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March 9, 2020

**RE: Public Comment on NEPA Regulations the Council on Environmental Quality (CEQ) is proposing to update its regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA) CEQ–2019–0003).<sup>1</sup>**

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Washington DC  
Submitted via email to *Federal eRulemaking Portal*:  
<https://www.regulations.gov>

Greetings,

The Environmental Defense Institute's (EDI) mission statement includes a focus on environmental, health and safety impacts of the Idaho National Laboratory – a US Department of Energy (DOE) site in SE Idaho.

**Given the significance of these NEPA revisions, EDI requests that the comment period be extended for an additional 90 days.**

During EDI's >30-year existence we have submitted countless comments on proposed National Environmental Policy Act (NEPA) proposals by Nuclear Regulatory Commission (NRC) DOE (INL, Hanford, WIPP), NASA and the US Forest Service actions.

**In the strongest terms possible, EDI is categorically opposed to any further watering down the NEPA revisions proposed by the Council on Environmental Quality (CEQ).** In fact, NEPA has already been gutted by successive Presidents and barely only saved by litigation initiated by EDI and numerous environmental organizations with the requisite resources to challenge federal actions in court.

The NEPA regulations the CEQ and President Trump are proposing to update its regulations for implementing the procedural provisions of the NEPA will gut the original Congressional intent contained in the current statute. As CEQ notice states:

“The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, (NEPA) was signed into law by President Nixon on January 1, 1970. The Council on Environmental Quality (CEQ) initially issued guidelines for implementing NEPA in 1970, revised those guidelines in 1973, and subsequently promulgated its NEPA implementing regulations in 1978.”

“Congress enacted NEPA to establish a national policy for the environment, provide for the establishment of CEQ, and for other purposes. Section 101 of NEPA sets forth a national policy ‘to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future

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<sup>1</sup> COUNCIL ON ENVIRONMENTAL QUALITY [CEQ–2019–0003] Federal Register/ Vol. 85, No. 7 / Friday, January 10, 2020 / Proposed Rules

generations of Americans.”

“42 U.S.C. 4331(a). Section 102 of NEPA establishes procedural requirements, applying that national policy to proposals for major Federal actions significantly affecting the quality of the human environment by requiring Federal agencies to prepare a detailed statement on: (1) The environmental impact of the proposed action; (2) any adverse effects that cannot be avoided; (3) alternatives to the proposed action; (4) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources that would be involved in the proposed action.”<sup>2</sup>

### Summary of EDI’s comments

1. NEPA’s current cumulative effects would be changed by President Trump/CEQ to no cumulative effects considered (i.e., no cumulative climate change will be considered). This means the existential threat of climate disaster on the entire world will not be included in any NEPA analysis.<sup>3 4</sup> The cumulative effects of all the DOE’s Idaho National Laboratory site radiological emissions would not be included in any new CEQ NEPA Environmental Impact Statement (EIS) analysis thus denying the public the information needed for an informed decision. Without this crucial NEPA cumulative assessment, the proposal is deceptive because the public is only being given how much impact a new facility will add and not the total INL impacts.
2. DOE’s continued dumping of mixed hazardous high-level, Transuranic and low-level nuclear waste are cumulative and due to their tens-of-thousands of year half-lives must be considered forever wastes.<sup>5</sup> Inadequate NEPA analysis due to reduced requirements by regulatory agencies (EPA, NRC and Idaho Department of Environmental Quality (IDEQ)) allow these practices to continue.<sup>6</sup>
3. The proposed CEQ NEPA changes will force the speed up the Environmental Impact Statement (EIS), Environmental Assessments (EA) processes so agencies will not be able to conduct adequate assessments of the proposed federal actions.<sup>7</sup>

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<sup>2</sup> Federal Register/ Vol. 85, No. 7 / Friday, January 10, 2020 / Proposed Rules 40 CFR Parts 1500, 1501, 1502, 1503, 1504, 1505, 1507, and 1508 [CEQ–2019–0003] [www.regulations.gov](http://www.regulations.gov).

