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**EPA Proposed Rule to the Clean Air Act will Exempt
DOE from Compliance**

The Clean Air Act (CAA) Maximum Achievable Control Technology was promulgated by the Environmental Protection Agency (EPA) in September of 1999 to fill huge gaps in the current environmental statutes/regulations that previously allowed hazardous air pollutants to be released into the environment and thus threaten public health and safety. The CAA standards were also intended to compensate for significant deficiencies in current environmental statutes such as the Resource Conservation Recovery Act (RCRA) and the Toxic Substances Control Act. Prior to the 1999 promulgation (by EPA), CAA rules underwent a lengthy multi-year comment period that showed wide support from the state regulators as well as the general public. Only the polluters, including the US Department of Energy (DOE), were opposed to the CAA standards because they would be required to upgrade their emission control equipment. Reducing air pollution has a direct effect of reducing the hazard to public health.

Now the Bush Administration, and his EPA Administrator, Christine Todd Whitman, want to roll back those public health and safety gains of the previous Clinton Administration. The most obscene of these rollbacks can be found in the Clean Air Act (CAA). EPA's new Proposed Rule (published in the Federal Register July 30, 2002 **to replace** current CAA standards) grants a **blanket exemption** to the entire DOE nationwide complex from compliance with the CAA emission regulations. The new Proposed Rule leaves most of the original regulations in place with this crucial difference - the new **exceptions** to the rule are so broad that little is left to which the new rule would apply, thus fatally gutting the regulation. "The [new] proposed rule would not apply to site remediation activities involving the cleanup of radioactive mixed waste managed in accordance with all applicable regulations under the Atomic Energy Act and Nuclear Waste Policy Act authorities." ⁽¹⁾

In plain language this refers to DOE operations even though EPA could not bring itself to specifically name a sister executive branch agency. The DOE is the single largest polluting entity in this country with an estimated total cleanup cost of \$212 billion.⁽²⁾ Cleanup for just the Idaho National Engineering and Environmental Laboratory (INEEL) is estimated at \$44.3 billion.⁽³⁾

Just think what that cleanup money could do for education and future generations' environmental security if the federal government appropriately managed its lethal waste in the first place. Now DOE is again actively lobbying to cut pollution control costs that will only compromise our collective environmental health.

DOE is in the process of constructing mixed hazardous and radioactive waste treatment plants at about six of its sites across the country (Hanford, WA; INEEL, Idaho; Oak Ridge, TN; Savannah River, South Carolina; Pantex, Texas; West Valley, New York; and possibly others.

At INEEL, DOE is converting mixed hazardous and high-level radioactive liquid waste into a solid form acceptable for internment in a geologic repository. This deadly liquid waste contains significant quantities of listed organic and inorganic hazardous waste that during inappropriate treatment and/or inadequate emission control equipment becomes volatilized hazardous air pollutants as defined in the current Clean Air Act standards. DOE does not want to construct emission control systems that will filter out these hazardous and radioactive air pollutants, thus the Department's push for an exemption to the law. At DOE's Savannah River Site high-level waste treatment operation, excessive benzene emissions have prevented full compliance with the current CAA standards.

The Environmental Defense Institute (EDI), Keep Yellowstone Nuclear Free, and David McCoy's legal challenges forced the closure of two of INEEL's radioactive waste incinerators (Waste Experimental Reduction Facility, and the High-level New Waste Calcine Facility), on both current CAA and RCRA hazardous waste permitting violations. Under the new EPA proposed rule, these incinerators may be able to continue operations.

The Environmental Defense Institute (EDI) and David McCoy submitted a formal Petition to EPA's Office of Enforcement and Compliance Assurance in July 2001. This Petition to EPA specifically requested a hearing or determination that the CAA requirements be applied to the INEEL waste treatment operations.⁽⁴⁾ EDI was not granted a hearing or a determination as of this date. Apparently, EPA is hoping the new Proposed Rule is promulgated soon giving DOE its exemption so EPA does not have to take any enforcement action.

