BEFORE THE HAZARDOUS MATERIALS AND WASTE MANAGEMENT DIVISION

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

STATE OF COLORADO

Compliance Order No. 95-10-03-01

ORDER REQUIRING COMPLIANCE WITH SITE TREATMENT PLAN

IN THE MATTER OF THE UNITED STATES DEPARTMENT OF ENERGY,
ROCKY FLATS ENVIRONMENTAL TECHNOLOGY SITE

This Compliance Order ("Order") is issued to the United States Department of Energy ("DOE") by the Colorado Department of Public Health and Environment through the Hazardous Materials and Waste Management Division ("Colorado" or "CDPHE" or "the State") pursuant to (i) CDPHE's authority under the Colorado Hazardous Waste Act ("CHWA"), § 25-15-308, C.R.S., (1989 & 1995 Supp.); (ii) State implementing regulations found at 6 CCR 1007-3, § 268; and (iii) the Federal Facility Compliance Act of 1992 ("FFC Act"), 42 U.S.C. § 6901, et seq.

I. INTRODUCTION

1. This Order is entered into by the parties for two purposes. One purpose relates to Mixed Low-Level ("MLL") waste. In that regard this Order is to approve with modifications the Proposed Site Treatment Plan for the Rocky Flats Environmental Technology Site ("Rocky Flats" or "RFETS") that was submitted to the State by DOE in April of 1995 pursuant to § 105 of the FFC Act, 42 U.S.C. § 6939c(b)(2), and to require compliance by DOE with the Site Treatment Plan as herein modified and approved. A copy of the Proposed Site Treatment Plan is attached hereto as Exhibit A and incorporated herein by reference.

2. The other purpose for this Order relates to Mixed Transuranic waste. In that regard this Order is to establish an Agreement addressing compliance with § 3004(j) of the Hazardous and Solid Waste Amendments of 1984 ("HSWA") to the Resources Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6924(j), and to require compliance by DOE with said Agreement.

3. As provided for by this Order, Colorado hereby APPROVES the Plan as modified herein, and DOE SHALL HENCEFORTH COMPLY WITH IT.

II. JURISDICTION

4. This Order is issued pursuant to the CHWA, RCRA § 6001, and the FFC Act.

5. The FFC requires the development and submittal for each facility at which DOE generates or stores mixed wastes a plan for developing treatment capacities and technologies to treat all of the facility's mixed wastes, regardless of the time said mixed wastes were generated, to the standards promulgated pursuant to section 3004(m) of RCRA (otherwise known as "Land Disposal Restrictions" or "LDR"). See 42 U.S.C. § 6939c(b)(1). The term "mixed waste" is defined in 42 U.S.C. § 6903(41) to mean waste that contains both hazardous waste and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. § 2011, et seq.). Pursuant to 42 U.S.C. § 6939c(b)(2), Colorado shall approve, approve with modifications, or disapprove said plan within six (6) months after receipt, and upon approval of the plan issue an Order under appropriate State authority requiring compliance with the approved plan.

6. The FFC Act also allows, pursuant to 42 U.S.C. § 6939c(b)(5), a State to waive the requirement for DOE to develop and submit a plan pursuant to subsection 6939c(b)(1) for the treatment of all mixed wastes to LDR standards if the State and DOE enter into an agreement that addresses compliance with § 3004(j) of RCRA, 42 U.S.C. § 6924(j). Section 3004(j) prohibits the storage of hazardous waste prohibited from land disposal unless such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal.

7. DOE proposes to achieve compliance with the requirements of the FFC Act for Mixed Transuranic waste by continuing interim storage until the New Mexico Waste Isolation Pilot Plant ("WIPP") is operational; to characterize, certify, process if necessary, and package the waste to meet WIPP's Waste Acceptance Criteria ("WAC"); and to permanently dispose of the waste at WIPP. It is the State's position that in light of the Proposed Site Treatment Plan for Mixed Transuranic waste submitted by DOE for Rocky Flats, the appropriate jurisdictional basis for entering into this agreement regarding Mixed Transuranic Waste is as set forth in paragraph 8, below. While DOE disagrees with the premise on which the State's position on this matter is based, it agrees to the State's jurisdictional basis as set forth in paragraph 8, below.

8. While for practical purposes DOE's Proposed Site Treatment Plan addresses both MLL waste and Mixed Transuranic waste, DOE and CDPHE acknowledge that jurisdictionally each type of waste is addressed by this Order under separate provisions of the FFC Act, as described below.

a. Regarding MLL waste, this Order constitutes (i) CDPHE's approval with modifications of DOE's Proposed Site Treatment Plan pursuant to 42 U.S.C. § 6939c(b)(2)(A); and (ii) an order requiring compliance with the approved Site Treatment Plan pursuant to 42 U.S.C. § 6939c(b)(2)(C) and the CHWA.

b. Regarding Mixed Transuranic waste, this Order constitutes (i) an Agreement between DOE and CDPHE pursuant to 42 U.S.C. § 6939c(b)(5)(A)(i) that addresses compliance with the storage prohibition of § 3004(j), and (ii) an order pursuant to 42 U.S.C. § 6939c(b)(5)(A)(ii) and the CHWA requiring DOE's compliance with that Agreement. Pursuant to 42 U.S.C. § 6939c(b)(5), these technically constitute a "waiver" of the requirement for DOE to submit a plan pursuant to the requirements of 42 U.S.C. § 6939c(b)(1) for Mixed Transuranic waste, but as has already been stated, for practical purposes both MLL waste and Mixed Transuranic waste are addressed in the same Plan.

9. For purposes of entry and enforcement of this Order, DOE waives any objection to jurisdiction of CDPHE. By entering into this Order, DOE does not admit, accept or concede the determinations, allegations, findings of fact, and conclusions of law set forth in this Order, except as otherwise specified, and each party specifically reserves the right to contest any such determinations, allegations, findings of fact, and conclusions of law in any proceeding other than actions brought to enforce this Order.

10. By entering into this Order, DOE does not waive any claim of sovereign immunity it may have under Federal law that is not expressly waived by statute; nor does it waive any claim of jurisdiction over matters reserved to it under the Atomic Energy Act.

