

7. STATUTES, REGULATIONS, CONSULTATIONS, AND OTHER REQUIREMENTS

7.1 Statutes and Regulations

This section identifies and summarizes the major laws, regulations and requirements that may apply to the different alternatives analyzed in this Advanced Mixed Waste Treatment Project (AMWTP) Environmental Impact Statement (EIS). Section 7.1.1 first lists those laws, regulations and requirements previously analyzed in the *Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Environmental Impact Statement* (DOE INEL EIS); this section then describes how those requirements may apply to this project specifically. In addition to laws, regulations, and requirements discussed below, there may be additional project-specific contractual requirements in any contract entered into between the U.S. Department of Energy (DOE) and BNFL, Inc. (BNFL) if one of the “action” alternatives is selected.

7.1.1 Federal and State Environmental Statutes and Regulations

National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. §4321 et seq.), the Council on Environmental Quality Implementing Regulations (40 C.F.R. § 1500 et seq.) and DOE Implementing Regulations (10 C.F.R. §1021 et seq.) This EIS is being prepared to comply with NEPA - the federal law that requires agencies of the federal government to study the possible environmental impacts of major federal action significantly affecting the quality of the human environment. Although the proposed project is envisioned as one that would be executed primarily by a private entity, this EIS assesses potential impacts before DOE decides whether to proceed with the project. The unique process described in §1021.216 allows DOE to compare potential environmental impacts between approaches suggested by competing offerors when in the process of a private sector procurement. DOE compares these impacts in the Environmental Critique. Those environmental considerations that are detailed in the Critique are made available to the Source Evaluation Board considering the procurement, and become a part of the technical criteria against which the competing offerors are evaluated during the procurement process.

As a result of this competition and the comparison of potential environmental impacts associated with the competing proposals the Source Evaluation Board chose BNFL as the winning contractor for the Phase I part of the project.

This EIS considers whether BNFL should be allowed to continue with the remainder of the project as it was proposed to DOE, or whether one of the various alternative courses of action is the better decision for DOE. As required by NEPA, the potential environmental impacts of each alternative are analyzed and being considered in this EIS.

Atomic Energy Act of 1954 (AEA), as amended (42 U.S.C. §2011 et seq.) The AEA is that statute that requires DOE to establish standards to protect health and safety with respect to atomic materials. Ordinarily this is accomplished through DOE Orders, standards and procedures to insure the safe operation of its facilities. In the project under consideration in this EIS, because the proposed AMWTP would not be considered a DOE facility, but instead would be a privately owned and operated facility, DOE Orders, standards and procedures are not necessarily applicable. Nonetheless, DOE remains

ultimately responsible for its atomic or nuclear materials. Thus, the environmental, safety and health standards that would apply to this proposed project are those established in the contract between DOE and BNFL, particularly those set out in the Environmental Safety and Health Program Operating Plan that would result from negotiations between BNFL and DOE.

Clean Air Act (CAA), as amended (42 U.S.C. §7401 et seq.) This federal statute and its regulations are important to this proposed project and its alternatives. In addition, the Idaho statute and regulations promulgated under the CAA authority are also important. The heart of the CAA is the National Ambient Air Quality Standards (NAAQS). These are national standards set by the U.S. Environmental Protection Agency (EPA) for certain pervasive pollutants; the standards are set at a level designed to protect human health with a conservative margin of safety. States have the primary responsibility of assuring that the air quality within state borders is maintained at a level that meets the NAAQS. This is achieved by states through the establishment of source-specific state requirements that are described in State Implementation Plans. Also under the federal law is the requirement that new sources of air pollutants meet established New Source Performance Standards (NSPS) set by EPA. These NSPS can be described as design standards, equipment standards, work practices or operational standards, in addition to the other approach of numerical emission limitations.

Because of the significance of this body of law, these different concepts will be examined in the discussion in Section 7.2 according to each alternative being considered.

Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. §6901 et seq.), and the Idaho Hazardous Waste Act, I.C. 39-4400 et seq. This body of law regulates the treatment, storage and disposal of hazardous wastes. For purposes of this proposed project and the wastes that would be treated and/or stored, this set of laws is very significant, regardless of which alternative is chosen by DOE. Regulation under these laws is by permit, meaning that the State of Idaho and EPA study the alternative chosen by DOE and then establish a permit specific to the project that describes how the project is to be carried out. Whether DOE chooses the No Action Alternative, or any other alternative under consideration in this EIS, some type of RCRA permit will be required. As with the CAA discussion above, the discussion in Section 7.2 considers each alternative and the likely RCRA permitting scheme that would exist for each alternative.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended (42 U.S.C. §9601 et seq.). This body of law does not play a predominant role in the proposed project; however it does factor in to all of the alternatives, primarily after any activity is completed. Therefore, some discussion of this statute is warranted.