<sup>3</sup> [Michael B. Gerrard](#), Columbia University School of Law, and [Tracy Hester](#), University of Houston School of Law, “Climate Engineering and the Law Regulation and Liability for Solar Radiation Management and Carbon Dioxide Removal.” “In view of the disastrous Hurricanes Harvey, Irene and Maria, and the Trump administration’s abandonment of action on climate change, increasing attention is going to climate engineering as a way to avoid the worst impacts of climate change.”

<sup>4</sup> Lukas Ross, Senior policy analyst, Friends of the Earth.

<sup>5</sup> Tami Thatcher, The “Forever” Contamination Sites at the Idaho National Laboratory <http://www.environmental-defense-institute.org/publications/EarthDayINLreport.pdf>

<sup>6</sup> Chuck Broschious, Radioactive Waste Management Complex Subsurface Disposal Area, Five Year Review, Waste Area Group (WAG) 7, CERCLA Cleanup at Idaho National Laboratory for U. S. Department of Energy, Compiled for Environmental Defense Institute by Chuck Broschious. <http://environmental-defense-institute.org/publications/EDICERCLARWMCRevG.pdf>

<sup>7</sup> CEQ FR notice states: “ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays, including by using CEQ’s authority to interpret NEPA to simplify and accelerate the NEPA review process. In response to E.O. 13807, CEQ published an initial list of actions and stated its intent to review its existing NEPA regulations in order to identify potential revisions to update and clarify these regulations.” “On August 15, 2017, President Trump issued E.O. 13807 titled, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure.”

4. Current NEPA analysis is inadequate and must be strengthened not weakened as CEQ/President Trump propose.<sup>8</sup>
5. It's important that somehow DOE officialdom in NEPA analysis has to admit what they did to the people downgradient from the INL deep-well hazardous/radioactive waste (HRW) injection wells. And it is a sign of what is to come from the INL HRW RWMC burial grounds eventually.
6. Disclaimers like the ones below are exemplars common in US government Nuclear Regulatory Commission (NRC) NEPA/EIS documents show how unreliable the government analysis is:<sup>9</sup>

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Other examples of various DOE NEPA analysis's disclaimers that undermine/discredit the validity/credibility of the NEPA analysis listed below:

**“Contract No:**

“This document was prepared in conjunction with work accomplished under Contract No. DE-AC09-08SR22470 with the U.S. Department of Energy (DOE) Office of Environmental Management (EM).

<sup>8</sup> Rob Klee, Yale School of Forestry and Environmental Studies (FES) lecturer, ideas are giving added teeth to the National Environmental Policy Act (NEPA) of 1970 by including a hard, economy-wide greenhouse gas target. “This was the first environmental law,” says Klee, who teaches environmental law and policy. “NEPA and the other first-generation environmental laws were designed to address egregious in-your-face harms” (think companies dumping pollutants in the nation's waterways or emitting toxic fumes). Essentially, NEPA require the government to consider the environment before taking any major action or the public can sue, explains Klee, but the law as it stands is just procedural.”

<sup>9</sup> Supplement to the U.S. Department of Energy's Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada, Final Report Manuscript Completed: May 2016 Date Published: May 2016, NUREG-2184

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**“DISCLAIMER**

“This is a technical report that does not take into account contractual limitations or obligations under the Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste (Standard Contract) (10 CFR Part 961). For example, under the provisions of the Standard Contract, spent nuclear fuel in multi-assembly canisters is not an acceptable waste form, absent a mutually agreed to contract amendment.

“To the extent discussions or recommendations in this report conflict with the provisions of the Standard Contract, the Standard Contract governs the obligations of the parties, and this report in no manner supersedes, overrides, or amends the Standard Contract.

“This report reflects technical work which could support future decision making by DOE. No inferences should be drawn from this report regarding future actions by DOE, which are limited both by the terms of the Standard Contract and a lack of Congressional appropriations for the Department to fulfill its obligations under the Nuclear Waste Policy Act including licensing and construction of a spent nuclear fuel repository.”<sup>12</sup>

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PACIFIC United States Government nor any agency thereof, nor Battelle Memorial Institute, nor any of their employees, makes any warranty, expressed or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise, does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government of any agency thereof, or Battelle Memorial Institute. The views and opinions of authors expressed herein do not necessarily [sic] state or reflect those of the United States Government or any agency thereof, or Battelle Memorial Institute.”<sup>13</sup>

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<sup>10</sup> [Spent Fuel and Waste Disposition](#) Spent Nuclear Fuel and High-Level Radioactive Waste Inventory Report Prepared for U.S. Department of Energy Spent Fuel and Waste Disposition SRNL: Dennis Vinson, Joe T. Carter September 2019 FCRD- NFST -2013- 0002

<sup>11</sup> Ibid Foot Note #10

<sup>12</sup> Spent Nuclear Fuel and High-Level Radioactive Waste Inventory Report September 2019, Pg. II.