III. COVERED MATTERS

11. Except as specifically set forth elsewhere in this Order, this Order shall only apply to and require compliance with the Site Treatment Plan as approved, which governs compliance with the FFC Act as it pertains to past, on-going and future generation, accumulation, storage, and treatment of:

a. the hazardous waste portion of mixed waste, excluding backlog mixed residues as described in Paragraph 13(t) herein; and

b. the hazardous waste portion of Mixed Low-Level wastes generated from the treatment or processing of backlog mixed residues

located at the RFETS which, regardless of the time of generation or placement into storage, do not meet the LDR treatment standards promulgated pursuant to § 3004(m) of HSWA (42 U.S.C. § 6924(m)) and corresponding State law. These wastes are referred to herein as "covered wastes." It is the intent of the Parties that "covered wastes" shall include wastes generated and/or stored prior to the date when such wastes became subject to the prohibition on land disposal.

12. The Parties acknowledge that this Order does not address corrective or remedial action pursuant to RCRA, HSWA, CHWA, or CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499), nor does this Order address RCRA/CHWA compliance issues other than those compliance issues specifically addressed herein. The Parties acknowledge that this Order does not affect the jurisdiction and rights of the State of Colorado to address RCRA and CHWA compliance issues not specifically covered by this Order pursuant to State or Federal authority.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. The following constitute the Findings of Fact and Conclusions of Law that Colorado considers the basis for this Order. Nothing in this Order shall be considered an admission, acceptance or concession by any Party, except that DOE agrees not to challenge the following Findings of Fact and Conclusions of Law contained in this Paragraph in any action taken to enforce this Order.

a. The RFETS is located in northern Jefferson County, Colorado, approximately 16 miles northwest of Denver.

b. The RFETS was established by the United States Atomic Energy Commission in 1951 and began operations in 1952. The RFETS has been used for the production of components for nuclear weapons in accordance with DOE's authority and responsibility under the Atomic Energy Act. The RFETS's present mission is to clean up contaminated facilities, processes, materials, soils and water; and to properly manage, process, treat, store and dispose at acceptable receiver sites all excess material and waste in order to reduce risks to safety,

health and the environment to acceptable levels.

c. The RFETS is a government owned and operated, contractor co-operated facility.

d. The RFETS is owned by the United States and is part of the DOE nuclear weapons complex.

e. DOE is a department of the Federal government and is subject to regulation of its hazardous waste management activities pursuant to § 6001 of RCRA, 42 U.S.C. § 6961, and Executive Order 12088.

f. On or about August 18, 1980, DOE and its then operating contractor, Rockwell International Corporation, submitted a Notice of Hazardous Waste Activity to EPA pursuant to § 3010 of RCRA. DOE and Rockwell identified themselves as engaged in generation, treatment, storage, and/or disposal of hazardous waste at the RFETS. On or about November 14, 1980, DOE and Rockwell submitted a RCRA Part A permit application to EPA in order to qualify for RCRA interim status.

g. DOE is the "owner" and "operator" of RFETS, a hazardous waste treatment, storage and disposal facility, as those terms are defined in 40 CFR Part 260.10 and 6 CCR 1007-3, § 260.10.

h. DOE is a "generator" of hazardous waste at RFETS as that term is defined in 40 CFR Part 260.10 and 6 CCR 1007-3, § 260.10.

i. The RFETS is a "facility" as that term is defined at 40 CFR Part 260.10 and 6 CCR 1007-3, § 260.10.

j. The LDR regulations were first promulgated by EPA on November 7, 1986, for listed solvents and dioxins (51 Fed. Reg. 40572). On July 8, 1987, EPA promulgated regulations for "California List Wastes" (52 Fed. Reg. 25760). Radioactive waste mixed with listed solvent wastes and dioxins or California List Waste is prohibited from land disposal pursuant to the solvent, dioxin and California List land disposal prohibitions.

k. The LDR regulations for the "First Third"

of scheduled wastes were promulgated on August 8, 1988 (53 Fed. Reg. 31138); for the "Second Third" on June 8, 1989 (54 Fed. Reg. 26594); and, for the "Third Third" on May 8, 1990 (55 Fed. Reg. 22520). In the Third Third rule, EPA granted a two-year national capacity variance for mixed wastes covered in the rule. Such wastes which went into storage prior to or during the period of the National Capacity Variance are not directly subject to the LDR storage prohibitions.

l. Pursuant to § 3006(g) of RCRA, requirements or prohibitions applicable to the generation, transportation, treatment, storage or disposal of hazardous waste imposed by or through HSWA take effect immediately in authorized states and are enforceable by EPA.

m. Pursuant to § 3006(b) of RCRA, 42 U.S.C. § 6926(b), on November 2, 1984, the Administrator of EPA authorized the State of Colorado to administer and enforce the State hazardous waste program in lieu of the Federal program. The State was authorized to regulate radioactive mixed waste on November 7, 1986, and was further authorized to administer and enforce certain portions of the HSWA amendments on July 14, 1989. On July 13, 1991, CDH received authority to administer the California List, solvents and dioxins portion of the LDR portion of HSWA. On April 7, 1994, Colorado received final authorization, effective June 6, 1994, over the First, Second, and Third Third Land Disposal Restrictions. See 59 Fed. Reg. 16568.

n. The LDR regulations prohibit the land disposal of hazardous wastes identified therein (other than those wastes that qualify for an exemption from the restrictions pursuant to 40 CFR Part 268.6) which have not been treated with specified technologies or to treatment standards as specified in 40 CFR Part 268 and 6 CCR 1007-3, § 268.

o. Certain hazardous wastes that are prohibited from land disposal pursuant to HSWA and CHWA are currently generated and stored at RFETS.

p. Pursuant to 40 CFR Part 268.50 and 6 CCR 1007-3, § 268.50, it is unlawful to store

hazardous wastes that have been prohibited from land disposal except for the purpose of accumulating quantities necessary to facilitate proper recovery, treatment, or disposal of such wastes. The storage prohibitions directly apply only to those hazardous wastes subject to LDR that are placed in storage units after their respective LDR prohibition dates.

q. Colorado satisfies the requirements of the FFC Act, 42 U.S.C. § 6939c(b)(2), in that it has (i) authority under Colorado law to prohibit land disposal of mixed waste until the waste has been treated, and (ii) both authority under State law to regulate the hazardous components of mixed waste and authorization from the Environmental Protection Agency under 42 U.S.C. § 6926 to regulate the hazardous components of mixed waste. Colorado is therefore an appropriate State to which DOE must submit for review and approval, modification, or disapproval the Site Treatment Plan for Rocky Flats.

