

## ADDENDUM TO 1995 SETTLEMENT AGREEMENT

The Parties to this Addendum, the State of Idaho, through the Governor and Attorney General, and the Departments of the Navy and Energy, through General Counsels and Director, Naval Nuclear Propulsion Program, hereby agree to the following Addendum to the 1995 Settlement Agreement and Consent Order in Public Service Co. of Colorado v. Batt, No. CV 91-0035-S-EJL (D. Id.) and United States v. Batt, No. CV-91-0054-S-EJL (D. Id.) (Hereinafter "1995 Agreement"):

### I. PURPOSE OF ADDENDUM:

This Addendum is executed for the purpose of governing the receipt and handling of shipments of Naval spent fuel as that term is defined in the 1995 Agreement and providing for enforceable commitments by the Navy to assure that Naval spent fuel is stored safely in Idaho and removed from Idaho with reasonable promptness as provided in this Addendum. This Addendum is necessary to provide definition to the Parties' relationship and to assure the ongoing mission of the Naval Nuclear Propulsion Program at the Idaho National Laboratory (INL).

### II. DEFINITIONS:

Unless otherwise expressly stated herein all terms used in this Addendum shall be used as defined in the 1995 Agreement.

### III. EFFECT ON 1995 AGREEMENT:

This Addendum relates only to the receipt and storage of Naval spent fuel at the INL after January 1, 2017 and January 1, 2035. Except as expressly provided for in this Addendum, all other provisions of the 1995 Agreement are unaffected by this Addendum.

### IV. EFFECTIVE DATE AND CONDITION ANTECEDANT:

The terms and conditions of this Addendum shall be effective on the date of the last signature to this Agreement. If on January 1, 2023, the Navy is in material breach of any mandatory and applicable provisions of the 1995 Agreement and/or this Addendum, this Agreement shall at the election of the State of Idaho be voidable unless the Court determines that material breach did not occur, or that such material breach was cured within 180 days from written notice by the State to the Navy of the material breach.

### V. TERMS AND CONDITIONS:

- A. All Naval spent fuel shipped to Idaho after January 1, 2035, must meet the national security requirements required by paragraph D.1.a of the 1995 Agreement.
- B. Notwithstanding the provisions of paragraph C.1 of the 1995 Agreement, after January 1, 2035, the Navy may maintain a volume of Naval spent fuel at INL of not

more than nine (9) metric tons heavy metal (MTHM) for a timeframe reasonably necessary for examination, processing, and queuing for shipment to a repository or storage facility outside Idaho provided:

1. No portion of said nine MTHM Naval spent fuel provided for in paragraph V.B of this Addendum, shall consist of or be from shipments of Naval spent fuel arriving at the INL prior to January 1, 2026; and,
  2. After January 1, 2035, the Navy may ship a running average of no more than twenty (20) shipments per year of Naval spent fuel to INL. The term "running average" shall be defined as set forth in paragraph A.16 of the 1995 Agreement.
- C. Notwithstanding the provisions of paragraph E.8 of the 1995 Agreement, Naval spent fuel arriving at the INL after January 1, 2017 may be kept in water pool storage for a timeframe reasonably necessary for examination and processing not to exceed six (6) years. All Naval spent fuel located in water pool storage prior to January 1, 2017 must be removed from water pool storage by not later than January 1, 2023.
- D. In addition to the volume of Naval spent fuel provided for in paragraph V.B above, the Navy may maintain a volume of not more than 750 kilograms heavy metal of Naval spent fuel in archival wet or dry storage as necessary for comparison to support fuel designs under development or in use in the U.S. Navy fleet. The archival fuels provided for in this section are not subject to the limitation set forth above in paragraph V.C.
- E. After January 1, 2035 the Navy shall annually provide notice to the State of Idaho of: (1) the total quantity (in kilograms) of Naval spent fuel maintained for archival storage; (2) the actual number of shipments and actual number of metric tons of Naval spent fuel shipped to and from INL during the preceding calendar year; and (3) an estimate of the number of shipments and the number of metric tons of Naval spent fuel to be shipped to and from INL during the following calendar year.


#### VI. REMEDIES:

- A. If the Navy fails to satisfy the substantive obligations or requirements it has agreed to in this Addendum or fails to meet deadlines for satisfying such substantive obligations or requirements, shipments of Naval spent fuel to INL shall be suspended unless and until the Parties agree or the Court determines that such substantive obligations or requirements have been satisfied.
- B. In addition to the remedy specified in paragraph VI.A above, in the event that the Navy fails to remove Naval spent fuel from pool storage as provided in paragraph V.C of this Addendum, then subject to the availability of the appropriations provided in advance for this purpose, the Navy shall pay to the State of Idaho \$60,000 for each day such requirement has not been met.