<sup>13</sup> PACIFIC NORTHWEST LABORATORY *operated by* BATTIELLE MEMORIAL INSTITUTE *for the* UNITED STATES DEPARTMENT OF ENERGY *under Contract DE-AC06-76RLO 1830*

## What was the original NEPA purpose Sec. 1502.1 of Environmental Impact Statement?

“The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. **Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses.** An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.”<sup>14</sup> [emphasis added]

## Is NEPA and CERCLA/FFCA<sup>15</sup> working as Congress intended to address DOE’s HLW/TRU waste mismanagement and environmental degradation?

Ultimately DOE, EPA and NRC continue to abuse the National Environmental Policy Act (NEPA) process by routinely and repeatedly ignoring State/public comments, no matter how reasoned, and no matter how supported by science and facts because they are self-regulated. NEPA needs to require DOE and other agencies to directly answer with technical justification each question asked or challenge made. When they cannot, they must resolve the underlying issue or risk the health and safety of future generations.

The whole risk assessment and public process is irreparably broken. The risk assessment process is subject to fiddling and fudging in myriad ways (estimates, bogus assumptions in models, etc.). As a result, the agencies can bury their desires in a warped process to get any outcome they desire. It is not in any way an honest process. And it isn't a process that gets to truth. Thus, reclassifying high-level waste (HLW) to lesser waste category (i.e. reclassify) waste has significant environmental consequences. Since DOE is able to leave it in INL’s shallow dumps rather than shipping to the requisite (under the NWA) HLW geologic repository it saves money. DOE claims CERCLA is not a requirement for implementing current policy:

“Section 3116 is not dependent on the independent process under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USC 9601 et seq. 1980) and does not provide a basis for any new authority, responsibility, or obligation for DOE or any other entity with respect to the CERCLA process or otherwise affect the CERCLA process. Decisions regarding past releases of contaminants and the impacts of contaminated soils associated with the [Tank Farm Facility]TFF will be addressed under the CERCLA process as specified in the Federal Facility Agreement and Consent Order among DOE, the State of Idaho, and the U.S. Environmental Protection Agency (EPA) (State of Idaho et al. 1991).”<sup>16</sup> [pg.3] [emphasis added]

DOE/INL’s HLW INTEC tank closure plan using the new DOE Order 435.1 policy further compromised the NEPA/CERCLA cleanup process by changing one word from – “maximum extent technically to economically practical.” This seemingly minor change made a significant difference in

<sup>14</sup> Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977). Source: 43 FR 55994, Nov. 29, 1978, unless otherwise noted

<sup>15</sup> Federal Facilities Compliance Act -- Public Law 102-386, signed October 6, 1992 (106 Stat. 1505) amended the Solid Waste Disposal Act. ... All Federal agencies are subject to all substantive and procedural requirements of Federal, State, and local solid and hazardous waste laws in the same manner as any private party.

<sup>16</sup> DOE/NE-ID-11226, Pg.3.

the requirement to utilize the best technology available to clean the HLW tanks to a less expensive economical solution.<sup>17</sup> The implications of leaving the tank solids (heels)<sup>18</sup> are incalculable. DOE considers it too expensive<sup>19</sup> to remove - this most deadly waste – left permanently over Idaho’s sole source Snake River Aquifer for millennia (the half-life of the residual tank waste radionuclides).

