

PART FOUR

INTEGRATION OF EPA AND ECOLOGY RESPONSIBILITIES

ARTICLE XXIII. RCRA/CERCLA INTERFACE

86. Part Two of this Agreement requires DOE to carry out RCRA TSD work under the direction and authority of Ecology. Part Three of this Agreement requires DOE to carry out investigations and cleanup of past-practice units through the CERCLA process under the authority of EPA, or through the RCRA Corrective Action process under the authority of Ecology. This Part Four establishes the framework for EPA and Ecology to resolve certain disputes that may arise concerning the respective responsibilities of the two regulatory agencies.

87. EPA and Ecology recognize that there is a potential for the two regulatory agencies to impose conflicting requirements upon DOE, due to the complexities of the Hanford Site (where RCRA TSDs, and past-practice units may be in close proximity to each other) and due to the overlap between the respective authorities of the two regulatory agencies. EPA and Ecology intend to carry out their responsibilities so as to minimize the potential for any such conflicts. Except as otherwise specified in Appendices C and D, either EPA or Ecology shall be lead regulatory agency for oversight of DOE's work for all operable units, TSD groups/units or milestones covered by this Agreement.

ARTICLE XXIV. LEAD REGULATORY AGENCY AND REGULATORY APPROACH DECISIONS

88A. The designation of lead regulatory agency and regulatory process for each operable unit, TSD group/unit or milestone shall be made

through the change process in Section 12.0 of the Action Plan. EPA and Ecology have joint authority to determine the choice of lead regulatory agency and regulatory process, in consultation with DOE, and DOE shall not dispute such joint determinations.

B. If the EPA and Ecology cannot agree on the choice of lead agency and/or regulatory process for any operable unit, TSD group/unit or milestone, then the issue shall enter the dispute resolution process as provided in Article XXVI. If, following such dispute resolution process, EPA and Ecology cannot agree, then the releases and units that are the subject of the dispute shall be considered a matter which Ecology, EPA, and DOE have chosen not to address under this Agreement, and all Parties reserve all rights and authorities with respect to such matters.

89. Except as otherwise specified in Appendices C and D, either EPA or Ecology will serve as lead regulatory agency for each operable unit, TSD group/unit and milestone, and the non lead regulatory agency will generally not be involved. EPA and Ecology will enter into an Memorandum of Understanding (MOU) which will describe the circumstances when the lead regulatory agency and non-lead agency will interact and coordinate activities. These include instances where:

- A. The lead regulatory agency has requested the assistance or involvement of the non lead agency;
- B. Ecology lacks legal authority to approve or require action, such as approval of a CERCLA remedial action;
- C. The non lead agency has a mandatory legal obligation or duty, such as under a permit;
- D. EPA is the lead regulatory agency, and Ecology concurrence is sought

for a CERCLA Remedial Action.

Any disputes between EPA and Ecology concerning RCRA matters that cannot be resolved in accordance with the MOU, may be referred by either EPA or Ecology to dispute resolution under Article XXVI. In the event that EPA and Ecology cannot agree on the selection of CERCLA remedial action where Ecology is the lead regulatory agency, DOE will be notified and the dispute will be elevated to the IAMIT and resolved in accordance with Article XVI. For such disputes, the IAMIT and SEC will include the Ecology representatives designated in Article VIII. In the event the matter is elevated to the Administrator for resolution, Ecology will be notified and invited to participate in any meeting with DOE to discuss the issues under dispute.

ARTICLE XXV. PHYSICALLY INCONSISTENT ACTIONS

90. EPA and Ecology intend that neither regulatory agency shall direct actions to be taken at the Hanford Site that are physically inconsistent with other actions directed by either regulatory agency at the Site. This provision applies to any actions required to be taken at the site under RCRA or CERCLA. For the purposes of this Agreement, Physically Inconsistent Action shall mean any action which, if implemented, would reduce the overall effectiveness of other response actions. The setting of priorities for action based on budgetary considerations shall not be used as a factor in determining the presence of physical inconsistency. The provisions of this Article are independent of and do not modify or otherwise affect the provisions of Article XXVIII (RCRA/CERCLA Reservation of Rights).

91. In the event of a dispute between EPA and Ecology over an issue of physical inconsistency, either Party may refer such dispute to the dispute

resolution process at Article XXVI. In resolving a dispute concerning a possible physical inconsistency, the parties shall attempt to resolve the dispute in such a way as to promote timely cleanup and benefit to the net overall environmental quality of the Hanford Site.