Additionally, and equally misguided, is EPA's new Proposed Clean Air Act Rule to exempt RCRA hazardous waste and Superfund cleanup (CERCLA) actions. The Proposed Rule states: "Furthermore, we [EPA] believe that these existing [RCRA/CERCLA] programs are the most appropriate, comprehensive and effective regulatory approach to address air emissions resulting from site remediation activities at sites addressed using CERCLA authority and RCRA corrective action sites and to avoid transfer from one medium to another."⁽⁵⁾

This is a patently ludicrous statement because neither RCRA nor CERCLA provide comparable air emission standards which are specifically why the current CAA standards were adopted to fill that regulatory gap and supplement the deficiencies of these other environmental laws.

The extremely successful strategy to divert the nation's attention onto the impending war with Iraq is allowing the Bush Administration to concurrently ram through its environmental disembowelment agenda without the public's knowledge.

If the Proposed EPA Rule is promulgated, it will be a major step backward in terms of public health and safety. One can only assume that this politically motivated proposed rule is intended only to benefit the polluters, including the federal government's Department of Energy operations. The public welfare is again put in hazard's way.

State of Idaho Files Objection to EDI Amicus Brief in Federal Court

The State and DOE are currently litigating over the interpretation of the 1995 federal court sanctioned Settlement Agreement that was intended to set enforceable time limits on certain milestones for getting the radioactive waste at INEEL out of Idaho and interned in geologic repositories.

Idaho Attorney General Alan Lance contends in his court filings, that this is just "a matter of contract interpretation" between Idaho and DOE. The basic crucial question presented in federal court: **Is the INEEL buried transuranic waste included in the Settlement Agreement for shipment out of Idaho?**

Buried waste at INEEL sounds relatively innocuous. How is the court to know what the impact of this vague term of "buried transuranic waste" means in terms of the public health and safety if Idaho's procedural efforts block the crucial information EDI is attempting to offer?

In September the State of Idaho filed in federal court a "Memorandum in Opposition" to both the Environmental Defense Institute (EDI) and Democratic candidate for Governor Jerry Brady's Amicus Curiae (friend of the court) briefs submitted to US Federal Court. Alan Lance states: "The interests of EDI and Mr. Brady are adequately represented by these [state of Idaho] offices and neither EDI nor Mr. Brady should be granted leave to participate as amicus curiae in this matter." [\(6\)](#)

The State of Idaho quite simply does not want the court or the public to know just how bad the situation is because it will reflect on the state's fundamental lax enforcement of environmental laws. Why else would Idaho go to such lengths to block crucial information from the court and the public when EDI's brief basically substantiates and affirms Idaho's legal argument that the buried radioactive waste must be exhumed and shipped to out-of-state geologic repositories?

In 1993, Idaho also successfully blocked an EDI Amicus Brief to the federal court during the period when the Settlement Agreement was being negotiated. That EDI brief documented some 90 metric tons of irradiated reactor fuel had been dumped in shallow pits and trenches at INEEL. EDI argued that this buried waste must be included in the "then" proposed Settlement Agreement. It never was! Now Idaho is back in court and once again a decade later still blocking this crucial information for the same misguided political reasons: "keep the lid on this explosive radioactive waste pot." This type of behind closed door negotiations has not worked for three successive Idaho governors starting with Cecil Andrus in the late 1970's. It is time for this process to receive the full public engagement that the issue calls for. The points in EDI's Amicus Brief are:

- Buried radioactive waste at INEEL poses the greatest threat to human health and the environment because it is migrating into the aquifer causing extensive contamination of the groundwater.
- Permanently leaving the waste in the existing INEEL shallow burial sites is a violation of the Nuclear Waste Policy Act, the Resource Conservation Recovery Act, and other relevant environmental protection regulation.
- Substantially more high-level and transuranic radioactive waste is buried at INEEL than the parties to this case have disclosed to the Court or the public.
- The intent and spirit of the 1995 Settlement Agreement was to establish a binding process and time line for the removal of all INEEL high-level and transuranic waste, both stored and buried, out of the State of Idaho and to statutorily compliant permanent geologic repositories.
- The Court is urged to exercise its authority, in the interest of public health and safety, to amend the Settlement Agreement language to ensure compliance to include all of the buried high-level and transuranic waste located at INEEL.

