is ***critical*** to document ***all*** activities at hazardous waste units until closure activities are complete and PE Certification is received. DOE needs to formulate a closure strategy." (Emphasis in original).

The minutes of April 23 & 24, 1996 have an attachment regarding the INL waste management processes to be operated under interim status /consent order. The document was part of the draft RCRA Part B Permit Application Work Plan for the INL. The document provides a list of units that were deemed **"unpermittable"** under RCRA and will continue to operate under interim status and a consent order. [page 1, Received by Division of Environmental Quality April 26, 1996] Among the facilities were:

CPP 601 WG/WH cells Storage and Treatment Tanks;
CPP 603 Storage Tank;
CPP 604 PEW Evaporators;
CPP 604 PEW Feed/Storage and Treatment Tanks;
CPP 604 PEW Condensate/Feed Storage Tanks;
CPP 604 Tank Farm Tanks;
CPP 641 Westside Holdup Storage Tanks;
CPP 659 NWCF Calciner;
CPP 659 NWCF Evaporator Tank System;
CPP 659 NWCF HEPA Filter Leaching System;
CPP 659 NWCF Storage and Treatment Tanks;
CPP 1618 LET&D Evaporators;
CPP 1618 LET&D Nitric Acid Recycle Storage Tank;
CPP 1618 LET&D Storage Tanks;
Calcined Solids Storage Facility;
ICPP Tank Farm.

Clearly, the Idaho public had an interest to know about the above major facilities at INL which could not qualify for RCRA permits and which were exposing the public to radionuclides such as plutonium, heavy metals such as mercury, volatile organic compounds like dioxins and releasing enormous amounts of greenhouse gases. The IDEQ's and DOE's later submission of Part B Permit Applications would seem to have been nothing more than hollow gestures to keep unpermittable facilities operating. Neither the NWCF nor the WERF could pass the trial burns which were run subsequent to this memorandum but the facilities were allowed to operate through the ruse that a permit application was filed with the IDEQ. Public attendance and receipt of this documentation could have allowed the public to question the actions of the IDEQ and DOE to allow facilities to operate which were required to have successful trial burns prior to operation. Additionally, the facilities were illegally maintained on interim status for eight years past the RCRA requirement that interim status facilities had to be permitted by November 8, 1992.

The minutes of 4/23/96 demonstrate that decisions are approved at quarterly meetings whereby Consent Orders are used by DOE and IDEQ to keep facilities operating when the facility cannot be permitted under RCRA. CPP-601 WG/WH Cells Storage and Treatment Tanks may be put under the consent order with adequate justification if no justification can be provided they need to be permitted.

The June 2000 minutes have a discussion between the DOE and IDEQ of a plan to frustrate my own and the Troy-based Environmental Defense Institute's attempts to obtain a RCRA public hearing about a radioactive debris processing permit. IDEQ proposed to contact us to dissuade us

from our hearing requests in order to speed the permit issuance. We were contacted by the Attorney General Office and IDEQ representatives after our requests and were told that we had no legal right to a hearing.

The June 2000 minutes demonstrate the use of secret meetings to circumvent permitting requirements for hazardous waste facilities at INL by simply redefining a facility as something else. The "path forward" on the LET&D, which clearly is involved in the processing of mixed radioactive wastes subject to RCRA requirements as a thermal treatment unit has a facility assessment which "is in preparation and will present the INL position that the LET&D unit is a ***reclamation unit, and should be exempted from permitting requirements***. The anticipated completion for the LET&D and high level waste evaporator (HLLWE) facility assessments is the end of September 2000." (Emphasis supplied). The PEW and the LET&D both have evaporators and process high level waste. There is no explanation as to why the PEW should be subject to RCRA Part B permit requirements whereas the LET&D should be defined as a reclamation unit, exempt from permit requirements.

**Summary**

In summary EDI opposes EPA reauthorization of Idaho and to grant Idaho final authorization to operate its hazardous waste management program with the changes described in the authorization application. Idaho must not continue to have responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA).