“While prior NRC and DOE requirements for waste determinations called for removal “to the maximum extent *technically* and *economically* practical.” Section 3116 omits these adverbs, thereby suggesting that a broad range of considerations, including but not limited to technical and economic practicalities, may appropriately be taken into account in determining the extent of removal that is practical.”<sup>20</sup> [emphasis added]

The DOE documents presented to Idaho Department of Environmental Quality (IDEQ) for Resource Conservation Recovery Act (RCRA) floodplain review present misleading, incomplete, inconsistent facts and conclusions, and fail to comply with the state and/or federal requirements for information to be supplied under the Resource Conservation and Recovery Act (RCRA), the National Environmental Policy Act of 1969 (NEPA) and floodplain/ Wetlands Environmental Review Requirements of 10 CFR 1022 *et seq.*

The INL HLW Calcine Permit must be **rejected** until DOE/INL first addresses the immediate potential flood hazard and incorporates sufficient measures to protect the INTEC and other INL facilities as required by Idaho Code §39-4409(5). Specifically, corrective action is required prior to permit approval - as stated in IDEQ’s Fact Sheet:

“Corrective Action Determination: Idaho Code §39-4409(5) requires, in accordance with IDAPA 58.01.05.008 [40 CFR § 264.101 (a)], the owner/operator of a hazardous waste facility to institute corrective action as necessary to protect human health and the environment for all releases of hazardous wastes and hazardous constituents from any solid waste management unit at the facility, regardless of the time at which the waste was placed in the unit.”

“The DOE documents presented to Idaho Department of Environmental Quality (IDEQ) for RCRA floodplain review present misleading, incomplete, inconsistent facts and conclusions, and fail to comply with the state and/or federal requirements for information to be supplied under the Resource Conservation and Recovery Act (RCRA), the National Environmental Policy Act of 1969 (NEPA) and Floodplain/Wetlands Environmental Review Requirements of 10 CFR 1022 *et seq.*

“DOE’s short-cut Final Environmental Assessment (FEA) and attached Finding of No Significant Impact of the Remote-Handled Low-Level Waste Disposition Facility (RHWDP) are a violation of the National Environmental Policy Act (NEPA) that – if appropriately applied - would require a full Environmental Impact Statement (EIS) given the major potential environmental, health and safety impact of this project. Moreover, given DOE/INL gross mismanagement of existing nuclear waste disposal at the Idaho National Laboratory (INL) over six decades – resulting in extensive contamination of the underlying Snake River Aquifer, the public has no confidence that this new highly radioactive near-

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<sup>17</sup> NRC offered tank sediment extraction solutions but DOE rejected them.

<sup>18</sup> “Tank heel” means the liquid/solid level remaining in each tank after lowering the level to the greatest extent possible by using existing transfer equipment, such as steam jets. See SECTION 3 below for more information on how much of the tank heels and the curie contents are left in the tanks.

<sup>19</sup> “At the Idaho National Laboratory, waste has been retrieved from seven 1136 m<sup>3</sup> (300,000-gallon) tanks and four 114 m<sup>3</sup> (30,000-gallon) tanks from 2002 to 2005 at a total (development plus operations) of \$35 million. This yields an average cost of \$7 million per tank.” NAS 2006, Pg. 44. This literally is how much Idaho’s future is worth to DOE.

<sup>20</sup> DOE, Basis for Section 3116 Determination for the Idaho Nuclear Technology and Engineering Center Tank Farm Facility, November 2006, Revision 0, Pg. 48. DOE/NE-ID-11226

surface dump will not further impact their health and safety.<sup>21</sup> Thus, at the minimum, a full scale EIS should have been conducted. EDI and KYNF won a lawsuit against DOE forcing a full EIS on 2008 inadequate EA on an incinerator at INL AMWTP.”<sup>22</sup>

Another exemplar of NRC’s NEPA violations are discussed in Tami Thatcher reporting:

“The US Nuclear Regulatory Commission’s new Waste Confidence Generic Environmental Impact Statement (NUREG-2157) was developed in response to the 2010 court ruling that some aspects of its Waste Confidence rulemaking did not satisfy NEPA in facility licensing and license extensions. The NRC has for years simply stated that it was confident that permanent disposal would be available “when necessary.” The court held that the NRC needed to evaluate the environmental effects of failing to secure permanent disposal and also needed to adequately examine the risk of spent fuel pool leaks and spent fuel pool fires.

