



July 9, 2002

Sent via Certified Mail

Spencer Abraham, Secretary
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, D.C. 20585

John Ashcroft, Attorney General
U.S. Department of Justice
5111 Main Justice Bldg.
10th and Constitution Ave., N.W.
Washington, D.C. 20530

Christine Todd Whitman, Administrator
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

John Iani, Regional Administrator, Region X
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, WA 98101

C. Stephen Allred, Director
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706

Warren Bergholz, Jr., Acting Site Manager
U.S. Department of Energy
Idaho Operations Office
850 Energy Drive, MS 1108
Idaho Falls, ID 83401

60 Day Notice of Intent to Sue Over DOE's Failure to Comply with the Resource Recovery and Conservation Act, (42 U.S.C. § 6901 et seq); the Clean Water Act (33 U.S.C. § 1251 et seq.); the Clean Air Act (42 U.S.C. § 7401 et seq.); Safe Drinking Water Act (42 U.S.C. 300 F, et seq.); the National Environmental Policy Act (42 U.S.C. § 4332 et seq.); the floodplain/wetlands requirements of 10 CFR 1021 et seq.; DOE Orders 5400.1, 5400.5; Plaintiffs' rights to Due Process under the U.S. Constitution and the Administrative Procedures Act, 5 U.S.C. §§ 701-706 (APA) in operation of facilities at the Idaho National Engineering and Environmental Laboratory (INEEL) including the High Level Liquid



Waste Evaporator (HLLWE), the Process Equipment Waste Evaporator (PEWE), the Liquid Effluent Treatment and Disposal facility (LET&D), New Waste Calcining Facility (NWCF), Tank Farm Facility (TFF), the Service Waste System (SWS), the two Percolation Ponds, ancillary equipment and injection well at located at INTEC.

Dear Sirs/Madame

The Environmental Defense Institute, Inc. (EDI), Keep Yellowstone Nuclear Free, Inc. (KYNF), both non-profit public interest organizations, and David B. McCoy, resident of Idaho Falls, ID, (collectively "Plaintiffs") hereby give Notice of Intent to Sue to the U.S. Environmental Protection Agency (EPA), the Idaho Department of Environmental Quality (IDEQ) and the U.S. Department of Energy (DOE) pursuant to the above statutes.

The Resource Conservation and Recovery Act (RCRA) requires permitted operations for hazardous waste treatment, storage, and disposal facilities. None of the above cited INEEL facilities located at the Idaho Nuclear Technology and Environmental Center (INTEC) operate with a RCRA permit. As shown below, the above cited INTEC facilities present an imminent and substantial danger to the public health and environment. With respect to the cited INTEC facilities, DOE has knowingly and systematically violated RCRA, the Clean Water Act (CWA), the Clean Air Act (CAA), the National Environmental Policy Act (NEPA), Executive Orders and DOE Orders.

I. Summary of Issues

Construction for the High-Level Liquid Waste Evaporator (HLLWE) at the Idaho National Engineering and Environmental Laboratory (INEEL) was initiated in 1993 and operation of the HLLWE as a new facility began in 1996. The HLLWE has processed over 4 million gallons of high level radioactive liquid and mixed hazardous wastes without a RCRA permit. DOE is required but has failed to submit an application for a RCRA permit for the HLLWE. The HLLWE has operated at all times without a RCRA permit and without interim status.

The whole purpose of obtaining state and federal permits for a new facility in advance of construction and operation is to protect the public and environment from the operations of facilities which have not received proper scientific and regulatory scrutiny. The HLLWE has failed to comply with the RCRA requirements for new facilities. DOE failed to obtain a prerequisite RCRA permit 180 days before beginning construction.

Moreover, DOE has never complied with the statutory requirements to have obtained interim status for the HLLWE because the HLLWE was not "in existence" by July 3, 1986, i.e., under construction, in operation, or with unavoidable contractual commitments. Interim status is granted only by statutory compliance. Interim status cannot be conferred by a permitting agency, consent order or by merely listing a facility on the Part A application as DOE did for the HLLWE.