The choice of geographic location of the proposed AMWTP on the Idaho National Engineering and Environmental Laboratory (INEEL) has been approved by the State of Idaho during the preliminary process of obtaining a Siting License as required by the *Idaho Hazardous Waste Facility Siting Act*, I.C. 39-5801 et seq. The license for siting the proposed project within the Radioactive Waste Management Complex boundaries was granted by the State of Idaho in 1997.

The CERCLA statute and regulations become significant because the geographic area selected for the proposed AMWTP is within an area already determined to be a "CERCLA site". Thus, ultimate cleanup of the area must be according to any applicable CERCLA requirements.

Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. §11001 et seq.) This statute requires that inventories of specific chemicals used or stored in either the storage facility or the proposed AMWTP would be communicated to the State of Idaho for purposes of emergency response planning. If DOE chooses the No Action Alternative, the responsibility for this reporting activity will lie with the management and operations (M&O) contractor for the INEEL. Alternatively, if DOE chooses one of the “action” alternatives, BNFL will have the responsibility of reporting to the State and preparing emergency response plans.

Toxic Substances Control Act (TSCA)(15 U.S.C. §2601 et seq.) This statute plays a role in this proposed project because some of the waste materials contain small amounts of polychlorinated biphenyl (PCB), which are regulated by TSCA. Depending upon the alternative chosen, these substances will be either incinerated or else repackaged. Under either circumstance, compliance with TSCA will require a permit from EPA. An application for a TSCA permit was submitted by BNFL to the State of Idaho and EPA jointly on December 5, 1997.

Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §651 et seq.) If DOE chooses any of the “action” alternatives, compliance with the *Occupational Safety and Health Act* will be the responsibility of BNFL according to *Occupational Safety and Health Act* standards. If DOE chooses the No Action Alternative, protection of the workforce will remain with the M&O contractor and DOE. The occupational safety requirements of the U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) are not directly applicable to DOE’s government-owned contractor-operated facilities by virtue of Section 4(b)(i) of the Occupational Safety and Health Act of 1970. However DOE requires a written worker protection program that integrates all requirements contained in DOE 440.1;29 CFR Part 1960, “Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters;” and other related site specific worker protection activities.

7.1.2 Other Pertinent Laws or Requirements

Site Treatment Plan Consent Order. This is a mandatory Order that was negotiated between DOE and the State, pursuant to the *Federal Facility Compliance Act*, an amendment to RCRA that requires federal facilities to identify all of their hazardous wastes and to develop, and follow up on, plans to treat these wastes. The wastes under analysis in this EIS have been identified and described in the *INEEL Site Treatment Plan*; treatment of these wastes has been made a requirement in the ensuing Settlement Agreement/Consent Order. If DOE selects the No Action alternative, it will have to request relief from the Settlement Agreement/Consent Order and if granted, will have to renegotiate the *INEEL Site Treatment Plan* to somehow exempt these specific wastes from treatment.

Idaho Settlement Agreement/Consent Order. This is a federal court order that incorporates all of the terms and conditions agreed to among DOE, the State of Idaho, and the Department of the Navy (see Appendix C for details). One of the terms and conditions in that Settlement Agreement/Consent Order is that: “DOE shall ship all transuranic waste now located at the INEL [Idaho National Environmental Laboratory], currently estimated at 65,000 cubic meters in volume, to the Waste Isolation Pilot Plant (WIPP) or other such facility designated by DOE, by a target date of December 31, 2015 and in no event later than December 31, 2018.” See paragraph “B” of the Settlement Agreement/Consent Order. The Settlement Agreement/Consent Order also states that “DOE shall, as soon as practicable, commence the procurement of a treatment facility for the treatment of mixed waste, transuranic waste and alpha-emitting mixed low level waste.” See paragraph “E.2” of the Settlement Agreement/Consent Order. If DOE were to select the No Action alternative, it would have to request relief from this Settlement Agreement/Consent

Order from the federal court, and would have to renegotiate a modified agreement with the State and the Navy, which would then have to be approved by the court.