As discussed at length in this report there is a tragically long history of non-enforcement of all environmental laws at Department of Energy's INL site by the cognizant regulators. Moreover, EPA's continued failure to enforce its own statutes remains a fundamental public/environmental hazard that will only change with a change in both federal and state administrations. As a relatively poor state, Idaho is no match for the political/economic weight the federal government wields as the largest single employer in the state.

As discussed above, there was a brief period after the 1995 Settlement Agreement and Federal Court Consent Order that provided some balance to previous DOE lawless operations. Despite this significant and unprecedented judicial intervention, it was compromised by subsequent EPA/IDEQ unwillingness to take DOE back to court and show how the Settlement Agreement is being violated. EDI has no illusion that this discussion will have any impact on EPA discussion on Idaho's request for authorization of RCRA enforcement given the agency's long history with any enforcement of DOE operations. DOE will continue to use Idaho as its hazardous/radioactive waste dump without fear of any significant environmental statute enforcement.

Respectfully submitted

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**End Notes**

**[1]** David McCoy, JD. and Chuck Broscious February 5, 2001, Petition "Issues Presented to United States Environmental Protection Agency, Inspector General on Idaho National Engineering and Environmental Laboratory Violations of Environmental laws submitted on behalf of Keep Yellowstone Nuclear Free and Environmental Defense Institute. This report is a presentation to the U.S. Environmental Protection Agency Inspector General prior to the forthcoming investigation of the Idaho National Engineering and Environmental Laboratory (now INL) that will review environmental statute violations.

Keep Yellowstone Nuclear Free (KYNF) and the Environmental Defense Institute (EDI) et.al. filed suit in 1999 with the Department of Energy (DOE) over the planned Advanced Mixed Waste Treatment Plant slated for construction at the Idaho National Laboratory (INL). This suit was settled with stipulations that an alternative to incineration of nuclear waste be identified and implemented. To date that stipulation has been implemented by elimination of the incineration portion of the project.

On April 11, 2000, KYNF, EDI, and Attorney David McCoy ("Plaintiffs") filed a notice of Intention to Sue DOE over failure to comply with Resource Conservation Recovery Act (RCRA) and Clean Air Act in operation of the New Waste Calcining Facility high-level nuclear and chemical waste incinerator at INL.

On May 5, 2000, the Plaintiffs filed a Notice of Intent to Sue EPA and the State of Idaho

over failure to comply with Resource Conservation Recovery Act (RCRA) and Clean Air Act in operation of the New Waste Calcining Facility high-level nuclear and chemical waste incinerator at INL. The plant was subsequently shut down pending a review under the National Environmental Policy Act (NEPA).

On August 8, 2000, the Plaintiffs filed a notice with Environmental Protection Agency (EPA) Office of Inspector General and the DOE Office of Inspector General requesting an investigation of the State of Idaho Department of Environmental Quality (IDEQ), EPA Region 10, and DOE Idaho Operations Office concerning RCRA, Clean Air Act, and Toxic Substances Control Act (TSCA) permitting procedures at INL.

On September 6, 2000, the Plaintiffs filed a notice of Intent to Sue DOE, EPA, and the State of Idaho over RCRA and Toxic Substances Control Act (TSCA) violations in operation of the Waste Experimental Reduction Facility (WERF) which was subsequently shut down.

On September 19, 2000, the Plaintiffs filed a Notice of Intent to Sue the State of Idaho for a Petition for Declamatory Ruling, and imposition of financial sanctions against DOE for failure to furnish a Calciner closure plan as mandated by the Second Modification to the Consent Order and by the RCRA.

On September 18, 2000, the Plaintiffs filed with EPA Inspector General and the USDOE Inspector General another request to investigate the INL Specific Manufacturing Capability operation for RCRA, TSCA, and Clean Air Act violations.