r. DOE brought to EPA's attention that DOE is currently storing certain radioactive mixed wastes containing hazardous wastes prohibited from land disposal, and that such storage may be considered as not for the purpose of accumulating quantities necessary to facilitate proper recovery, treatment, or disposal of such wastes. The storage of such radioactive mixed waste has not been for the purpose of accumulating quantities necessary to facilitate proper recovery, treatment, or disposal of such wastes, and constitutes a violation of applicable hazardous waste law and regulations, including regulations found at 40 CFR Part 268.50 and 6 CCR 1007-3, § 268.50.

s. On November 3, 1989, DOE and CDPHE entered into Settlement Agreement and Compliance Order on Consent No. 89-10-30-01 that addresses the application of RCRA and the Colorado hazardous waste regulations to "residues" at the RFETS. Residues are materials that DOE asserted were recyclable for purposes of recovering valuable plutonium, highly enriched uranium, americium or neptunium. The United States District Court for the District of Colorado, in Sierra Club v. US DOE and Rockwell, 734 F. Supp. 946

(1990), determined that the hazardous waste portion of certain "residues" ("backlog mixed residues") located at RFETS were covered by the requirements of RCRA.

t. On August 1, 1991, the State of Colorado, through CDPHE, filed a Complaint against DOE regarding backlog mixed residue compliance, pursuant to RCRA, 42 U.S.C. § 6901 et seq., the Colorado Hazardous Waste Act (CHWA), §§ 25-5-101 to 407, C.R.S. (1989), and their implementing regulations. Negotiations towards settlement of this case, CDH v. US DOE, 91-B-1326 (D. Colo.), resulted in a Settlement Agreement and Compliance Order on Consent ("Backlog Mixed Residue Agreement and Order") dated April 23, 1993. That Agreement and Order establish requirements for DOE to process and manage backlog mixed residues for eventual shipment and disposal. Pursuant to the Backlog Mixed Residue Agreement and Order, DOE is to develop annual plans for CDPHE approval, to manage the backlog mixed residues and place them in compliant storage locations, pending final disposal. The backlog mixed residues excluded under Paragraph 11(a) of this Agreement are those backlog mixed residues described in Appendix A of the Backlog Mixed Residue Agreement and Order.

u. On October 6, 1992, the FFC Act became law. This legislation amended the waiver of sovereign immunity found in RCRA § 6001 to extend that waiver to include civil and administrative penalties for violations of federal or state hazardous waste laws. The FFC Act made explicit that the waiver extends to administrative orders and to all aspects of hazardous waste management. The FFC Act also mandated that DOE develop mixed waste Site Treatment Plans for each of its facilities for approval by the appropriate regulatory authority. As discussed above, in the case of Rocky Flats, CDPHE is the appropriate regulatory authority.

v. Pursuant to 42 U.S.C. § 6939c(c)(1), on April 6, 1993, DOE published in the Federal Register a schedule for submitting the plans required under the FFC Act. See 58 Fed. Reg. 17875. Pursuant to that schedule, in October 1993 DOE submitted to Colorado and made available to the public a "Conceptual" Site

Treatment Plan. In August 1994 DOE submitted to Colorado and made available to the public a "Draft" Site Treatment Plan. The 1993 schedule provided for the submittal of a "Proposed" Site Treatment plan on or before February 28, 1995, but on that date DOE modified its schedule to allow for submittal to Colorado of the Proposed Site Treatment Plan on March 31, 1995. See 60 Fed. Reg. 10840.

w. On April 3, 1995, DOE submitted to Colorado a Proposed Site Treatment Plan, which consists of a Background Volume and Compliance Plan Volume. See Exhibit A.

x. Shortly after the submittal of the Proposed Site Treatment Plan, notices of its availability were published in the Rocky Mountain News and the Denver Post, which are newspapers of general circulation in the Denver metropolitan area, and the submitted plan was made available to the public on request and was also available to the public at the Rocky Flats Public Reading Room located at the Front Range Community College in Westminster, Colorado. On May 24, 1995, Colorado received public comment on the Proposed Site Treatment Plan at a public meeting held at the Ramada Inn in Westminster, Colorado. While Colorado solicited written public comment, to date none has been received. Colorado has considered the public comments received at the May 24th meeting in making its determination on the Proposed Site Treatment Plan.

y. Colorado has considered the need for regional treatment facilities for the mixed waste already stored and to be generated at Rocky Flats, and has consulted with the Administrator and other States in which a facility affected by the Plan is located.

V. APPROVAL OF THE PLAN

14. Regarding Mixed Low-Level waste and pursuant to 42 U.S.C. § 6939c(b)(2) (A), CDPHE HEREBY APPROVES WITH MODIFICATIONS the Background Volume and Compliance Plan Volume of the Proposed Site Treatment Plan submitted by DOE to CDPHE in March of 1995. The specific parts of the Background Volume and Compliance Plan Volume of the Proposed Plan that are approved, disapproved, and

approved with modifications are in Exhibit B, which is attached hereto and incorporated herein by reference. The Site Treatment Plan consists not only of the already submitted Background and Compliance Plan Volumes, but also shall include the Annual Reports and Quarterly Progress Updates described in Section IX herein (Updating and Modifying the Plan). The entire Plan as modified and updated shall be referred to hereinafter as "the Plan as approved" or "the Site Treatment Plan as approved".

VI. ORDER REGARDING MIXED LOW-LEVEL WASTE

15. Pursuant to 42 U.S.C. § 6939c(b)(2)(C) and § 25-15-308, C.R.S., DOE is hereby ORDERED and agrees to comply with the Site Treatment Plan as approved regarding Mixed Low-Level waste.

VII. AGREEMENT REGARDING MIXED TRANSURANIC WASTE

16. Pursuant to 42 U.S.C. § 6939c(b)(5)(A)(i), DOE and CDPHE hereby AGREE that the Site Treatment Plan as approved adequately addresses compliance for Mixed Transuranic waste with the storage prohibition at § 3004(j) of RCRA so long as the following requirements are satisfied: (i) WIPP shall commence acceptance of Mixed Transuranic waste from Rocky Flats on or before the end of 1998; (ii) all of the Mixed Transuranic waste at Rocky Flats shall be able, either with or without further treatment or processing, to meet the WIPP Waste Acceptance Criteria, which are defined in the applicable revisions of WIPP-DOE-069, Waste Acceptance Criteria for the Waste Isolation Pilot Plant, and Safety Analysis Report for the TRUPACT-II Shipping Package, and (iii) once WIPP commences accepting Mixed Transuranic waste from Rocky Flats, newly-generated covered Mixed Transuranic waste shall not be stored at Rocky Flats for longer than two (2) years, unless a longer period proposed in the Annual Progress Report or a Quarterly Progress Report is approved by the State, except for covered Mixed Transuranic wastes that require treatment in systems included in the approved Site Treatment Plan and treatment schedules for those systems requires storage for a period longer than two (2) years. If one or more of the above requirements are not satisfied, CDPHE may at its discretion declare by written notice pursuant to section XII, Notification, that the Agreement between DOE and CDPHE regarding the Mixed Transuranic portion of the Site Treatment Plan as approved is null and void. In that event, DOE shall be required to either (a) change the Site Treatment Plan to the satisfaction of CDPHE to provide for the development of treatment capacities and technologies to treat the covered Mixed Transuranic waste to the standards promulgated pursuant to § 3004(m) of RCRA, or (b) otherwise address to the satisfaction of CDPHE compliance of the Mixed Transuranic waste with the storage prohibition established in § 3004(j) of RCRA.