The LET&D was also a new facility that required a RCRA permit prior to its construction and operation. The LET&D never met statutory requirements to qualify for interim status because the LET&D was not in existence by 7/3/86. DOE failed to obtain a RCRA permit in advance of construction and operation of the LET&D.

The public has been denied opportunity for notice and meaningful hearings for the HLLWE and LET&D, prior to their construction and operation as new facilities, including the right to

review plans, comment, receive written responses, review a draft permit and challenge the draft.

DOE failed to provide proper notice in the Federal Register for the HLLWE, the LET&D and the PEWE, required because they are actions within the floodplain. 10 CFR 1022 et seq. Floodplain requirements mandate an environmental impact statement and consideration of alternatives to constructing hazardous waste treatment, storage and disposal facilities in the floodplain above the Snake River Plain aquifer.

Public notice requirements of RCRA (40 CFR 124 et seq.), the CWA, the CAA, the Administrative Procedures Act (APA) and U.S. Constitution have been openly flaunted by the DOE. DOE conducts secret meetings with the Idaho Department of Environmental Quality in violation of state and federal Open Meetings Act. (5 U.S.C. § 552b; Idaho Code 67-2341 et seq.).

Numerous protections provided for in 40 CFR Subparts 264 and 265 were denied the public, including but not limited to, characterization of wastes, testing, monitoring, reporting and other technical requirements **prior to** operation of the HLLWE, LET&D and other cited INTEC facilities.

Numerous INTEC facilities operate with no RCRA permit.

II Violations

The HLLWE and the above cited facilities release hazardous waste to the atmosphere via the Main Stack and other vents at INTEC or by spills, leaks and disposals, violating the Clean Air Act and RCRA.

The HLLWE and the above cited facilities release hazardous waste to the groundwater via the Service Wastewater System (SWS), or by spills, leaks and disposals, violating the Clean Water Act and RCRA. Groundwater test wells at INTEC show the presence of toxic waste contaminants from INTEC hazardous waste facilities operations, including, but not limited to, the HLLWE.

The groundwater at INTEC is contaminated in violation of the Safe Drinking Water Act.

1. RCRA Violations

DOE has failed to protect the public from the operation of RCRA non-permitted INTEC facilities. DOE has gone so far as to claim that the INTEC facilities are “unpermittable.” At great peril to the public health and environment, DOE has knowingly proceeded to operate the INTEC facilities despite DOE knowledge that the facilities cannot qualify for permits.

DOE has failed to initiate closure for the INTEC facilities which it claims are unpermittable. Closure plans do not exist for numerous of these INTEC facilities, including the HLLWE, which is a violation of RCRA.

DOE submits partial applications which do not encompass the facilities which are related to each other in the INTEC hazardous waste operations.

INTEC facilities such as the PEWE, NWCF, Tank Farm Facility, Percolation Ponds, SWS have operated longer on a purported interim status than would have been permissible under RCRA if the facilities held full RCRA permits. Interim status has been used by DOE as a legal mirage to attempt to give a nonexistent legitimacy to hazardous waste processing operations at INTEC that clearly require RCRA permits. Statutorily, interim status is not a permit. Interim status cannot be conferred by a consent order. A RCRA permit is required during the operational

lifetime of a facility. Consent orders do not constitute a RCRA permit. Interim status expired in 1992 for mixed hazardous and radioactive treatment, storage, and disposal facilities which did not obtain final approval for a RCRA part B application. Congress provided no exception to the 1992 cut-off date in the event of regulatory changes.

RCRA is a 'cradle to grave' system for hazardous waste management that requires that the facilities which receive hazardous waste for processing and facilities to which the wastes are sent for further processing, storage or disposal must all have a RCRA permit. All of these above cited INTEC facilities send hazardous wastes to and from each other. None of the above cited facilities have a RCRA permit and sending and receiving hazardous wastes to non-permitted facilities violates RCRA.