Judge Lodge in this case has the authority to overrule the State's objections to EDI's Amicus brief. It is hoped that he will exercise that authority in the interest of public health. See below article where the federal court in another case approved EDI Amicus Brief.

Calciner Incinerator Closure Plan Announced

DOE and the State of Idaho announced the closure of the New Waste Calcine Facility, located at INEEL. This mixed hazardous chemical and high-level radioactive waste incinerator operated since 1982 reducing nearly 4 million gallons of liquid waste to a solid "calcine" form that remains in storage. An earlier version called the Waste Calciner Facility operated between 1963 and 1982 converting an additional 4 million gallons of liquid waste to a solid granular calcine.

These two plants incinerated over 8 million gallons of the most lethal material in the world without the required hazardous waste treatment permits or meeting emission standards. This liquid waste is generated through the dissolution of nuclear reactor fuel in acid and solvent baths to facilitate the separation of nuclear bomb grade isotopes used in military programs. See KYNF article below.

In May of 2000, the Environmental Defense Institute, Keep Yellowstone Nuclear Free, and David McCoy filed a formal Notice of Intent to Sue the Department of Energy (DOE), the Environmental Protection Agency (EPA), and the State of Idaho for operating the Calciner without the required regulatory permits. Shortly thereafter, DOE announced a temporary shutdown pending a final determination of the Calciner's fate (otherwise known as spend the money required to upgrade the Calciner so it can meet regulatory requirements).

Now the final nails are being hammered into the Calciner's coffin, ending one of the most perverse illegal government operations. It is a tragic commentary that it takes the threat of litigation by environmental organizations before the DOE and its complacent regulatory agencies own up to their legal obligations to the American public. This is not just an issue of violating

environmental laws; fundamentally it is an issue of public health and safety. DOE has always placed continued operations, and cost reductions at the top of their priority list and worker/public health and safety at the bottom as an option, not as a primary criteria.

Equally tragic is the continued INEEL operations of similar high-level liquid waste processing units called the High-Level Liquid Waste Evaporator, the Process Equipment Waste Evaporator, and the Liquid Effluent Treatment and Disposal Evaporator. Like the Calciner, these waste plants are also un-permitted because they simply cannot meet the hazardous waste and Clean Air Act permit emission control requirements. These waste plants have operated for decades processing millions of gallons of this deadly liquid waste left over from reactor fuel processing operations.

In one of the most contorted obfuscations of environmental law, DOE has taken a five-year grace period provision in the law offered to existing operations to get into compliance, called "interim status," and stretched it out to decades. This is all being done with the blessing of State of Idaho and EPA regulators.

In July 2002, once again the Environmental Defense Institute, Keep Yellowstone Nuclear Free, and David McCoy filed a Notice of Intent to Sue DOE and the regulators for non-compliance and non-enforcement of the most basic of federal environmental laws related to these waste processing plants.

Since the High-Level Liquid Waste Evaporator started in 1996, it alone has processed more than 4 million gallons of this most deadly waste. Essentially, these high temperature evaporators boil off the liquid portion of the waste and then return the concentrated sludge/slurry to the High-Level Waste Tank Farm. Any radionuclides and hazardous chemicals and metals that become airborne (volatized) go out the stack with inadequate or non-existent filter/emission control systems.

DOE hopes to stall long enough to process all of the easily retrievable liquid portion waste in the INEEL Tank Farm before they are forced to shut down. DOE is already moving on an illegal tank closure program that includes dumping a concrete grout material on top of the even more toxic residual tank sludge/sediments and calling it "cleaned up."