VIII. ORDER REGARDING MIXED TRANSURANIC WASTE

17. Pursuant to 42 U.S.C. § 6939c(b)(5)(A)(ii) and § 25-15-308, C.R.S., DOE is hereby ORDERED and agrees to comply with the Site Treatment Plan as approved regarding Mixed Transuranic waste.

IX. UPDATING AND MODIFYING THE PLAN

18. Commencing on March 15, 1996, and annually thereafter, DOE shall submit to CDPHE for review and approval an Annual Progress Report and Work Plan ("Annual Report") to the Site Treatment Plan. The Annual Report shall begin with a description of the progress made in achieving compliance with the Site Treatment Plan for covered wastes at Rocky Flats. In addition, in order to be approved by CDPHE, each Annual Report shall have as a minimum the following components:

* Progress Report - This part shall describe for each individual covered waste stream or group of similar waste streams the progress made toward achieving compliance with the Site Treatment Plan, and shall assess the appropriateness of continuing to pursue the technologies selected in light of alternate technologies and capacities identified in the Plan. Where viable alternatives are identified, changes may be proposed for review and comment and/or approval. This part shall also include any new proposed Revisions in accordance with Section XXV herein (Revisions) to the approved Site Treatment Plan.

* Work Plan - This part shall describe for [1] FY+1 for approval the planned tasks or activities for each waste stream or group of similar waste streams, as well as any tasks or activities that are not waste stream specific. The description of each task or activity shall include a schedule for implementation and identify any specific reports or other products resulting from the activity. The Work Plan shall also include milestones through FY+2 and proposed changes to milestones for FY+1 and FY for approval. The reasons for any activity, schedule and/or program change from the Site Treatment Plan or previous Annual Report shall be identified

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[1] Fiscal Year (FY) denotes the current fiscal year. The federal fiscal year starts on October 1 and ends on September 30 of the following year. The federal fiscal year is designated by the calendar year in which it ends. For example, FY95 starts on October 1, 1994 and ends on September 30, 1995. FY+1 means the federal budget year following the present FY. FY+2 means the federal budget year following FY+1.

and their impacts described. Changes shall only be made with good cause shown, and the burden of proof regarding such changes shall reside with DOE.

Submittal of the Annual Report to CDPHE shall be pursuant to Section XIII herein (Submittal, Review and Approval of Deliverables) and shall be in conformance with the requirements of 42 U.S.C. § 6939c(b)(4). CDPHE shall endeavor to make all reasonable efforts to deliver comments and approval of the work plan and any changes proposed in the Progress Report to DOE within thirty (30) days of receipt of an Annual Report. Once the work plan or any changes proposed in the Progress Report is finally approved by CDPHE, an Annual Report shall automatically be incorporated into and made a part and requirement of this Order.

19. Commencing on December 15, 1995, and on the fifteenth day of the last month of every calendar quarter thereafter, DOE shall submit a Quarterly Progress Update ("QPU") to CDPHE for review and, where appropriate, approval. Each QPU shall include at a minimum the status of each task or activity that was to have been performed during that quarter. For any task or activity that is not being implemented in accordance with the schedules in the Work Plan as approved, DOE shall identify the cause of the failure to meet the schedule and a new schedule for implementation of that task or activity. The identified new schedule shall not require CDPHE approval. The QPU may also include proposals for consideration, elimination, or selection of treatment alternatives for particular waste streams; Revisions; modifications of existing tasks; and addition of new tasks or changes to the approved Site Treatment Plan for approval. Review and approval of those portions of a QPU shall be pursuant to section XIII herein (Submittal, Review and Approval of Deliverables). When reviewing those portions of a QPU requiring approval, CDPHE shall endeavor to make all reasonable efforts to deliver comments and/or approval to DOE within thirty (30) days of receipt of a QPU. Once finally approved by CDPHE, the relevant portion of said QPU shall automatically be incorporated into and made a part and requirement of this Order.

X. MILESTONES AND TARGET DATES

20. The Site Treatment Plan as approved provides for a three-year rolling milestone approach to implement the schedules concerning MLL waste and Mixed Transuranic waste. In the Plan, schedules are designated as either "milestones" or "target dates".

21. "Milestones" are enforceable deadlines for near-term activities (i.e., the current fiscal year plus the next two additional years) that are subject to revision, extension, or modification as specified in this Order. Failure to complete a task or implement a schedule that has been designated a "milestone" in the Site Treatment Plan as approved within the time

allocated therein shall constitute a violation of this Order. CDPHE may thereafter take appropriate enforcement action at its discretion in accordance with Section XIV (Dispute Resolution).

22. "Target dates" are nonenforceable deadlines for longer-term activities and are intended to be converted to milestones on an annual basis as follows. Each year, existing milestones and target dates shall be reviewed and adjusted if necessary through the annual update process described above in Section IX (Updating and Modifying the Plan). During this process an additional year of milestones shall be established by converting upcoming target dates to milestones.

22A. The conversion of target dates to milestones or the adjustment of milestones shall consider (i) funding availability; (ii) new technical information; (iii) other factors including, but not limited to, new or emerging technologies and priority changes as a result of new information; (iv) for FY, the amount of funds provided for use at RFETS under DOE's approved FY Waste Management funding program or RFETS available funding for Waste Management under a continuing resolution, if applicable; (v) for FY + 1, the proposed waste management allocation for RFETS based on the President's budget submittal, or the proposed waste management allocation for RFETS in DOE's budget submittal to the Office of Management and Budget (OMB) if the President's budget has not been submitted; and (vi) for FY + 2 and outyears, the OMB Environmental Management funding targets apportioned to RFETS. The parties intend to integrate and prioritize the work performed pursuant to this Order with other work at RFETS. Thus, the establishment and modification of milestones under this Order will occur as part of the sitewide budget review and milestone setting process that is currently being negotiated as part of a new cleanup agreement. However, the State retains full discretion to determine that the scope and pace of activities that can be accomplished within the RFETS budgetary allotment is insufficient to protect human health or the environment, or is otherwise inconsistent with the exercise of its regulatory authority, and DOE reserves its right to dispute any such determination pursuant to Section XIV (Dispute Resolution).