The New Waste Calcine Facility (NWCF) operated a mixed hazardous and high-level radioactive waste incinerator without a RCRA permit sending and receiving wastes to and from the HLLWE, LET&D, PEWE, TFF, SWS, Percolation Ponds and INTEC injection well. The NWCF and its related INTEC facilities have released thousands of tons of hazardous air pollutants and radionuclides into the environment.

The NWCF ("Calcliner") is an incinerator, but DOE operated it as though it were a thermal treatment system which denied the public the higher protections required for an incinerator. DOE processed inorganic substances with the NWCF in violation of known prohibitions against incineration of inorganic substances. Upon information and belief, although the NWCF Calcliner is currently in stand down mode, DOE plans to revive calcination of wastes but has failed to inform the public of those plans as required by RCRA.

The PEWE accepts certain hazardous wastes which are required under federal law to be treated by other types of processes. DOE has failed to characterize PEWE waste feed and monitor PEWE emissions. The PEWE is a thermal treatment facility using evaporators, but DOE mischaracterizes the PEWE as a "tank treatment" operation to avoid the regulations which apply to thermal treatment units. Additionally, as a fractionation unit, the LET&D is similarly subject to thermal treatment regulations, but DOE is characterizing the LET&D as "tank treatment."

Many tanks and vessels integrally associated with the HLLWE, PEWE, and LET&D are not compliant with RCRA permit requirements, are not seismically qualified, structurally inadequate, lack secondary containment, and exceed their design life. DOE has only recently submitted a RCRA Part B Application for the PEWE and LET&D, but have received no permit and currently these facilities operate without a permit.

The HLLWE and LET&D are respectively an evaporator and fractional distillation unit and DOE is failing to require the specific protections provided by RCRA and the Clean Air Act for protecting the public and environment from the type of dangerous emissions of hazardous waste to the atmosphere from the HLLWE and the LET&D. Characterization of wastes processed and monitoring for emissions is not in compliance with RCRA or CAA requirements.

The Tank Farm Facility and the numerous tanks and connecting service piping associated with INTEC hazardous waste operations are not in compliance with numerous RCRA requirements, including but not limited to, requirements for permits, characterization, and requirements contained in 40 CFR 264/265 Subpart J. RCRA requires that wastes sent to a facility such as the HLLWE must be characterized prior to treatment. The high-level tank farm wastes have not been adequately characterized. This was a problem encountered with the NWCF Calcliner and among the reasons the Calcliner could not be permitted.

The tanks and connecting service lines (ancillary equipment) at INTEC fail to meet numerous RCRA design requirements, including but not limited to, requirements for double

containment, seismicity, inspection protection against leaks, corrosion, waste analysis and monitoring. Numerous tanks are well past their design lifetime. The tanks at INEEL have spilled, leaked and disposed hazardous wastes into the groundwater and the atmosphere.

Public notification and early opportunity for public comment requirements of the RCRA Expanded Public Participation Rule have also been violated by the construction and operation of the HLLWE prior to informing the public of DOE plans. (40 CFR 124 et seq.). DOE continues to operate the HLLWE without submitting an application, holding hearings, and informing the public of its operations.

By failing to obtain a RCRA and other federal permits required for the HLLWE and the other INTEC facilities, DOE fails to comply with the requirements of DOE Order 5400.1 which requires compliance with environmental protection, safety and health requirements for DOE operations.

By failing to obtain a RCRA and other permits required for the HLLWE and the other INTEC facilities, DOE fails to comply with DOE Order 5400.5 which sets forth requirements of radiation protection of the public and the environment.