**[2]** Environmental Defense Institute , August 8, 2003, letter to Kwai Chan, Assistant Inspector General, U. S. Environmental Protection Agency Office of Inspector General. We are concerned that your office has not responded to our Petition, originally filed to your office August 8, 2000, together with supplemental Petition submittals related to the Department of Energy and the State of Idaho's failure to comply with relevant environmental statutes and regulations at the Idaho National Laboratory (INL). We have submitted extensive documentation which validates the assertions we made in the August 8, 2000 Inspector General Complaint as well as the Petition discussing Idaho's failure to competently regulate numerous aspects of DOE's INL operations. We are additionally concerned that EPA Region 10 issued a public notice, dated 7/9/03, of EPA's preliminary approval of the final authorization to the State of Idaho to revise its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). This action appears to ignore the ongoing EPA Inspector General's (EPA/IG) investigation into our allegations of Idaho's mismanagement of its RCRA program. In our view, EPA Region 10 is obligated to delay Idaho's permanent RCRA authorization until the EPA/IG issues it findings.

**[3]** Environmental Defense Institute and Keep Yellowstone Nuclear Free March 13, 2007, to Petition to Bill Roderick Acting Inspector General U. S. Environmental Protection Agency Office of Inspector General. ("Petitioners") hereby request that the U.S. Environmental Protection Agency Office of Inspector General conduct a formal investigation of EPA Region-10 February 26 2007 final ruling on our 11/9/06 petition opposing EPA's Idaho Authorization of State Hazardous Waste Management Program Revision. EPA Region 10's ruling is included in Attachment B. Petitioners believe that EPA Region-10 ruling offered inadequate and inconclusive legal and regulatory justification to substantiate their ruling to re-authorize Idaho Department of Environmental Quality (IDEQ). Petitioners offered in Attachment A, our joint comments to IDEQ on their "Intent to Permit" a new mixed hazardous and radioactive treatment

operation. These comments articulate significant continuing deficiencies in IDEQ's RCRA/HWMA current permitting process stated in: Preliminary Comments on U.S. Department of Energy Class 3 Modified Permit to the Volume 14 for the Idaho Nuclear Technology and Engineering Center (INTEC) at the Idaho National Laboratory, Permit Number EPA ID No. ID4890008952I, INTEC Liquid Waste Management System and the Integrated Waste Treatment Unit. IDEQ Public Notice of Intent 1/26/07 to approve Class 3 Permit Modifications of Volume 14, Docket Number 10HW-0701.

**[4]** Environmental Defense Institute report "What is Buried at Idaho National Laboratory's Radioactive Waste Management Complex Subsurface Disposal Area" Five Year Review CERCLA Cleanup Operational Unit (OU-7-13/14 ), Draft Supplemental Analysis for Two Proposed Shipments of Commercial Spent Nuclear Fuel To Idaho National Laboratory for Research and Development, Compiled for Environmental Defense Institute by Chuck Broscious, July 30, 2015-A.

**[5]** Environmental Defense Institute, Review of the Mixed Hazardous Radioactive CERCLA Waste Cleanup Policy at the Radioactive Waste Management Complex Subsurface Disposal Area Department of Energy's Idaho National Laboratory Submitted by Chuck Broscious on behalf of Environmental Defense Institute August 2018 Rev. 4.0.

This report lays out the Department of Energy's Idaho National Laboratory Radioactive Waste Management Complex/Subsurface Disposal Area CERCLA cleanup process and the policy decisions that went into how DOE is compromising Idaho's water future. How did we get to where we are today and why DOE is leaving hazardous nuclear waste buried at the INL and calling it "clean enough"? DOE's decision to leave 90% of the buried waste in the dump and violate the 1995 Settlement Agreement and Federal Court Consent Order with the State of Idaho is a crucial threat to our states' safe water future by failing its commitment to cleanup its nearly 70 year nuclear legacy waste. DOE's priority to spent >$1 trillion on building new nuclear weapons rather than spent only $ ~600 million to cleanup the huge environmental disaster from the last nuclear production legacy. This represents the warped priority and values the federal government places on Idaho's water future that is unconscionable by any health and human rights standards.

This report also reviews both the policy setting Environmental Supplement Analysis for the Treatment of Transuranic Waste and the Record of Decision for the RWMC because they both cover the same policy area and contain the same fundamental flaws related to the DOE's mismanagement of the RWMC. EDI's primary focus is on the existing legacy waste, the problems with the "Accelerated Retrieval Program" intended to remediate the dump (illegally leaving mixed hazardous/radioactive waste in-place) and the importation of additional TRU waste to INL from other DOE nuclear sites.