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ATTACHMENT 1:

JOINT STIPULATION AND ORDER

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Noahy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

OCT 27 1997

NATURAL RESOURCES DEFENSE COUNCIL,)
 et al.,)
)
 Plaintiffs,)
)
 v.)
)
 FEDERICO PEÑA, Secretary of Energy,)
 et al.,)
)
 Defendants.)

ANNE MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

Civ. No. 97-936 (SS)

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 90-1-4-443
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 DEPARTMENT OF JUSTICE

JOINT STIPULATION AND ORDER

WHEREAS, on April 30, 1997, Plaintiffs filed a complaint and motion for preliminary injunction in this action, alleging, *inter alia*, that Defendants failed to adequately analyze the environmental impacts of, and reasonable alternatives to, construction and operation of the National Ignition Facility (NIF) at Lawrence Livermore National Laboratory (LLNL), thus violating the requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*; the regulations of the Council on Environmental Quality, 40 C.F.R. Parts 1500 to 1508 (CEQ regulations); and the NEPA regulations of the Department of Energy (DOE), 10 C.F.R. Part 1021;

WHEREAS, on August 8, 1997, the Court denied Plaintiffs' motion in part and granted it in part, finding, *inter alia*, that Defendants had looked carefully at NIF;

r/c

WHEREAS, on September 3-12, 1997, after denial of Plaintiffs' motion for preliminary injunction directed towards construction of NIF, Defendants unearthed, removed from the NIF excavation pit, and disposed of 112 capacitors contaminated with toxic polychlorinated biphenyls (PCB's) and approximately 784 tons of PCB-contaminated soil, as well as 75 corroded waste drums;

WHEREAS, Defendants assert that they conducted the foregoing removal and disposal activities in accordance with applicable laws and regulations and in a manner that did not pose any threat to the public health and safety or to the environment;

WHEREAS, Plaintiffs contest this assertion;

WHEREAS, on September 22, 1997, Plaintiffs moved under Rule 60(b) of the Federal Rules of Civil Procedure for relief from that part of the Court's Order of August 8, 1997, denying Plaintiffs' motion for preliminary injunction of construction and excavation of the NIF pending a ruling on the merits of its claims under NEPA, alleging, *inter alia*, that Defendants previously knew but did not adequately analyze and disclose in the Programmatic Environmental Impact Statement for the Stockpile Stewardship and Management (SSM) Program (SSM PEIS) the risk of building the NIF in an area that may contain buried hazardous, toxic, and/or radioactive wastes;

WHEREAS, Defendants assert that the analysis in the SSM PEIS

regarding the environmental impacts of constructing and operating NIF was fully adequate and that the discovery of the hazardous materials at the NIF excavation site constituted new information;

WHEREAS, Plaintiffs contest this assertion;

WHEREAS, Defendants deny the allegations in Plaintiffs' Rule 60(b) motion, including the allegation that Defendants previously knew but did not adequately analyze and disclose in the SSM PEIS the risk of building the NIF in an area that may contain buried hazardous, toxic, and/or radioactive wastes;

WHEREAS, upon the Court's request, Plaintiffs filed a detailed proposed order on September 23, 1997, suggesting additional studies and analyses for Defendants to prepare regarding hazardous materials in the area in and around the NIF excavation site;

WHEREAS, on September 24, 1997, Defendants filed a response to Plaintiffs' proposed order of September 23, 1997, asserting, *inter alia*, that they have conducted, and plan to continue, detailed evaluations at and nearby the NIF construction site;

WHEREAS, Plaintiffs contest Defendants' assertion that their detailed evaluations are adequate;

WHEREAS, entry into this Joint Stipulation and Order is made in good faith in an effort to avoid further expensive and protracted litigation, without any admission by Defendants or any

concurrence by Plaintiffs as to whether Defendants have violated any applicable laws and regulations, including NEPA, the CEQ regulations or the DOE NEPA regulations, and without any admission by Defendants that they are obligated to prepare and circulate, for public review and comment, a supplement to the SSM PEIS, which evaluates the reasonably foreseeable significant adverse environmental impacts of continuing to construct and operating NIF at LLNL in an area that may be contaminated with hazardous, toxic, and/or radioactive substances;

WHEREAS, each undersigned representative of the parties certifies that he or she is fully authorized to enter into and execute this stipulation on behalf of each respective party and to legally bind such party to this stipulation;

NOW THEREFORE, the undersigned attorneys for the respective parties to this action hereby stipulate and agree as follows:

1. As specified in paragraphs 2-6 below, Defendants will conduct a full evaluation of any potential risks to the human environment resulting from continuing to construct and operating the NIF at LLNL in an area that may be contaminated with hazardous, toxic, and/or radioactive substances;

2. Beginning within 10 days of entry of this Joint Stipulation and Order, Defendants will review all available

reports, studies, maps, aerial photographs and other available records, and interview workers at LLNL who are reasonably known to have relevant knowledge, in order to determine as accurately as possible whether and where hazardous, toxic, and/or radioactive materials may be buried in the following areas, as further identified in the attached map:

- a. Helipad Area (Area 1);
- b. Building 571 Area (Area 2);
- c. Northern Boundary Area (Area 3);
- d. Building 490 Area (Area 5);
- e. East Traffic Circle Area (unnumbered but marked; buried PCB-laden capacitors and other waste found in an undocumented dump in this area);
- f. East Gate Drive Area (Area 15) (another undocumented hazardous waste dump found near this area);
- g. The area extending from Areas 1, 2 and 5 to and including the NIF construction site, and beyond to the perimeter of the circular road immediately beyond the NIF construction site, as marked on the map.