2. Clean Air Act

DOE's INEEL facility is in violation of the Clean Air Act, 42 U.S.C. § 7401 et seq. and the national emissions standards for emissions of radionuclides, at 40 CFR Part 61. INEEL has failed to evaluate every release source for radionuclides by using the approved EPA computer model to determine doses received by the public 40 CFR 61.93(a). INEEL failed to carry out comprehensive inventory necessary to identify each point that has the potential to deliver more than 1% of the effective dose equivalent standard. 40 CFR 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 continuously monitored or monitored periodically to confirm continuing low emissions. 40 CFR 61.93

INEEL has failed to install stack monitoring equipment on all its regulated point sources. 40 CFR 61.93. INEEL has failed to conduct and comply with the appropriate quality assurance programs. INEEL has not adhered to the "compliance and reporting" requirements, it has failed to calculate the highest effective dose equivalent in accordance with standards described in subparagraphs (a) through (d) above and as required by 40 CFR 61.94.

DOE has failed to file a true, accurate and complete annual report as required by 40 CFR 61.94. The lack of monitoring equipment at all 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.

DOE public official certification that monitoring data is true, accurate and complete is materially false and the certifications are untrue, in violation of 40 CFR 61.94.

The cited INTEC facilities release hazardous waste pollutants to the air via the INTEC Main Stack or by uncontrolled emissions to the atmosphere by leaks, spills and disposals in violation of the requirements of the Clean Air Act. These RCRA non-permitted INTEC facilities also release hazardous wastes to soil and groundwater because of numerous spills, leaks and disposals. DOE fails to use best available technologies to protect the public and environment from hazardous waste spills and disposals to soil, air and water.

No Clean Air Act Title V permit exists for the INTEC facilities. A State of Idaho Permit to

Construct an Air Pollution Source (PTC) was not obtained by DOE for the LET&D until 1999, well after the LET&D began operations. No PTC has been obtained for the HLLWE by DOE although the HLLWE has operated since 1996.

Additional CAA violations include: (1) Failure of DOE to comply with Maximum Achievable Control Technology (MACT) standards 40 CFR 63 Subpart DD for INEEL and the Idaho Nuclear Technology and Engineering Center (INTEC) formerly the Idaho Chemical Processing Plant (ICPP); (2) Failure of DOE to comply with Maximum Achievable Control Technology (MACT) requirements for INEEL as an industrially operated Publicly Owned Treatment Works/Federally Owned Treatment Works (POTW/FOTW) (40 CFR 63.1580 et seq.) and (3) as a prospective AMajor Source Category@ under ASite Remediation@ (40 CFR 63.112).

The INTEC Facilities at the INEEL are an Offsite Waste and Recovery Operation. DOE has failed to comply with the Provisions of 40 CFR 63 Subpart DD for which sets standards for the Control of Hazardous Air Pollutants from Off-site Waste and Recovery Operations.

DOE has failed to apply requirements of the National Emission Standards for Hazardous Air Pollutants for Source Categories to the INEEL. DOE's INEEL facility is a Publicly Owned Treatment Works/Federally Owned Treatment Works (POTW/FOTW) which is a major source of hazardous air pollutant emission such that INEEL must meet the requirements or criteria for development and implementation of a pretreatment program. (40 CFR Subpart VVV)

DOE made "major modifications" to the NWCF without obtaining required permits under the Clean Air Act's Prevention of Significant Deterioration (PSD) or New Source Review (NSR) provisions. DOE has failed to comply with Best Available Control Technology or Maximum Achievable Control Technology for the NWCF and other INTEC facilities by installing adequate air pollution control devices.

3. Clean Water Act

The CWA specifically prohibits the discharge of any pollutants into the waters of the United States, except in those cases where the discharger has first acquired a National Pollutant Discharge Elimination System discharge permit ("NPDES permit"). 33 U.S.C. §§ 1311(a), 1342. See also 40 CFR 122.

The RCRA non-permitted INTEC facilities release hazardous waste pollutants to the soil and groundwater through the Service Waste System. Because the groundwater is hydrologically linked to aquifer of the Snake River, a navigable body of the United States, a National Pollution Discharge Elimination System (NPDES) permit is required.