The Natural Resources Defense Council, Confederated Tribes and Bands of the Yakama Nation, and the Shoshone-Bannock Tribes are currently in federal court challenging the legality of this misguided tank closure program at INEEL, Hanford, and Savannah River Site.

See EDI's website publications for more information on INEEL high-level waste tank closure issue.

INEEL Mission Change made by DOE without Environmental Impact Analysis

by David McCoy

Without previously preparing any environmental impact assessment (EA) or analysis, DOE publicly announced on July 15, 2002, that the Idaho National Engineering and Environmental Laboratory (INEEL) would change its mission from environmental cleanup to "become the country's flagship lab for the development of nuclear energy." DOE Secretary Spencer Abraham committed \$5 million as part of a planned \$300 million toward the goal intended for INEEL to lead the way to the construction of new nuclear power plants at DOE sites, sites currently owned by the utilities and foreign countries.

Unless legal action is taken now to force DOE to prepare an Environmental Impact Statement (EIS) for the INEEL mission change, DOE will be able to avoid future public opposition to nuclear construction at INEEL because of Nuclear Regulatory Commission early site application provisions. DOE is funding and participating in a partnership with private industrial corporations, including Excelon, Entergy and Dominion Resources to site and build new nuclear plants at DOE sites, including INEEL on a "fast-track basis" set up by the Nuclear Regulatory Commission.⁽⁷⁾

DOE is falsely portraying the INEEL mission change as an administrative action that is exempt from EIS preparation. DOE clearly does not qualify for an administrative EIS exemption because INEEL lies above the sole source Snake River Aquifer; there is a floodplain, Craters of the Moon National Monument, Yellowstone National Park and the Teton wilderness area in the vicinity of INEEL.⁽⁸⁾ INEEL has already contaminated the aquifer with plutonium, cesium-137, strontium-90, tritium, as well as a broad range of organic hazardous chemical wastes.

Federal Court Judge Approves EDI Amicus Brief

The Natural Resources Defense Council (NRDC) filed litigation against the Department of Energy (DOE) related illegal disposal of high-level radioactive waste in violation of the Nuclear Waste Policy Act (NWPA).⁽⁹⁾

On October 1, 2002, US District Court for the District of Idaho Judge B. Lynn Winmill issued an Order granting permission for the Environmental Defense Institute to file Amicus Curiae (friend of the court brief). This EDI brief is in support of NRDC's legal case.

At issue are the DOE's alleged illegal operations that permanently leave significant quantities of mixed hazardous chemical and high-level radioactive waste in tanks at INEEL, Hanford, WA, and Savannah River Site, South Carolina.

Judge Winmill's decision is significant given that now the crucial INEEL specific information EDI presented in our Amicus Brief will now become part of the court's decision making process. This litigation is challenging DOE's ongoing practice of dumping concrete grout on top of tank sediments/heels and calling it "cleanup." Tragically, the State of Idaho granted DOE a permit for "closure" of two high-level radioactive waste tanks at INEEL employing this ineffective approach. Once the grout is dumped into the tank, further remediation efforts will be nearly impossible if the tanks are found to continue to leak pollution into the aquifer.

DOE simply does not want to spend the money using existing technology to fully empty the tanks of all its waste and appropriately treat it and send it off to an approved high-level waste geologic repository outside of Idaho. DOE's own experts acknowledge that the grout will not mix with the tank sediments/heels and will only "sandwich" the waste between the tank bottom and the grout above. This clearly is a violation of not only the Nuclear Waste Policy Act but also the Resource Conservation Recovery Act (RCRA). Given that these tanks are some forty feet **below** the Big Lost River flood plain, future migration of radioactive pollution into the aquifer is reasonably assured.

Decades of cutting corners and mismanagement of its radioactive and hazardous waste has resulted in extensive Snake River Aquifer contamination that is now nearly impossible to cleanup. DOE estimates the costs for those waste areas that can be cleaned up are currently at \$44.3 billion for INEEL alone.