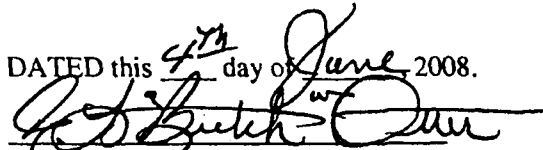
IX. DEPARTMENT OF ENERGY:

The obligations set forth in this Addendum are obligations of the Naval Nuclear Propulsion Program and, consistent with Paragraph K.1.b of the 1995 Agreement, are Navy obligations for purposes of enforcement. This Addendum neither creates nor imposes any liabilities or obligations on DOE, nor adds to the liabilities and obligations assumed by DOE in the 1995 Agreement. To the extent, however, that any activity subject to the terms of this Addendum is conducted or carried out by the DOE on behalf of the Navy, it shall be the obligation of the Navy to comply with the terms of this Addendum or any Court Order enforcing this Addendum in carrying out such activity.

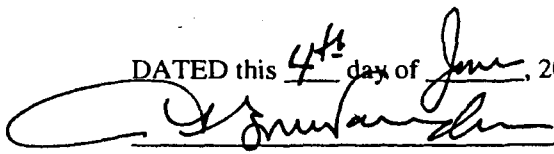
DATED this 7<sup>th</sup> day of June, 2008.

  
Admiral Kirkland Donald  
Director, Naval Nuclear Propulsion Program

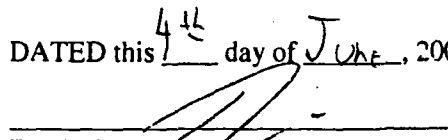
DATED this 4<sup>th</sup> day of June, 2008.

  
C. L. "Butch" Otter  
Governor of Idaho

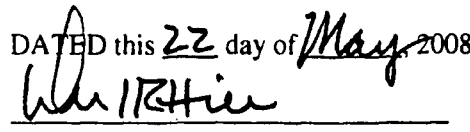
DATED this 4<sup>th</sup> day of June, 2008.

  
Lawrence Wasden  
Idaho Attorney General

DATED this 4<sup>th</sup> day of June, 2008.

  
Frank Jimenez  
General Counsel, Department of Navy

DATED this 22 day of May, 2008.

  
David Hill  
General Counsel, Department of Energy

- C. The Court may enforce the rights, obligations and requirements assigned by this Addendum pursuant to all legal and equitable remedies available to the courts of the United States, including, but not limited to, use of the Court's contempt powers, provided, however, that in the event Idaho invokes the remedy specified in paragraph VI.A, and the Navy suspends shipments as stipulated therein, the Court's enforcement powers shall be limited to determining whether the substantive obligations or requirements alleged to have been breached have been satisfied. Nothing herein limits or shall be construed to limit the Court's powers to enforce this Addendum in the event the Navy refuses to cease shipments as specified herein.
- D. No provision of this Addendum shall compel any Party to act without due legal authority. Performance by every Party under this Addendum shall be subject to and comply with all applicable federal statutes, regulations and orders, including the Anti-Deficiency Act.
- E. In the event that any Party to this Addendum contends that any other Party has violated any terms of the Addendum, the Parties shall seek to resolve their differences informally before asking for resolution by the Court.

#### VII. CONSENT ORDER:

- A. The Parties agree they shall jointly present this Addendum to the U.S. District Court with a proposed Consent Order that will provide for the incorporation of this Addendum and continuing jurisdiction of the Court. This Addendum and Consent Order shall not preclude any Party from applying to the Court under Rule 60, of the Federal Rules of Civil Procedure, or the Court from granting relief thereunder.
- B. If the Consent Order is not entered by the Court, in accordance with paragraph VII.A above, within 45 days of lodging with the Court, then any Party to this Addendum may elect to terminate this Addendum, in which case this Addendum becomes null and void, and of no force or effect and all terms of the 1995 Agreement shall be fully enforceable as related to Naval spent fuel as though this Addendum had never been executed.

#### VIII. EFFECT ON PENDING LITIGATION AND ON OTHER LITIGATION AND PROCEEDINGS:

The Parties acknowledge the existence of pending litigation between the Department of Energy and the State of Idaho, United States v. Batt, 9th Circuit No. 06-35661. Neither this Addendum nor the fact of entering into this Addendum shall be used by the Parties as evidence or in argument in the named litigation at any stage of that litigation, or in any other litigation or administrative proceeding, except in proceedings to enforce or interpret this Addendum.