INEEL does not have a NPDES permit at INTEC and is in violation of the Clean Water Act. All the INTEC facilities are point sources for which a NPDES permit is required. The discharge of pollutants into waters of the United States in the absence of an NPDES permit is expressly within the contemplation of the CWA's citizen suits provision. 33 U.S.C. §§1365(f). Pursuant to 33 U.S.C. § 1365(b) we are hereby providing notice of intent to sue.

The INTEC Percolation Ponds, in addition to lacking a NPDES permit, fail to meet RCRA requirements to have liners and are contaminating the groundwater. Interim status has expired for the Percolation Ponds. Although no RCRA permit was obtained for the ponds, these ponds continue to receive 1.5 to 2.5 millions gallons of waste water per day from the Service Waste System, further contaminating the groundwater and driving a plume of hazardous wastes and radionuclides into the aquifer. The Percolation Ponds are an open dump and violate Land Disposal Restrictions.

DOE has not complied with DOE Order 5400.5, issued in 1993, which prohibits discharge of liquid effluents to contaminated soil columns under the existing Percolation Ponds.

The Service Waste System deliberately dilutes the INTEC waste stream in violation of RCRA prohibition against dilution.

Upon information and belief, an INTEC hazardous waste injection well which has received hazardous waste and which has no RCRA permit, is still available for use and has failed to begin RCRA closure.

These RCRA non-permitted INTEC facilities are integrally related to each other. The public has not had opportunity to review the INTEC facilities in relation to each other in a National Environmental Policy Act (NEPA) mandated Environmental Impact Statement prior to the construction and operation of the facilities in the floodplain. The cumulative human health and environmental effects of the operation of these facilities and alternatives thereto have not been considered.

Although a RCRA Part B application is currently pending before the Idaho Department of Environmental Quality for the PEWE and the LET&D, the HLLWE, as an integral part of the INEEL Liquid Waste Management System, is **not** part of that application. DOE segments applications so that the public can never grasp what the entire picture is for intended operations. The human health and environmental consequences cannot be reviewed for the facilities in relation to each other.

Plaintiffs request that all non-permitted INTEC operations stand down and begin RCRA closure because the facilities have no permits.

4. **National Environmental Policy Act of 1969**

DOE has not supplied the necessary information or complied with the requirements to obtain and receive permits under RCRA, the CWA, the CAA and no adequate environmental impact statement has been provided for these facilities in accord with NEPA.

NEPA requires that federal agencies evaluate the environmental impacts of all major federal actions affecting the quality of the human environment. 42 U.S.C. § 4332(2)(c). Current operation of the HLLWE and the related facilities is in violation of NEPA because no reasonably thorough discussion and sufficiently detailed analysis, consideration of alternatives, environmental costs, or balancing of the economic and technological benefits has been prepared for the HLLWE and facilities from which it receives hazardous wastes and to which the HLLWE sends hazardous wastes. An irreversible and irretrievable commitment of resources for the cited INTEC facilities has been made in the absence of an Environmental Impact Statement.

Additionally, Executive Orders 11988, 11990 and 10 CFR 1022 et seq. require that federal agencies implement the Floodplains/wetlands requirements through existing procedures such as those established to implement the National Environmental Policy Act of 1969.

DOE has failed to address the requirements of 10 CFR 1022 et seq. to consider environmental consequences and alternatives for remediation to the HLLWE and other actions in the floodplain.

Under the floodplains/wetlands requirements the public is entitled to, but has been denied, the opportunity to participate in all the environmental considerations with respect to actions in the floodplains *before* DOE proceeds with action. DOE proceeded with the federal action to build and operate the HLLWE and other INTEC facilities, without first providing the opportunity for public notice and opportunity for comment as mandated in the floodplains/wetlands requirements.