3. In the event that the activities conducted under paragraph 2 reveal any areas where hazardous, toxic, and/or radioactive substances may be buried, Defendants will conduct additional surface geophysics analyses as reasonably necessary to obtain relevant information as to potential significant adverse impacts. In conducting such analyses, Defendants will use

appropriate technologies, in accordance with standard industry practice, such as electrical induction surveys, magnetometers, seismic refraction, and/or ground penetrating radar.

4. In the event that the investigation in paragraph 3 reveals or confirms areas where hazardous, toxic, and/or radioactive materials may be buried, Defendants will conduct whatever further analyses are reasonably necessary to evaluate potential risks, including, at a minimum, soil borings and/or soil vapor studies.

5. Defendants are currently drilling a groundwater monitoring well at the Helipad Area (Area 1), and, based on findings therefrom, they will drill one additional groundwater monitoring well within the next six months. Defendants will drill one or more additional groundwater monitoring wells in the area surrounding the NIF construction site, as reasonably necessary, to evaluate the potential impact of any dewatering activities that may be conducted to remove contaminated groundwater from the NIF construction site.

6. During performance of the above activities, Defendants shall provide Plaintiffs and the Court with a report every 90 days (a) summarizing the progress they have made in conducting the above analyses and in constructing the NIF, and (b) describing the analyses and NIF construction activities (including locations and

schedules) that are planned for the next 90-day period. Defendants shall file the first report on or before November 27, 1997. Defendants shall meet with Plaintiffs upon issuance of each report, and up to four additional times annually, if requested by Plaintiffs, to discuss these issues further.

7. Following completion of the above activities described in paragraph 2-5 of this Joint Stipulation and Order, Defendants will prepare and circulate for public review and comment in accordance with DOE NEPA regulation 10 C.F.R. § 1021.314(d), a supplement to the SSM PEIS, which evaluates the reasonably foreseeable significant adverse environmental impacts of continuing to construct and of operating NIF at LLNL with respect to any potential or confirmed contamination in the area by hazardous, toxic, and/or radioactive materials.

8. Pending completion of the above activities, Defendants will take no action with respect to construction of the National Ignition Facility that may threaten the public health, safety and/or the environment, with respect to the potential migration of hazardous, toxic, and/or radioactive materials or contaminated groundwater.

9. The Court may hold a hearing one year after the signing of this Joint Stipulation and Order to review Defendants' progress in

complying with its provisions.

10. Pending Defendants' completion of a supplement to the SSM PEIS and the issuance of a Record of Decision based thereon, the Court shall retain jurisdiction over this matter to enforce the terms of this Joint Stipulation and Order.

11. Defendants may consult with the United States Environmental Protection Agency, the California Department of Toxic Substances Control, and the California Regional Water Quality Control Board (the regulators) about the activities to be taken pursuant to this Joint Stipulation and Order. Nothing in this Joint Stipulation and Order shall require Defendants to conduct any of the foregoing activities in the event that any of the regulators determines that that activity may be detrimental to public health and safety or the environment. In the event that any of the regulators makes such a determination, Defendants shall immediately notify Plaintiffs and provide an opportunity for Plaintiffs and Defendants to meet to discuss these issues further.

12. This Joint Stipulation and Order settles all claims and requests for injunctive relief that have been raised in Plaintiffs' September 22, 1997 Rule 60(b) motion. With respect to claims other than those that have been raised in Plaintiffs' Rule 60(b) motion, Plaintiffs reserve all rights and claims, and Defendants reserve

all rights and defenses, including jurisdictional defenses. In any judicial action to enforce this Joint Stipulation and Order, Defendants reserve all rights and defenses, including jurisdictional defenses.

Respectfully submitted this 22nd day of October, 1997,



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ORDER

The foregoing Joint Stipulation is APPROVED and ENTERED as an Order of this Court on this 27 day of Oct, 1997.


HONORABLE STANLEY SPORKIN
United States District Judge

Marylisa Kelley Declaration
Attachment H

**AREAS RECOMMENDED FOR
ADDITIONAL STUDY 1990**

- ① MELPAC AREA
- ② BUILDING 571 AREA
- ③ NORTHERN BOUNDARY AREA
- ④ BUILDING 511
- ⑤ BUILDING 480 AREA
- ⑥ EVAPORATION POND
- ⑦ BUILDING 543 AREA
- ⑧ BUILDING 612
- ⑨ BUILDING 5475 AREA
- ⑩ BUILDING 518
- ⑪ CHRONICUM STUDY
- ⑫ BUILDING 141
- ⑬ NH-501 AREA
- ⑭ BUILDING 282
- ⑮ EAST GATE DRIVE AREA
- ⑯ NORTH EAST BOUNDARY AREA
- ⑰ UNLINED DRAINAGE DITCHS



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ATTACHMENT
Joint Stipulation And Order

