IN THE MATTER OF ROCKY FLATS

SETTLEMENT AGREEMENT AND
STATE COMPLIANCE ORDER ON CONSENT NO 94-07-07-01
EPA DOCKET # CERCLA-VIII-91-03 & RCRA-VIII-91-07

On March 10 1994 DOE EPA, and CDH agreed to enter into formal negotiations on environmental restoration activities to be established in the Rocky Flats Cleanup Agreement (RFCA) which is intended to replace the existing Interagency Agreement (IAG) The parties further agreed to use best efforts to have a tentative agreement on the RFCA and submit its text for public comment by September 15, 1994 Subsequent to the public comment period the parties will determine whether revisions to the tentative agreement are necessary before adopting final changes

This Settlement Agreement and State Compliance Order on Consent (Settlement Agreement and State Order") is entered into by EPA pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), and the Resource Conservation and Recovery Act (RCRA), and by CDH pursuant to the Colorado Hazardous Waste Act (CHWA) The State Order has been issued by CDH pursuant to § 25-15-308, C R S (1989) The Settlement Agreement and State Order shall be an effective and enforceable agreement and order for the milestones identified in Attachments A and B Attachment A describes those milestones missed by DOE between March 1993 and June 1994, and Attachment B describes those milestones likely to be missed by DOE between July 1994 and January 31, 1995 The parties agree that through January 31 1995, compliance with this Settlement Agreement and State Order shall satisfy DOE's obligations and any liability for stipulated penalties under the IAG for the milestones identified in Attachments A and B Thus, for the totality of assessed penalties for the milestones described in Attachments A and B, and in the spirit of good faith and cooperation, a settlement amount of $2,800,000 has been agreed to by DOE which will be apportioned between CERCLA stipulated penalties, CHWA administrative penalties and supplemental environmental projects (SEPs) The penalty was mitigated from $3,700,000 due to DOE's commitment to use its best efforts to reach a new agreement by January 31, 1995, and DOE s willingness to resolve stipulated penalties in advance of violations actually occurring The parties will now focus their efforts on negotiating the RFCA in order to address activities at the facility Therefore, EPA, CDH, and DOE agree, and it is hereby ordered, as follows

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DOCUMENT CLASSIFICATION
REVIEW WAIVER PER
CLASSIFICATION OFFICE

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a) DOE shall specifically request appropriation and authorization from Congress in DOE's FY96 budget submittal, consistent with paragraph 132 of the IAG, for payment of $350 000 to the "Hazardous Substances Response Trust Fund ' Within 30 days of receipt of the necessary appropriation DOE shall make payment of $350,000 by U S Treasury check payable to the 'Hazardous Substances Response Trust Fund" and this money will be paid from funds authorized and appropriated for that specific purpose, in accordance with paragraph 132 of the IAG Payment shall be remitted by DOE to the location provided in Attachment C

b) In settlement of violations of the requirements of the Consent Order (91-01-22-01) and the Colorado Hazardous Waste Permit (91-09-30-01), as described in Attachments A and B DOE shall pay $350,000 to CDH by U S Treasury check DOE will pay $175,000 within 90 days of signing this agreement, and will pay an additional $175,000 on or before December 30, 1994

c) In satisfaction of DOE's remaining obligations to CDH and EPA, the parties mutually agree that SEPs will be funded as follows:

i DOE will expend an additional $1,630,000 to fund SEPs which relate to and are at or in the vicinity of, Rocky Flats The SEPs will consist of environmental projects not already specifically required by the IAG or any other legal requirements The parties will attempt to mutually identify these projects, and their respective scopes and schedules, by November 1, 1994 Subsequent to the identification of SEPs, DOE will fund such projects as mutually agreed among the parties,

ii If, by November 1, 1994, the parties cannot reach mutual agreement on these additional projects, and their respective scopes and schedules, then prior to November 15, 1994, CDH will identify projects, and their respective scopes, for its portion of the SEP funds ($580,000),

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iii If by November 1 1994, the parties cannot reach mutual agreement on these additional projects and their respective scopes and schedules, then prior to November 15, 1994, EPA will identify projects, and their respective scopes for its portion of the SEP funds ($1 050,000);

iv Prior to January 15, 1995 DOE will submit schedules and cost estimates for each project identified by EPA and CDH If EPA and CDH are satisfied with the schedules and cost estimates, DOE will implement the SEPs accordingly If EPA and CDH are not satisfied with the submitted schedules and/or cost estimates EPA and CDH will so notify DOE and the dispute resolution procedures in paragraph c(v) will be initiated,

v The dispute resolution procedures for disputes arising under paragraph c(iv) shall follow the procedures found in Parts 12 and 16 of the IAG for EPA and State-lead sites for disputes relating to EPA and State-directed SEPs, respectively Dispute resolution procedures shall commence at the Senior Executive Committee (SEC) level within 14 days of EPA's or CDH's notification under paragraph c)iv and shall be limited to SEP schedules and cost estimates,

vi Unless all of the parties agree otherwise, SEPs must be funded and initiated prior to FY 96, and,

vii On or before January 31, 1995, DOE will provide funding in the amount of $470,000 to CDH to be used for environmental purposes which mutually benefit CDH and DOE

d) DOE's failure to timely submit the penalty payments as described in Paragraph a) or to implement and/or fund SEPs as identified pursuant to Paragraphs c)i , c)iv , and c)vi , constitutes a violation of the IAG In the event of any such violation of the IAG, DOE agrees to pay $10,000 to the Hazardous Substances Response Trust Fund, consistent with Part 19 of the IAG, for each week (or part thereof) that DOE fails to timely make penalty payments under Paragraph a), or to implement and/or fund SEPs as described under Paragraph c) DOE's failure to timely submit penalty payments as described in Paragraph b), or to implement and/or fund SEPs as identified pursuant to Paragraphs c)i , c)iv , c)vi and c)vii , constitutes a violation of this CDH Order In the event