XI. PROJECT MANAGERS

23. Within ten (10) days of the effective date of this Order, Colorado and DOE shall each designate a Project Manager. The Parties shall each notify the other Party in writing of the Project Manager they have selected. Each Project Manager shall be responsible for overseeing the implementation of the Site Treatment Plan as approved. Any Party may change its designated Project Manager by notifying the other Party, in writing, ten (10) days before the change, to the extent possible. To the maximum extent possible, communications between the Parties concerning the terms and conditions of this Order and the Site Treatment Plan as

approved shall be directed through the Project Managers. Each Project Manager shall be responsible for assuring that all communication from the other Party and Project Manager is appropriately disseminated to that responsible Project Manager's organization.

24. The Project Managers shall meet approximately monthly to report on the status and discuss progress and problems relating to all work under this Order and the Site Treatment Plan as approved. At each meeting, Colorado will use its best effort to notify DOE of all potential problems or issues identified, and DOE shall do likewise to notify Colorado of all potential issues or problems regarding compliance with the Order and Plan. Additionally, the status of the resolution of any previously identified problems or issues of compliance shall be provided and discussed.

25. It is the intent of the Parties that this notification process shall be used to minimize the need to invoke Dispute Resolution.

XII. NOTIFICATION

26. Unless otherwise specified, one copy of any report or submittal by DOE required by this Order, or any notice or notification required to be made or given by any Party under this Order shall be sent to the Project Managers at the addresses stated below, with written acknowledgment of receipt.

PROJECT MANAGER, CDPHE
ROCKY FLATS
COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
HAZARDOUS MATERIALS & WASTE MANAGEMENT DIVISION
4300 CHERRY CREEK DRIVE SOUTH
DENVER, COLORADO 80222-1530

LDR PROJECT MANAGER,
WASTE PROGRAMS DIVISION,
US DOE ROCKY FLATS FIELD OFFICE
BOX 928
GOLDEN, COLORADO 80402-0928

XIII. SUBMITTAL, REVIEW AND APPROVAL OF DELIVERABLES

27. Unless otherwise provided in this Order or the Site Treatment Plan as approved, all deliverables developed by DOE pursuant to this Order and the Site Treatment Plan as approved shall be submitted by DOE to Colorado for review and comment or review and approval, as provided in this Order and to the United States Environmental Protection Agency ("EPA") for information.

Deliverables are the Annual Progress Report and Work Plan, Quarterly Progress Updates, documents or notices signifying completion of milestones, proposed treatment plans for new covered wastes and Revisions. DOE shall complete and transmit each deliverable required by this Order so that Colorado and EPA receive the deliverable not later than the date established pursuant to the Site Treatment Plan as approved for completion of each such deliverable. A transmittal letter shall accompany each deliverable specifying the Section of the Site Treatment Plan as approved requiring submittal of that deliverable.

28. The State will review each deliverable submitted by DOE pursuant to the Site Treatment Plan as approved within the time frames established in the Plan, if such is appropriate and a time frame has been established. In the course of its review, the State may consult with DOE. Oral comments made during these discussions shall not require a written response by the Parties.

29. For deliverables that require approval by the State pursuant to this order, Colorado shall either (A) approve each deliverable as submitted; (B) disapprove the deliverable and return it to DOE with comments; (C) approve the deliverable with modifications; or (D) conditionally approve any Revision, subject to consideration of public comment and interstate consultation when required by the FFC Act § 6939c(b)(4). Comments shall be provided in a timely manner with adequate specificity so that DOE can make the appropriate changes to the deliverable. Colorado's comments shall specify a reasonable time consistent with paragraph 30, in light of the nature of the comments, by which DOE must submit the revised deliverable. This time may be extended by mutual agreement of the Parties.

30. In the event that Colorado disapproves the deliverable and returns it to DOE with comments or approves the deliverable with modifications, DOE shall have up to thirty (30) days to resubmit. DOE shall notify the State within seven (7) days of the State's notification to DOE of the disapproval or approval with modifications of its desire to pursue informal consultations. The parties intend that informal consultations may occur during this thirty (30) day period and that DOE will resubmit in advance of thirty days to the extent practical. If the parties fail to reach agreement regarding the content of the resubmitted document within this thirty (30) day period, DOE may invoke the provisions of Section XIV below (Dispute Resolution) no later than seven (7) days after expiration of the 30 day period. This time may be extended by mutual agreement of the Parties. Failure to enter the dispute resolution process within this seven (7) day period shall constitute a waiver of DOE's right to invoke Section XIV (Dispute Resolution) regarding the State's disapproval or approval with modifications. For purposes of this Paragraph, DOE may incorporate Colorado's comments by addendum, erratum, amending correspondence, or any other appropriate means.

31. Within fourteen (14) days after approval of the response

or fourteen (14) days after the conclusion of Dispute Resolution, if invoked, DOE shall resubmit the revised document to the State. In the event that CDPHE determines that the resubmitted document is not in accordance with the agreement reached during informal consultations or with the response required pursuant to resolution of a dispute, CDPHE may determine this to be a violation of this Order and may take any enforcement action available to it under applicable law.

32. Unless notified to the contrary in writing by Colorado, DOE is entitled to proceed with work under the Site Treatment Plan as approved under the assumption that the information submitted is generally acceptable. DOE recognizes that work done in anticipation of proposed changes to the Site Treatment Plan as approved remains subject to review and approval and that DOE may be required to modify or undo work performed without such approval. Any such work undertaken pending approval shall not constitute a violation of this Order.

XIV. DISPUTE RESOLUTION

33. DOE must exhaust the procedures set forth below regarding Dispute Resolution prior to initiating any administrative or judicial proceeding regarding the following matters:

a. requests for modification or extension of requirements of this Order or the Site Treatment Plan as approved,

b. requests for amendments to this Order, and

c. determinations on any deliverable or other activity required under this Order or the Site Treatment Plan as approved, except determinations rendered on any permit application or closure plan, and

d. determinations regarding scope and pace of activities as referenced in Paragraph 22A above.