“So, the NRC’s new Waste Confidence Generic Environmental Impact Statement acknowledges prolonged above-ground storage and a multitude of issues including ground water contamination from spent fuel pools, severe accident consequences, and terrorism. The NRC considers “reasonably foreseeable” events including a severe accident that may result in evacuating millions of people, vacating thousands of square miles, rendering expansive areas of land unsuitable for agriculture, and costing billions of dollars not including replacement power costs. With evacuation, the NRC emphasizes that radiological doses to the public should be low. The NRC declares that the impact of indefinitely continued spent fuel storage is “SMALL” with a probability-weighted determination that almost sounds reasonable until you consider multi-year operation of multiple plants which makes a severe accident likely.

“This draft EIS is reasonable only if the promotion of the nuclear industry is our country’s highest priority, above national security and stability, health, and prosperity. The NRC knows that promotion of the nuclear industry requires the NRC to keep pretending that finding long term solutions for spent nuclear fuel will magically get easier as time goes on. It requires the NRC to keep pretending that the costs of repackaging spent fuel or building a repository that generated our electricity will not be a burden for future generations. And it requires the NRC to keep pretending that nuclear catastrophes are simple mundane affairs that may cause some unenlightened people to experience depression because they’ve had to vacate their homes permanently, their country and community may be bankrupt, and they and their land are being poisoned by widespread radionuclide contamination.”<sup>23</sup>

DOE’s miss-management -approved by EPA- and disputed by State of Idaho of HLW at INTEC and MFC from processing sodium cooled/bonded SNF according to the 2018 INL Site Treatment Plan:

“The Remote-Handled (RH) Waste Disposition Project (RWDP) transfers RH waste from INL storage areas and prepares the waste for shipment and disposal. This project manages RH-TRU and RH-MLLW. Additionally, some of the RH waste is contaminated with contaminants that require treatment in CPP-659 or CPP-666 (sort, segregate, absorb, size, and react) before disposal. These contaminants include sodium (Na) and sodium potassium (NaK), which present significant handling and treatment challenges. CPP-666 and CPP-659 have several permitted treatment processes for Na and NaK. The CPP-666 Fluorinel Dissolution Process Area (FDPA) Sodium Distillation System (SDS) treats Na- and NaK-contaminated debris. Additionally, the CPP-666 FDPA cell and CPP-659 decon cell are permitted for water and air

<sup>21</sup> See EDI Snake River Plain Aquifer Report available at, [www.environmental-defense-institute.org](http://www.environmental-defense-institute.org)

<sup>22</sup> In the United States District Court for the District of Idaho, *Keep Yellowstone Nuclear Free*, Environmental Defense Institute, et.al. (Plaintiffs) v. United States Department of Energy, (Defendants), DECISION AND ORDER, [Filed 04/28/2008](#). In this case, plaintiffs forced DOE to conduct a full EIS related to INL Advanced Mixed Waste Treatment that had originally planned on a plutonium/transuranic waste incinerator. DOE subsequently eliminated the incinerator.

<sup>23</sup> Tami Thatcher, Public Comment to the Nuclear Regulatory Commission Regarding the Waste Confidence Draft Generic Environmental Impact Statement and Proposed Rule, Docket ID No. NRC-2012-0246 Submitted by Tami Thatcher 12/20/2013

treatment of Na and NaK. CPP-659, CPP-666, and CPP-1617 are permitted waste storage areas, with the majority of the waste stored in CPP-1617.”<sup>24</sup> [STP-3-5]

Nuclear Regulatory Commission NRC 10 CFR § 60.1 Purpose and scope states: “This part prescribes rules governing the licensing (including issuance of a construction authorization) of the U.S. Department of Energy to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area sited, constructed, or operated in accordance with the Nuclear Waste Policy Act of 1982, as amended.”

“*Radioactive waste or waste* means HLW **and other radioactive materials** other than HLW that are received for emplacement in a geologic repository. [emphasis added]

“HLW includes irradiated reactor fuel **as well as reprocessing wastes**. However, if DOE proposes to use the geologic repository operations area for storage of radioactive waste other than HLW, the storage of this radioactive waste is subject to the requirements of this part.