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of any such violation of the Order, DOE agrees to pay $10 000 to CDH for each week (or part thereof) that DOE fails to timely make penalty payments under Paragraph b) or to implement and/or fund SEPs as described under Paragraph c EPA and CDH reserve their rights to take judicial or administrative action to seek performance of the terms of this agreement

e) DOE expressly waives any right to contest its liability for the original $2 800 000 stipulated penalty total (both cash and SEPs) which resolves DOE's liability, through January 31, 1995, for stipulated penalties accrued for the milestone violations listed in Attachments A and B

f) EPA and CDH shall not issue to DOE any Notice of Violation (NOV) for any violation of a milestone identified in Attachments A and B that occurs between the date of this Settlement Agreement and State Order and January 31 1995

g) DOE's payment to the Hazardous Substances Response Trust Fund, DOE's payment to CDH, and DOE's funding of SEPs pursuant to this Settlement Agreement and State Order shall constitute full settlement of the existing and potential IAG or CHWA violations described in Attachments A and B through January 31, 1995

h) The payment or expenditure of funds pursuant to the terms of this Settlement Agreement and State Order shall not affect DOE's commitment to seek funding in a timely manner to meet its obligations to perform other required environmental activities at Rocky Flats The transfer of funds to EPA and CDH and the implementation of SEPs pursuant to this Settlement Agreement and State Order shall not affect implementation of required environmental work at Rocky Flats

i) In the event the RFCA is delayed and not effective by January 31, 1995 EPA and CDH reserve their right to enforce the existing IAG, and DOE reserves its rights and defenses under the IAG for any and all milestone violations which occur on or after February 1, 1995 The parties agree however, to evaluate whether an extension of this agreement is appropriate As part of the evaluation, EPA and CDH will consider the circumstances of the delay

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j) EPA, CDH and DOE further agree that in any administrative or judicial proceeding seeking to enforce the terms of this Settlement Agreement and Colorado Compliance Order on Consent, DOE may raise as a defense that any fail re or delay was caused by the unavailability of appropria-ed funds In particular, nothing herein shall be construed as precluding DOE from arguing that no provision of this Order shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U S C section 1341 While the State disagrees that an Anti-Deficiency Act defense, or any other defense based on lack c funding, exists the Parties do agree and stipulate that it is premature at this time to raise and adjudicate the existence of such a defense

k) In the event DOE does not comply with the terms set forth in Paragraphs a ,b c , and d , EPA and CDH agree that the sole remedy against DOE shall be limited to an administrative or judicial action to enforce the terms provided in Paragraphs a , b , c and d EPA and CDH expressly covenant not to take any other administrative or judicial action to enforce the terms of this Settlement Agreement and State Order

Thomas Looby Date
Director, Office of Environment
Colorado Department of Health

7/7/94

Mark N Silverman Date
Manager
Rocky Flats Field Office

Jack W McGraw Date
Deputy Regional Administrator
U S Environmental Protection Agency
Region VIII

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j) EPA, CDH and DOE further agree that in any administrative or judicial proceeding seeking to enforce the terms of this Settlement Agreement and Colorado Compliance Order on Consent DOE may raise as a defense that any 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 shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U S C section 1341 While the State disagrees that an Anti-Deficiency Act defense, or any other defense based on lack of funding, exists, the Parties do agree and stipulate that it is premature at this time to raise and adjudicate the existence of such a defense

k) In the event DOE does not comply with the terms set forth in Paragraphs a ,b , c , and d , EPA and CDH agree that the sole remedy against DOE shall be limited to an administrative or judicial action to enforce the terms provided in Paragraphs a , b , c and d EPA and CDH expressly covenant not to take any other administrative or judicial action to enforce the terms of this Settlement Agreement and State Order

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Post-it Fax Note 7671	Date	# of pages ▶
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Phone #	Phone #	
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ATTACHMENT A

Operable Unit	Deliverables	Due Date
2	Draft Phase I RFI/RI Report	[illegible]/12/9[illegible]
2	Final Phase II RFI/RI Report	8/9/93
8	Draft Phase I RFI/RI Report	2/14/94
	Draft Phase I RFI/RI Report	4/11/94
12	Draft Phase I RFI/RI Report	4/20/94

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ATTACHMENT B

Operable Unit	Deliverables	Due Date
8	Final Phase [illegible] Report	7/[illegible]2/94
	Final Phase I RFI/RI Report	9/6/94
[illegible]0	Draft Phase I RFI/RI Report	8/25/94
10	Final Phase RFI/RI Report	1/30/95
1[illegible]	Draft Phase RFI/RI Report	9/20/94
12	Final Phase RFI/RI Report	9/15/94
1[illegible]	Draft Phase I RFI/RI Report	8/8/94
13	Final Phase I RFI/RI Report	1/11/95
14	Draft Phase RFI/RI Report	12/20/94