Dispute resolution shall not be utilized for any other matter, except any Party may invoke Dispute Resolution for any matter upon mutual written agreement of the other Party. If DOE initiates Dispute Resolution, CDPHE agrees to participate fully in that process and forego taking any related administrative or judicial enforcement action until after issuance of the CDPHE Division Director's written statement pursuant to Paragraph 38 or the CDPHE Executive Director's written statement in accordance with paragraph 38A below. DOE's initiation of Dispute Resolution shall not toll or impair any CDPHE enforcement action already in progress.

34. The Parties shall make reasonable efforts to informally resolve disputes as expeditiously as possible, including the use of technical mediation, as mutually agreed. However, if resolution cannot be achieved informally when a dispute arises under this Order, the procedures of this Section shall control. In attempting to resolve any dispute under this Section, the Parties may, by unanimous written agreement, modify or waive the procedures of this Section.

35. To initiate Dispute Resolution, the disputing Party shall notify the other Party by providing a written Notice of Dispute Resolution in accordance with Section XII (Notification) setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the information the disputing Party is relying upon to support its position.

36. The disputing Party shall thereafter engage the other Party in informal Dispute Resolution among the Project Managers and/or their immediate supervisors. During this informal Dispute Resolution period, which shall not exceed fourteen (14) days from the date of the written Notice of Dispute Resolution, the Parties shall meet as many times as necessary to discuss and attempt resolution of the dispute. The Parties may agree to use an advisory technical support group composed of the Parties' technical experts and mutually agreed upon independent experts. If resolution of the dispute does not occur within the fourteen (14) days, then the Parties shall attempt to cooperatively draft a written Statement of Dispute setting forth all relevant information, including the type of information listed above in Paragraph 35. If the Parties are unable to agree on a written Statement of Dispute within a reasonable period of time, each Party may prepare its own separate one.

37. If agreement cannot be reached on any issue within the fourteen (14) day informal Dispute Resolution period, the disputing Party shall within fourteen (14) days of the end of that period forward a written Statement of Dispute to the Dispute Resolution Committee (DRC), which is described below, thereby elevating the dispute to the DRC for resolution. Any separate Statement of Dispute from the other Party shall also be forwarded to the DRC during this time.

38. The DRC will serve as a forum for final agency resolution of disputes for which agreement has not been reached through informal dispute resolution, except for disputes arising from funding considerations as prescribed in paragraph 57. The DRC shall be comprised of DOE's Assistant Manager for Environmental Management and CDPHE's Hazardous Materials and Waste Management Division Director (or their respective delegates). Written notice of any delegation of authority from a Party's designated representative shall be provided to the other Party pursuant to the procedures in Section XII (Notification). The DRC shall have fourteen (14) days from receipt of the written

statement(s) of dispute to resolve the dispute. During this period, the DRC shall meet as necessary to discuss and attempt resolution of the dispute. Any mutually agreed upon resolution shall be issued in writing in accordance with Section XII (Notification), and shall be signed by all DRC members or their delegates. If mutually agreed upon resolution cannot be attained within the fourteen (14) day period, Colorado's DRC representative shall unilaterally issue a final written decision with respect to the dispute and shall provide it to DOE in accordance with Section XII (Notification). This duty of Colorado's DRC representative shall not be delegated. If mutually agreed upon resolution for disputes arising from funding considerations cannot be attained within the fourteen (14) day period, the DOE and CDPHE representatives of the DRC shall issue their written positions on the dispute. DOE may, within seven (7) days of receipt of the CDPHE written position, issue a written notice elevating the dispute to the CDPHE Executive Director. In the event that DOE elects not to elevate the dispute to the Executive Director or her designee[2] within the designated seven (7) day escalation period, DOE shall be deemed to have agreed with the written decision of the CDPHE representative of the DRC.

38A. For disputes arising from funding considerations as prescribed in paragraph 57, if DOE elected to elevate the dispute, then CDPHE Executive Director or her designee shall review and resolve the dispute within ten (10) days. Upon request, and prior to resolving the dispute, the Executive Director or her designee shall meet and confer with the DOE Rocky Flats Field Office Manager to discuss the issues under dispute. Upon resolution, the Executive Director or her designee shall provide DOE with a written decision setting forth resolution of the dispute.

39. The Colorado DRC representative's written decision issued in accordance with Paragraph 38 or the CDPHE Executive Director's or her designee's written decision in accordance with paragraph 38A above shall constitute final resolution of any dispute subject to the Dispute Resolution provisions of this Order. The DOE shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement, unless an appeal is pursued as described below.

40. The CDPHE Division Director's written decision issued in accordance with Paragraph 38 or the CDPHE Executive Director or her designee in accordance with paragraph 38A above shall constitute final agency action for purposes of appeal under State law. DOE shall have the right to appeal the DRC or the CDPHE Executive Director or her designee decision under applicable law, including seeking judicial review.

41. The pendency of any dispute under this Section shall not

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[2] Such delegation throughout this section shall not be below the level of the Director of the Office of the Environment.

affect DOE's responsibility for timely performance of the requirements of this Order and the Site Treatment Plan as approved, except that the time period for completion of work affected by the good faith exercise of the dispute resolution process shall be extended for a period of time not to exceed any actual delay caused by good faith use of the dispute resolution process starting from the date of the Notice of Dispute Resolution required pursuant to Paragraph 35 herein through the date of issuance of Colorado's DRC representative's or the CDPHE Executive Director's final written decision as discussed in Paragraphs 38 and 38A herein, and affected activities, schedules or milestones will be suspended and similarly extended, as necessary.

42. Within fourteen (14) days of the final resolution of a dispute pursuant to this Section, or pursuant to an appeal under Paragraph 40, DOE shall incorporate the final decision into all affected plans, deliverables, and activities.

43. During the pendency of any dispute, DOE agrees that it shall continue to implement those portions of this Order and the Site Treatment Plan as approved affected by the dispute that can be reasonably implemented pending final resolution of the issue(s) in dispute. All approved activities or milestones pursuant to this Order and the Site Treatment Plan as approved that are not affected by the dispute shall continue in effect without regard to the ongoing dispute.

XV. ENFORCEABILITY

44. DOE recognizes its obligation to comply with RCRA and CHWA as established by § 6001 of RCRA.

45. CDPHE reserves the right to exercise whatever legal authority it might have to take administrative and/or judicial enforcement action against DOE to enforce the terms of this Order, including but not limited to seeking the imposition of administrative or civil penalties, subject to paragraph 33, without having to invoke the Dispute Resolution procedure in Section XIV. Except as set forth in this Order, DOE reserves the right to raise any defenses it may have, whether procedural or substantive, in law or in equity to such enforcement action.