Flooding at INTEC may well cause further contamination of the Snake River Plain sole source aquifer. DOE's flood studies are contradictory, inadequate and contain numerous disclaimers. Floodplain information does not comply with 40 CFR 270.14 et seq, 10 CFR 1022 et seq. and/or NEPA requirements.

No contingency plans exist for safe removal of hazardous wastes from INTEC in the eventuality of flooding. The human health and environmental effects of simultaneous flooding of INTEC facilities has not been considered. Underground tanks can be floated. Calcine bin sets and other underground mixed high-level radioactive and hazardous waste storage units are vulnerable to flooding. Topographic maps for the INTEC facilities are inadequate and not in compliance with legal requirements. Terrorist events which could cause flooding at INTEC have not been considered with protections established.

Because the 1999 INEEL High-Level Waste Environmental Impact Statement (HLW/EIS) has not been finalized and no Record of Decision exists, DOE is under a current duty, to the extent possible, to apply the requirements of 10 CFR 1022 to the HLLWE and other proposed actions in the floodplains/wetlands. 10 CFR 1022.5(b).

The HLLWE and the other cited INTEC facilities are a critical action as defined by 1022.4(c) involving highly volatile, toxic or water reactive materials in the floodplain. No 500-year flood analysis has been performed for the HLLWE, the Tank Farm, PEWE, Percolation Ponds and Service Waste System. No adequate NEPA or 10 CFR 1022 analysis exists for floodplain issues linking the hazards to these facilities in relation to each other.

III Intent to Sue

Environmental Defense Institute, Inc., (EDI), Keep Yellowstone Nuclear Free, Inc., and David B. McCoy have previously furnished the IDEQ, EPA, DOE and U.S. Attorney General a Notice of Intent to Sue (NOI) for the NWCF and WERF incinerators. EDI and McCoy also issued a NOI on the PEWE and related facilities. The HLLWE and other INTEC facilities were specifically cited in the NOI for the PEWE as well as in the NOI for the NWCF, and other documents filed by Plaintiffs such as: 1.) A complaint to the EPA and DOE Inspector Generals requesting an investigation of DOE/ID RCRA permitting practices; 2.) A Petition to EPA Region 10 requesting that IDEQ RCRA enforcement authority be revoked; 3.) A Petition to EPA Office of Enforcement and Compliance Assurance for review of INEEL CAA violation; 4.) A Petition to IDEQ on INTEC Debris Processing Permit deficiencies. The NOIs along with all attachments for the NWCF and the PEWE, and petitions/complaints and attached documents filed with the U. S. EPA Inspector General, EPA/Region 10, EPA/OECA, and IDEQ, are hereto incorporated by EDI, KYNF and David B. McCoy in their entirety by reference thereto for this NOI.

Plaintiffs hereby put you on notice of their intent to sue pursuant to the above and related statutes. Plaintiffs will seek the appropriate relief for violations of the statutes, including without limitation, an injunction against the continuing operation of all non-complying sources until those facilities are in full compliance with requirements of law, an injunction requiring immediate and full compliance with governing statutes and all associated permitting, operating monitoring and reporting requirements. Plaintiffs will seek the maximum statutory penalties allowable for each day's violation per source under each of the statutes. Costs, attorney fees and expert witness fees will be sought.

For more information please contact:

_____ date:
David B. McCoy
2940 Redbarn Lane
Idaho Falls, ID 83404
V. 208 542-1449
F. 208 552-0565
E. dmccoy01@earthlink.net

_____ date:
Chuck Broschious, Executive Director
Environmental Defense Institute
P.O. Box 220
Troy, Idaho 83871
V. 208-835-6152
F. 208-835-5407
E. edinst@tds.net

_____ date:
Erik Ringelberg
Executive Director
Keep Yellowstone Nuclear Free, Inc.
P.O. Box 4838
Jackson, WY 83001
V. 307-732-2040
F. 307-732-0129
E. kynf@yellowstonenuclearfree.com