If at the conclusion of that dispute resolution process, the Parties have not agreed on a resolution of the dispute, then the releases and activities that are the subject of the dispute shall be considered a matter which the Parties have chosen not to address under this Agreement, and the Parties reserve all rights and authorities with respect to such matters.

ARTICLE XXVI. DISPUTE RESOLUTION

92. Except as otherwise provided in Paragraph 89, Resolution of Dispute between Ecology and EPA shall be resolved in the following manner:

A. On discovery of any dispute between Ecology and EPA, each regulatory agency's project managers shall make reasonable efforts to informally resolve such disputes. If informal resolution cannot be achieved, the disputing Party shall submit a written statement of dispute setting forth the nature of the dispute, the disputing Party's position with respect to the dispute, and the information relied upon to support its position to the IAMIT as described below. Receipt of such a statement by the IAMIT shall constitute formal elevation of the dispute in question to the IAMIT. At such time as the disputing Party submits a statement of dispute to the IAMIT, a copy shall be sent to DOE. The IAMIT will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. Ecology and EPA agree to utilize the dispute resolution process only in good faith and agree to expedite, to the extent possible, the Dispute Resolution

process whenever it is used.

B. The Ecology designated representative of the IAMIT is the Program Manager for Nuclear Waste. EPA's designated representative of the IAMIT is the Program Manager, Hanford Project Office of EPA's Region 10. Following elevation of a dispute to the IAMIT, the IAMIT shall have twenty one (21) days to unanimously resolve the dispute. Any successful resolution shall be documented within an additional twenty one (21) days by a jointly signed determination outlining the resolution reached. At such time, a copy of such documentation shall be sent to DOE. If the IAMIT is unable to unanimously agree on a resolution, the members shall forward pertinent information and their respective recommendations to the SEC for resolution.

C. The Ecology designated member of the SEC is the Assistant Director for Waste Management. EPA's designated member of the SEC is the Director, Office of Environmental Clean Up of EPA Region 10. The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the IAMIT. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute. The DOE-RL Deputy Manager shall meet with the SEC to assist in resolving the dispute. The SEC shall have twenty one (21) days to unanimously resolve the dispute. Any successful resolution shall be documented, within an additional twenty one (21) days, by a jointly signed determination outlining the resolution reached. At such time, a copy of such documentation shall be sent to DOE.

D. Throughout the above dispute resolution process, EPA and Ecology shall consult, as appropriate, with DOE in order to facilitate resolution of disputes.

93. If disputes are not resolved pursuant to this Article, such

disputes shall be subject to Article XXVIII.

94. The pendency of any dispute under this Part shall not affect DOE's responsibility for timely performance of the work required by this Agreement, except that the time period for completion of work directly affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Agreement which are not directly affected by the dispute shall continue and be completed in accordance with this Agreement.

ARTICLE XXVII. OTHER DISPUTES AND EPA OVERSIGHT

95. If there are other disputes between Ecology and EPA concerning overlaps between Part Two and Part Three of this Agreement, Ecology and EPA shall use the dispute resolution process in Article XXVI to resolve such disputes.

96. The provisions of this Agreement do not eliminate EPA's responsibility for oversight of Ecology's exercise of its authorized RCRA authorities. In carrying out any such oversight, EPA shall follow the statutory and regulatory procedures for such oversight and the provisions of this Agreement, including, as appropriate, the Dispute Resolution process in Article XXVI.

ARTICLE XXVIII. RCRA/CERCLA RESERVATION OF RIGHTS

97. If EPA and Ecology are unable to resolve jointly any dispute arising under this Part, then each regulatory agency reserves its rights to impose its requirements directly on DOE, to defend the basis for those

requirements, and to challenge the other regulatory agency's conflicting requirements. In such event, DOE reserves its right to raise any defenses available.

98. EPA and Ecology each reserve its right after utilizing the Dispute Resolution process in Part Four, to seek judicial review of a proposed decision or action taken with respect to corrective or remedial actions at any given operable unit on the grounds that either EPA or Ecology claims that such proposed decision or action conflicts with its respective laws governing protection of human health and/or the environment. It is the understanding of the Parties that this reservation is intended to provide for challenges where the adequacy of protection of human health and the environment or the means of achieving such protection is at issue.