XVI. FORCE MAJEURE

46. DOE agrees to adopt all reasonable measures to avoid or minimize any delays in the implementation of the Site Treatment Plan as approved. However, upon the occurrence of a force majeure, the Parties shall review and modify the Site Treatment Plan as approved in accordance with this Section.

47. In the event of a force majeure that, in DOE's opinion, necessitates revision of the Site Treatment Plan as approved, or any activity, schedule or milestone or any deliverable required under that Plan, DOE shall bear the burden of proof that the event is or was a force majeure.

48. A request for an extension to the Site Treatment Plan milestones or change in activities based on a force majeure shall not be timely unless DOE notifies the CDPHE Project Manager in writing in accordance with Section XII (Notification) within 48 hours of the time it first learns of the force majeure. Such notification shall describe the force majeure and duration of the anticipated delay in meeting the affected Site Treatment Plan activities schedule or milestone(s). As soon as practicable after the force majeure notification, DOE shall further notify CDPHE's Project Manager regarding the measures taken or to be taken to mitigate the anticipated delay, and the schedule for implementation of mitigation measures.

49. If Colorado determines that a force majeure has not occurred, the existing milestone(s) shall remain in force. Colorado's determination shall not affect DOE's right to raise force majeure as a defense in any civil or judicial proceeding related to performance under this Order and the Site Treatment Plan as approved.

50. In the event that DOE disagrees with any determinations made by CDPHE pursuant to this Section, DOE may use the procedure in Section XIV (Dispute Resolution) of this Order to resolve such dispute if otherwise subject to Dispute Resolution pursuant to Paragraph 33 above.

51. A "Force Majeure" is defined as any event or circumstance arising from causes beyond the reasonable control of a Party which cannot be overcome by due diligence and that causes a delay in or prevents the performance of any obligation under this Agreement.

XVII. EXTENSIONS

52. DOE may request extensions of time to perform activities and to milestones identified in the Site Treatment Plan as approved for good cause, which includes force majeure. Extensions shall be granted based upon receipt of a timely request for extension, where good cause exists that substantially affects the activities or milestones for which an extension is sought. Good cause shall include failure to obtain, after timely application and exercise of due diligence, a necessary permit or other authorization due to the action or inaction of a governmental authority other than DOE. The burden of proof that good cause exists is on DOE. To be timely, a request for an extension for good cause (other than on grounds of force majeure) must be made

no less than forty-five (45) days before the date required by this order, unless circumstances warrant a shorter period, as determined by CDPHE. Any request shall be in writing and shall be provided to CDPHE through the Project Manager identified in Section XI (Project Managers) in accordance with Section XII (Notification). The request shall specify:

a. The activity or milestone, and any related activity or milestone that would be affected if the extension were granted, that is sought to be extended;

b. The length of the extension sought; and

c. The good cause(s) for the extension.

53. Within twenty-one (21) days of a receipt of a written request for an extension, CDPHE shall advise DOE in writing of its position on the request, including the length of the extension, or that it will require additional time to respond. If CDPHE requires more time, the estimated time will be provided. If the request for an extension is denied, CDPHE shall include in its denial an explanation of the basis for its denial.

54. Within seven (7) days of receipt of the denial of the requested extension, DOE may invoke the Dispute Resolution Process. Otherwise, it will be deemed to have withdrawn the request.

XVIII. MODIFICATIONS

55. In the event that new or alternative treatment technologies are identified by DOE to achieve compliance with LDR requirements, it may seek to modify a deliverable or a previously proposed or approved activity or milestone established under the Site Treatment Plan as approved. In addition to inclusion in the annual update to the Site Treatment Plan, DOE may seek such a modification at any time by submitting in accordance with Section XIII (Submittal, Review and Approval of Deliverables) a written request which shall include any proposed new activity or milestone, and a discussion of any impacts to current activities, schedules or milestones.

56. A requested modification shall be permitted upon a showing that it will be of significant assistance in (i) the selection of treatment technologies; (i) the protection of human health and the environment; or (iii) the development of better, faster, or more economical treatment technology. In the event that a consensus on the need for a modification is not reached by the Project Managers, any Party may invoke Dispute Resolution.

XIX. FUNDING

57. If appropriated funds allocated for the fiscal year for waste management activities at the Site are not available to fulfill DOE's obligations under this Order and the Site Treatment Plan as approved, CDPHE shall be notified in accordance with Section XII (Notification) and shall meet to discuss whether the Parties can reach accommodation or adjustments to approved milestones, activities that require the payment or obligation of such funds that exceed the Site's waste management allocation. These discussions will be conducted as part of the sitewide baseline and milestone review process at or near the beginning of the fiscal year. The procedure in Section XIV (Dispute Resolution) shall be used if the Project Managers cannot reach an accommodation on a modification of this Order and the Site Treatment Plan as approved. The CDPHE's willingness to make such accommodations, if any, shall not be construed as a waiver of its position set forth below that lack of funding does not excuse DOE from meeting its obligation to comply with the requirements of applicable law, including the requirements of this Order and the Site Treatment Plan as approved. CDPHE and DOE further agree that in any judicial proceeding seeking to enforce the terms of this Order and the Site Treatment Plan as approved and/or to find DOE in contempt for failure to comply or for delay in compliance with such terms, DOE may raise as a defense that such failure or delay was caused by the unavailability of appropriated funds. In particular, nothing herein shall be construed as precluding DOE from arguing that no provision of this Order and the Site Treatment Plan as approved shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. While the State of Colorado disagrees that an Anti-Deficiency Act defense, or any other defense based on lack of funding, exists, it is agreed and stipulated that it is premature at this time to raise and adjudicate the existence of such a defense.

XX. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

58. CDPHE recognizes that DOE is currently storing and will continue to generate and store mixed wastes which are described in Section III (Covered Matters), and that DOE has agreed to address the continued storage of said wastes subject to RCRA § 3004(j) as set forth in this Order and the Site Treatment Plan as approved. Based upon the aforementioned facts and circumstances and upon other facts and circumstances known to CDPHE and set forth in this Order, as of the effective date of this Order and during its term, the Parties agree that so long as DOE is in full compliance with the provisions herein and the Site Treatment Plan as approved, this Order shall operate in lieu of any administrative or civil action by the State against DOE or its officers, employees, contractors or agents, with respect to compliance with § 3004(j)

and § 3004(m) of RCRA (and the State's equivalents) of the covered wastes described in Section III (Covered Matters) of this Order.