Executive Order 12898: Environmental Justice. This Executive Order is applicable to DOE for any of the alternatives being considered; therefore, an analysis of the possible impacts to minority and low-income communities has been done in this tiered EIS. See section entitled “Environmental Justice.”

7.2 Additional Comparisons Between Alternatives

If the No Action alternative is selected by DOE, a RCRA Storage Facility permit would be required; this hypothetical permit would require that EPA and the State of Idaho grant DOE a special and unique exception to the laws because under RCRA it is illegal to store hazardous wastes indefinitely. Because the wastes contain small amounts of PCBs, a TSCA indefinite storage permit would also have to be obtained from EPA. Also problematic is the issue of when indefinite storage becomes “de facto disposal” under EPA CAA regulations at 40 C.F.R. §191. These regulations control permissible air emissions from radioactive waste, including TRU waste. If the present storage location was reviewed according to the standards set in 40 C.F.R. §191, it is highly unlikely that EPA would certify that facility as an adequate radioactive waste disposal facility.

If the Proposed Action is selected, BNFL will have to acquire a RCRA permit for a storage and treatment facility. The treatment aspect of the RCRA permit would be for the operation of an incinerator, with numerous other RCRA subunits. A RCRA incinerator permit application is one of the most carefully reviewed applications by both EPA and the State. In addition to a rigorous RCRA permitting process, if the Proposed Action is selected, a permit under the CAA will be required. It is anticipated that the CAA permit would also be quite rigorous – EPA regulations in effect will include a requirement that the facility meet the “MACT rule.” Currently in the status of a proposed rule, this rule by EPA is expected to become final very shortly, and will require that new incinerators meet more rigorous emission standards than are currently in existence. The proposed MACT rule requires the use of Maximum Achievable Control Technology (MACT) to minimize emissions from the incinerator.

If DOE selects the Non-Thermal Treatment alternative, a RCRA permit for a storage and treatment facility will still be required, but the type of permit will be less rigorous than one for an incinerator. Likewise, although a permit under the CAA will be required, the proposed MACT rule would not be applicable, and therefore the permit would be less rigorous. A TSCA permit will also be required under this alternative.

Under the Treatment and Storage Alternative, the regulatory framework would be quite complex. A RCRA treatment facility permit would still be required, as would a TSCA permit and a CAA permit, but because the waste would be left at the INEEL indefinitely, an exceptional RCRA storage permit would have to be obtained from EPA and the State. A CAA permit would be required for the treatment facility. Also, as discussed previously in the No Action alternative discussion, certification by EPA of the INEEL as a TRU waste disposal facility under 40 C.F.R. §191 would be extremely unlikely.

7.3 Consultation

NEPA requires that during the preparation of this EIS, DOE consult with all Federal, State, and local agencies with jurisdiction or special expertise in the topics being analyzed in the EIS. Early in this NEPA process, the County Commissioners from Butte County were notified of this proposed project, and were consulted regarding any concerns they might have with the possibility of siting, constructing and operating a hazardous waste facility within Butte County. This notification and discussion with the Butte County Commissioners was part of the public involvement process that was required of DOE when it was involved in applying to the State of Idaho for its Hazardous Waste Facility Siting License under the *Idaho Hazardous Waste Facility Siting Act*.

In addition, consultation was initiated early in the NEPA process between DOE and the Shoshone-Bannock Tribes. For more detail regarding these consultations, please refer to DOE-Idaho Operations Office (DOE-ID) correspondence with the Tribes in the Administrative Record for this EIS. The State of Idaho has also been involved in early consultations with DOE on this proposed project. First, the State of Idaho, through the office of the Governor, was actively involved in negotiating the Idaho Settlement Agreement with DOE in order to settle NEPA litigation. The Settlement Agreement negotiations and the resulting Agreement reflect great concern on behalf of the State that the waste that is the subject of this EIS leave Idaho as soon as possible. Second, the State of Idaho required an application for a Hazardous Waste Facility Siting License at the onset of procurement activities for this proposed project. In the course of making application to the State, DOE-ID submitted information regarding various possible locations for the proposed AMWTP, as well as technical information regarding the physical characteristics of the different proposed sites. The State process includes review of the application by State hazardous waste facility siting experts prior to approval of the particular site that was approved by the State.

Third, the State has been very actively involved in ongoing discussions and technical reviews of the RCRA and TSCA permit applications. This ongoing process has allowed for a significant amount of professional discussion and consultation regarding hazardous waste facility issues.