“Conditions that permit the emplacement of waste at a minimum depth of 300 meters from the ground surface. (The ground surface shall be deemed to be the elevation of the lowest point on the surface above the disturbed zone.)

“*Geologic setting*. The geologic repository shall be located so that pre-waste-emplacement groundwater travel time along the fastest path of likely radionuclide travel from the disturbed zone to the accessible environment shall be at least 1,000 years or such other travel time as may be approved or specified by the Commission.

“The release rate of any radionuclide from the engineered barrier system following the containment period shall not exceed one part in 100,000 per year of the inventory of that radionuclide calculated to be present at 1,000 years following permanent closure, or such other fraction of the inventory as may be approved or specified by the Commission; provided, that this requirement does not apply to any radionuclide which is released at a rate less than 0.1% of the calculated total release rate limit. The calculated total release rate limit shall be taken to be one part in 100,000 per year of the inventory of radioactive waste, originally emplaced in the underground facility that remains after 1,000 years of radioactive decay.”<sup>25</sup>

“The majority of EM’s cleanup work at the Idaho site is driven by regulatory compliance agreements. The two foundational agreements are: the 1991 Comprehensive Environmental Response Compensation and Liability Act (CERCLA)-based Federal Facility Agreement and Consent Order (FFA/CO), which governs the cleanup of contaminant releases to the environment; and the 1995 Idaho Settlement Agreement (ISA), which governs the removal of transuranic waste, spent nuclear fuel and high level radioactive waste from the state of Idaho. Other regulatory drivers include the Federal Facility Compliance Act-based Site Treatment Plan (STP), and other environmental permits, closure plans, Federal and state regulations, Records of Decision (RODs) and other implementing documents.”<sup>26</sup>

In EDI’s view, IDEQ must reject the HLW Calcine Storage Permit and replace it with an annual storage permit based on progress in development of; 1.) retrieval technology; 2.) “Direct Vitrification” pilot plant scale so as not to repeat Hanford full scale rush on unproven designs. Also, IDEQ must force DOE (via the Consent Order) to start calcine extraction - starting with the oldest Bins that AoA claims may be problematic and to prevent DOE from permanently grouting in place in violation of NEPA, Federal Facility Act (FFCA), CERCLA, RCRA and Nuclear Waste Policy Act (NWPA). The retrieval

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<sup>24</sup> INL Site Treatment Plan (STP) Section 3.2.5 Remote-Handled Waste Disposition Project (CPP-659, CPP-666, CPP-1617), Pg. 3-5. <https://www.deq.idaho.gov/media/60179380/inl-annual-site-treatment-plan-report-1116.pdf>

<sup>25</sup> 10 CFR Part 60.1 and 60.2; (Disposal of High-level Radioactive Waste in Geologic Repository).

<sup>26</sup> Idaho Cleanup Project (ICP) Radioactive Waste Management Complex (RWMC) Closure and Other Mission Objectives Home page.



process must be done regardless of the treatment chosen. Why wait? Since Bin Set 7 (the newest of the 7) is empty it can be used to develop retrieval systems by transferring calcine from the Bin Set 1 (the oldest and most vulnerable) to Bin Set 7.<sup>27</sup>

Also, the permit must be **rejected** until DOE/INL first addresses the immediate potential flood hazard and incorporate sufficient measures to protect the INTEC and other INL facilities as required by Idaho Code §39-4409(5). Specifically, corrective action is required prior to permit approval - as stated in DEQ's Fact Sheet.

“The storage of any form of hazardous waste is prohibited unless the waste has available treatment to meet land disposal restriction (LDR) requirements in accordance with 40 CFR 268 of the Resource Conservation and Recovery Act (RCRA). In 1992, Congress passed the Federal Facility Compliance Act (FFCA), which allows for the storage of radioactive and hazardous mixed waste (mixed waste) until available treatment can be developed that meets the LDR requirements. Transuranic-contaminated mixed (TRU) waste is covered under the [Federal Facility Compliance Act] FFCA through the Site Treatment Plan (STP) since the implementation of the plan in November, 1995.” [emphasis added]