59. DOE releases the State of Colorado and its departments, agencies, officers and employees from any claims it may have resulting from this Order and the Site Treatment Plan as approved. DOE reserves any rights it may have to challenge any action CDPHE takes in implementing the requirements of this Order and the Site Treatment Plan as approved.

60. Except as otherwise set forth in this Order, each Party expressly reserves all other rights and defenses each may have, whether procedural or substantive, in law or in equity, with respect to the other Party to this Order and with respect to any person not a party to this Order.

XXI. COMPLIANCE WITH APPLICABLE LAWS

61. All actions required to be taken pursuant to this Order and the Site Treatment Plan as approved shall be taken in accordance with the requirements of all applicable Federal and State laws and regulations. All Parties acknowledge that such compliance may affect schedules to be performed under this Order and the Site Treatment Plan as approved, subject to the caveat provided in Paragraph 57 above. Extensions of schedules, when necessary, shall be provided in accordance with Section XVII (Extensions).

XXII. AMENDMENT AND TERMINATION

62. Upon mutual agreement of the Parties, this Order may be amended at any time prior to its termination. Any such amendment shall be in writing, be effective when signed by both of the Parties, and be incorporated into this Order by reference.

62A. Furthermore, unless the Parties mutually agree that no amendment to the order is warranted, the Parties shall begin a good faith dialogue in January 1999 to determine the extent to which the milestone and funding structure of the Order and the technical plans and schedules should be modified considering the Parties' experience in implementing the Order to date, the most recent information on current and projected funding availability, and the status of major technical issues that are expected to affect the management of mixed waste across DOE sites. If the Parties agree that amendment of the Order and modification of the Plan are warranted, the goal of the Parties is to finish such amendments and modifications no later than September 30, 1999. Any amendment must be by mutual agreement of the parties.

63. This Order shall terminate upon the completion of the

activities set forth within its terms which finally constitute, for all covered wastes, compliance with CHWA, applicable State regulations, and RCRA § 3004(j) and § 3004(m), 42 U.S.C. § 6924, unless extended, amended, or terminated as set forth herein. This Order shall remain in effect until covered waste in storage is in compliance with RCRA § 3004(m), 42 U.S.C. § 6924(m), and newly generated covered waste is being managed to meet RCRA § 3004(j), 42 U.S.C. § 6924(j).

XXIII. SEVERABILITY

64. If any provision or authority of this Order or the Site Treatment Plan as approved, or the application of this Order or the Site Treatment Plan as approved to any Party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provisions to other circumstances and the remainder of the Order and the Site Treatment Plan as approved shall remain in full force and shall not be affected thereby.

XXIV. ACCESS/DATA/DOCUMENT AVAILABILITY

65. CDPHE will be permitted to enter all areas of RFETS that handle hazardous waste or that contain information referred to in this Section. CDPHE will be permitted to inspect records, logs, and other documents relevant to implementation of this Order and the Site Treatment Plan as approved other than attorney work-product or other attorney-client privileged material; verify compliance by DOE with this Agreement; review the progress of DOE, its contractors, and lessees in carrying out the activities under this Agreement; conduct tests which CDPHE deems necessary; and verify data submitted to CDPHE by DOE. DOE shall honor all requests for access to RFETS made by CDPHE so long as the provisions of this Section are fulfilled. CDPHE access shall be subject to the applicable requirements of the AEA, 42 U.S.C. § 2011 et seq., and Executive Orders concerning the handling of unclassified controlled nuclear information, restricted data, and national security information. Nothing herein shall limit the existing legal authority of CDPHE to seek information, gather data or take samples.

66. Notwithstanding any provisions of this Order or the Site Treatment Plan as approved, all requirements of the AEA, as amended, and all Executive Orders concerning the handling of unclassified controlled nuclear information, restricted data and national security information, including "need to know" requirements, shall be applicable to any access to information or facilities covered under the provisions of this Order and the Site Treatment Plan as approved.

67. CDPHE reserves its rights to seek access to any

information or facilities in accordance with applicable law.

XXV. REVISIONS

68. A Revision is a change to the approved STP which requires, for those affected portions of the approved STP, publication of a notice of availability to the public and consultation with affected states and EPA pursuant to the FFC Act, 42 U.S.C. § 6939c(b)(4). A Revision is: (a) the addition or deletion of a treatment system or technology development not previously included in the approved STP; or (b) an extension to a milestone for a period greater than one year. Changes in waste volume; the addition or deletion of wastes or waste types; extensions or changes to milestones for a period less than a year; or changes to target dates shall not, by themselves, constitute a Revision.

69. Revisions to the approved STP shall be made as follows. DOE shall identify to CDPHE the need to revise the approved STP and provide supporting information on the basis for the Revision as a deliverable pursuant to Submittal, Review and Approval of Deliverables. In reviewing the Revision, CDPHE shall consider the need for regional treatment facilities. Conditional approval of a Revision is a determination by CDPHE that the Revision is acceptable, subject to consideration of public comment and consultation with affected States and EPA.

70. Within 30 days after receipt, CDPHE shall publish a notice of availability and make the Revision to the STP available to the public for review and comment and to affected States and for consideration and consultation. Revisions may be conditionally approved after receipt, and shall be approved, approved with modification, or disapproved within 6 months after the CDPHE's receipt of the proposed Revision. Any modifications to the Revision proposed by the State shall include supporting explanation and information.

71. To the extent practicable, comments from the public, affected states and EPA on Revisions will be obtained in conjunction with the review of the Annual Update to the STP. However, in the event a Revision is proposed to become effective before it could be addressed in the regularly scheduled Annual Update, CDPHE shall publish a Notice of Availability and consult with affected states and EPA, as appropriate, within 30 days of receipt of the proposed Revision.

XXVI. EFFECTIVE DATE

72. This Order shall become effective upon execution by authorized representatives of CDPHE and DOE. In the event that authorized representatives of CDPHE and DOE do not execute the Order on the same day, the Order shall become effective upon the date when the last Party affixes its signature to the Order.

THE PARTIES SO AGREE:

Thomas P. Looby, Director
Office of the Environment
Colorado Department of Public Health
and Environment

10/3/95
Date

Mark N. Silverman, Manager
Rocky Flats Field Office
U.S. Department of Energy

10/3/95
Date

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