Today's inadequate environmental remediation's become tomorrow's Superfund sites, thus shifting the costs and health hazards onto the next generation. That is unconscionable from any perspective. For a complete discussion on this see EDI's website publications NRDC vs. DOE <http://personalpages.tds.net/~edinst>

KYNF Hires Attorneys to Purse Litigation Against

INEEL Waste Operations

Keep Yellowstone Nuclear Free (KYNF) has commissioned a legal team headed by Brian Hanson, formerly involved with Gerry Spence's successful challenge to DOE's INEEL plutonium incinerator. Hanson's team includes, among others, David McCoy of Idaho Falls. The legal challenge will focus on the INEEL high-level liquid radioactive waste processing operations that currently are functioning without any of the required hazardous waste or Clean Air Act permits. EDI as a co-plaintiff to this developing law suit is providing crucial INEEL site specific data required to document DOE's violations.

For more information on this see EDI's website publications Notice of Intent to Sue.

<http://personalpages.tds.net/~edinst>

<http://yellowstonenuclearfree.com>

Price-Anderson Violations

at INEEL

by Erik Ringelberg

It was disclosed on June 17th, 2002, by the Idaho National Environmental Engineering and Environmental Laboratory (INEEL) that the INEEL contractor, Bechtel, BWXT Idaho, was facing a civil fine of approximately \$40,000 for a series of undisclosed potential health and safety violations under the Price-Anderson Act.

What was missing from this DOE-ID press release, since removed from the INEEL website, was that Bechtel had received notice of the problems in 2000, and apparently ignored the DOE requests to resolve them. The penalty was proposed due to the apparent refusal by Bechtel to comply with the regulations, in spite of a year's worth of warnings. The complete text of the complaint can be found at: <http://tis.eh.doe.gov/portal/home.htm>

[Environmentalists Still](#)

[Awaiting EPA Petition](#)

[Response](#)

[by David McCoy](#)

In August of 2000, the Environmental Defense Institute, Keep Yellowstone Nuclear Free, and David McCoy filed a formal petition with the Environmental Protection Agency Inspector General (EPA/IG) requesting an investigation of DOE's violation of environmental laws at the INEEL site.

As of this writing (two years later) the EPA/IG has not issued any finding on the complaint. It seems to me that it is not too much to see that the facts at a minimum show that numerous INEEL facilities have: 1) operated without permits for a decade; 2) that interim status has not been applicable for several facilities; 3) that the EPA along with the State of Idaho have not been timely in requiring facilities to meet the requirements necessary to obtain permits; 4) that consent orders and interim status are not substitutes for operating without hazardous waste treatment RCRA permits; and 5) that the High Level Liquid Waste Evaporator and the Liquid Effluent Treatment and Disposal Facility did not qualify for interim status because they did not meet time requirements or physical construction requirements. There are numerous other findings that could flow from these basic realities above such as lowered protection of the public and environment from operations, using the wrong processes for the types of wastes being processed, failure to obtain the RCRA and other permits before construction and operation of new facilities.

The EPA's Region X (Seattle) complicity in all of this has been clearly apparent to me at least from the administrative paper trail. For example, in the mid and late nineties it was well known that the Calciner was an incinerator but that the wastes being processed could not be characterized. The whole tank farm never has qualified for RCRA permits. The Service Wastewater system has never even been considered as a facility which requires a permit (which it needs) and there is no Clean Water Act permit for INEEL.

These legal/regulatory issues must be addressed by EPA's Inspector General or the public will be left to assume that there is no credible oversight from the EPA Inspector General.