“The Federal Facilities Compliance Act (FFCA) required all DOE facilities managing mixed waste to develop Site Treatment Plans (STP) to address mixed waste that are subject to Land Disposal Restrictions (LDR) standards promulgated pursuant to RCRA Section 3004 (m). In 1996 the Waste Isolation Pilot Plant (WIPP) Land Withdrawal Amendment Act states that ‘transuranic mixed waste designated by the Secretary [of Energy] for disposal at WIPP.... is exempt from treatment standards promulgated pursuant to section 3004 (m) of [RCRA].’ Therefore, DOE position is that Transuranic mixed waste destined for WIPP is not subject to, or requires inclusion in, the provisions of the STP.”<sup>28</sup>

Tami Thatcher reports: “[I]t is fitting to understand the “forever” contamination sites the Idaho National Laboratory’s cleanup is leaving behind. Ignoring the spent nuclear fuel and calcine that will supposedly be shipped out of state some-day, there are roughly 55 “forever” radioactively contaminated sites of various sizes, and about 30 “forever” asbestos, mercury or military ordnance sites.

“The areas contaminated with long-lived radioisotopes that are not being cleaned up will require institutional controls in order to claim that the “remediation” is protective of human health. People must be prevented from coming into contact with subsurface soil or drinking water near some of these sites — forever.

“The Department of Energy downplays the mess and usually doesn’t specify how long the controls are required when the time frame is over thousands of years: they just say “indefinite.” In some cases, the DOE earlier had claimed that these sites would be available for human contact in a hundred or so years. You can find a summary that includes the “forever” sites at [https://cleanup.icp.doe.gov/ics/ic\\_report.pdf](https://cleanup.icp.doe.gov/ics/ic_report.pdf)

“Institutional control of “forever” contamination means they put up a sign, maybe a fence or a soil cap — and assume it will be maintained for millennia. “Don’t worry about the cost. And besides,” they always add, “you and I won’t be here.”

“DOE continues to find more contaminated sites and expectations are not always met by remediation. But no matter: DOE wants to bury more waste at INL as well as make more nuclear waste.

“Frequently cited stringent EPA standards such as 4 rem/yr in drinking water are emphasized. But cleanup efforts often won’t come close to achieving the advertised standards. DOE argued against digging up meaningful amounts of transuranic and other long-lived radioactive waste at the Radioactive Waste Management Complex. Only the most egregious chemically laden waste is being removed. Denying that exorbitant cost to dig up waste and lack of another place to put it may have played a role, DOE argued that the incremental risk to a

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<sup>27</sup> DOE/NE-ID-11227, Appendix B.

<sup>28</sup> TRU MANAGEMENT IN THE SITE TREATMENT PLAN AT THE INEEL, Introduction.

worker was too high given the small incremental benefit to the public.”<sup>29</sup>

Lukas Ross reports: “The National Environmental Policy Act (NEPA) is one of our most important lines of defense against the climate crisis. It requires the federal government to request public input into projects, seek less harmful alternatives, and minimize the impact on our communities and the environment.

“Trump wants to gut NEPA so pipelines and dirty fossil fuel projects can bulldoze communities while cutting the public out of the process. And to make matters worse, he’s giving people like you far too little time to weigh in on this proposal. Congress could help save this critical environmental protection -- but we need your help to convince it to act.

“NEPA protections have helped stop poorly thought-out, polluting projects across the country -- from drilling on our public lands to the construction of industrial facilities that poison our communities.

“Now, Trump’s proposed changes to NEPA threaten places like Malheur National Forest in Oregon, the Bitterroot National Forest in Montana, and the Nantahala and Pisgah National Forests in North Carolina. And it threatens the ability of everyday people like you to object to potentially disastrous oil and gas projects.

“The Trump Administration can’t legally enact these changes without seeking public input. But instead of the allowing the typical 180 days for the public to weigh in that a major proposal like this usually warrants, it’s only allowing 60 days. This process is clearly designed to give the fossil fuel industry and other polluters disproportionate influence on the outcome.

“Some Members of Congress are fighting back. Democrats in the House of Representatives are calling for a longer period for public input. But we need them to keep that drumbeat going and to make sure their constituents understand that Trump is putting Big Oil’s profits ahead of their communities.

“The Trump NEPA plan is nothing but a corporate giveaway justified with a lie. The administration claims the proposed changes are about “assisting” federal agencies, “permitting reform,” or “streamlining.” But that is just a misleading way of saying they want to make it easier to approve dangerous projects in favor of letting polluters do whatever they want.

“Big Polluters and interest groups like the far-right Heritage Foundation have long dreamed of gutting NEPA. Corporate polluter opposition to NEPA has always been strong, but our movement is even stronger!”<sup>30</sup> [Lukas Ross, Senior policy analyst, Friends of the Earth]

The State of Nevada contends that the NRC NEPA process is flawed with respect to the Yucca Mt. high-level nuclear waste repository because it has been watered down:

“A contention is an issue of law or fact (in this case, possible scientific fact) that alleges the license application or Yucca Mountain Environmental Impact Statement (as adopted by NRC) does not meet statutory or regulatory requirements, and in the case of the license application “nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety.”<sup>31</sup>

Due to violations of NEPA by federal agencies Congress enacted additional legislation to force more compliance with environmental statutes as stated below:

**“Federal Facilities Compliance Act** -- Public Law 102-386, signed October 6, 1992 (106 Stat. 1505) amended the Solid Waste Disposal Act. ... All **Federal** agencies are subject to all substantive and

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<sup>29</sup> Tami Thatcher, The “Forever” Contamination Sites at the Idaho National Laboratory

<http://www.environmental-defense-institute.org/publications/EarthDayINLreport.pdf>

<sup>30</sup> Lukas Ross, Senior policy analyst, Friends of the Earth.

<sup>31</sup> Yucca Mountain Licensing Proceeding. <http://www.state.nv.us/nucwaste/licensing.htm>

procedural requirements of **Federal**, State, and local solid and hazardous waste laws in the same manner as any private party.”

“Requirement	Description & EPA Responsibility
“Waiver of Sovereign Immunity	States have the ability to sue the Federal government and collect fines and penalties.
Section 3008(a) Order Authority	EPA shall initiate administrative enforcement actions against the Federal government in the same manner and under the same circumstances as actions would be initiated against any other person. No administrative order shall become final until the Federal government has had the opportunity to confer with the Administrator.
Comprehensive Environment Inspections	The EPA Administrator is required to undertake inspections at all Federal treatment, storage, and disposal facilities for hazardous waste. The owner or operator shall reimburse the EPA for costs of the inspections.
Groundwater Inspections	The EPA Administrator shall conduct a comprehensive groundwater monitoring evaluation at Federal facilities.
Mixed Waste	DOE must submit two inventory reports within 180 days of October 6, 1992: 1) a national inventory of all its mixed wastes regardless of the time they were generated on a state-by-state basis; and 2) a national inventory of its mixed waste treatment capacities and technologies. Both EPA and the state have 90 days to comment. DOE will then develop a plan for developing treatment capacities and technologies to treat all the mixed wastes to standards in RCRA. Upon approval of the plan, EPA, or the delegated state, shall issue an order requiring compliance with the approved plan. OFFE has convened a workgroup to address the various requirements of the mixed waste provisions of the FFCA. States will be major players in this process.” <sup>32</sup>

**Despite the above EPA statements, they are hollow when it comes to actual compliance enforcement. Tragically, EPA as a federal agency under the Executive Branch is undermining enforcement of statutes such as NEPA/ FFCA/RCRA/CERCLA that then forces states, tribal governments, environmental organizations to launch costly litigation to force compliance.<sup>33 34</sup> The nation cannot allow President Trump and CEQ to further dilute and weaken NEPA.**

Respectfully submitted by,  
 Chuck Broschius  
 President EDI Board

<sup>32</sup> <https://www.epa.gov/fedfac/federal-facilities-compliance-act-table>

<sup>33</sup> U.S Court of Appeals for the Ninth Circuit, State of Idaho v. DOE, No.03-35470, DC. No. CV-91-00035 HLR/EJL.

<sup>34</sup> U.S District Court for the District of Idaho, Natural Recourses Defense Council, Snake River Alliance, Confederated Tribes of the Yakama Nation, Shosone Bannock. Case No. 01-CV-413 (BLW)