The INEEL 9/12/02 RCRA Work Plan also indicates that Tank Farm Tanks will be permitted as part of the Volume 14. These tanks were not included as part of the original permit application presented to the public. For reasons stated above, there must be a pre-application hearing to address this substantial change to the permit application along with the waste evaporators. Additionally, DOE's RCRA proposed permit and RCRA Work Plan documentation grossly fails to include *all* of the tanks related to the various process operations. Moreover, the documentation on tank by tank within the INEEL liquid waste management system to meet RCRA requirements is categorically missing. Approximately 115 tanks and vessels are connected to the INEEL Liquid Waste Management System that includes the Calciner, High-level Liquid Waste Evaporator, Process Equipment Waste Evaporator, Liquid Effluent Treatment and Disposal Evaporator as primary feeder or effluent units.

- There are 66 tanks that are feeder/effluent units to the liquid waste that are identified but not fully characterized in the Part B Application or meet RCRA standards.
- There are 87 tanks that do not have full RCRA qualified secondary containment capable of containing the full tank volume, though ten tanks have inadequate "pans" that do not have the capacity to hold the full volume of the tank as required.
- There are 90 tanks that have no known structural certification.

- There are an unknown but significant number of tanks that have already exceeded their design life. This is significant given the extremely corrosive type of waste being processed

The DOE has represented to McCoy since 5/10/01 that the High-level Liquid Waste Evaporator would be added later as a *modification* to the Part B RCRA Application. It should be noted that RCRA ⁽¹⁰⁾, which sets forth the causes for modification of permits requires that the alterations or additions to the permitted facility or the information about the facility, *was not available* at the time of the application for the permit. ⁽¹¹⁾ These conditions do not apply to the Evaporators and the Tank Farm Facility because these facilities have been in operation along with the waste processing units since approximately 1996 and much earlier for the Tank Farm Facility. The Evaporator operates illegally because it was a new facility and did not meet the legal requirements to achieve interim status.

Our position is that whatever facilities that will be part of the INEEL Liquid Waste Management Facility must be set forward in advance by the DOE for consideration as a total permit package that the public can review in a timely and procedurally proper manner. This would include any facilities in addition to those cited herein and we would suggest that Idaho DEQ, DOE and EPA review our recent July 2002 Notice of Intent to Sue for the INTEC facilities outlined therein that are also currently functioning facilities which are part of the waste management system.

This notice to the Idaho Department of Environmental Quality, the Environmental Protection Agency, and the DOE that these activities which would be present in the Big Lost River floodplain, the requirements of RCRA including Federal Register notice must be complied with.
⁽¹²⁾

Correction: INEEL News 9/02 incorrectly attributed attorney Kathleen Trever as working for the State of Idaho Attorney General Alan Lance in the current litigation with DOE (USA vs. Kempthorne). Ms. Trever took over as the Director of the State INEEL Oversight Program in 1996, and only formerly contributed as Deputy Idaho Attorney General during the 1995 Settlement Agreement litigation with DOE in the same law suit. Ms. Trever has also recently filed declarations in her official capacity in this case in support of the State of Idaho.

Endnotes:

1. See 67 Federal Register 49398, Section II(A)(4)(b)] [also see Proposed rule 40 CFR 63.7882(c)(7)
2. Paths to Closure, US Department of Energy, March 2000
3. INEEL Redefining Success in 2012, Letter from Mark Fri, Acting Manager of DOE/ID, 2/8/02, to C. Stephen Allred, Idaho Department of Environmental Quality.
4. See 40 CFR 63 Subpart DD, MACT requirements of 40 CFR 63 Subpart VVV applied to the INEEL waste treatment operations
5. Proposed Clean Air Act (40 CFR 63) Section II(A)(4)(a), Federal Register 7/30/02
6. USA vs. Kempthorne US Federal Court District of Idaho Cv. No. 91-00054-S-FGL
7. See 10 Code Federal Regulations 52.
8. See 10 CFR 1021.410 Appendix A and B
9. See See NRDC vs. USDOE, US Federal Court for the District of Idaho, Civil Suit No. 01-431
10. See 40 CFR 270.41 (a)(1) and (2).
11. See 40 CFR 270.41 (a)(1) and (2).
12. See 10 CFR 1021 et seq.