

# 1995 SETTLEMENT AGREEMENT

## “THE REST OF THE STORY”

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# Context



# Context



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Unmet promise to remove Rocky Flats Waste “within the decade” (1970s)

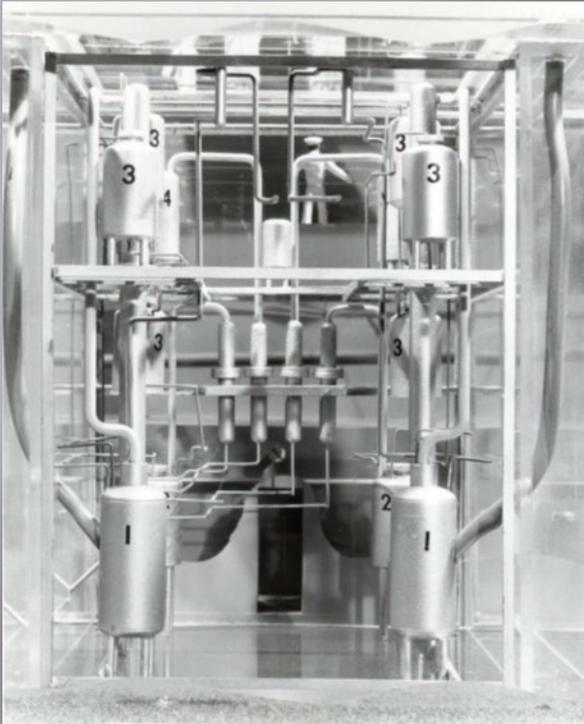


Aging spent fuel storage facilities

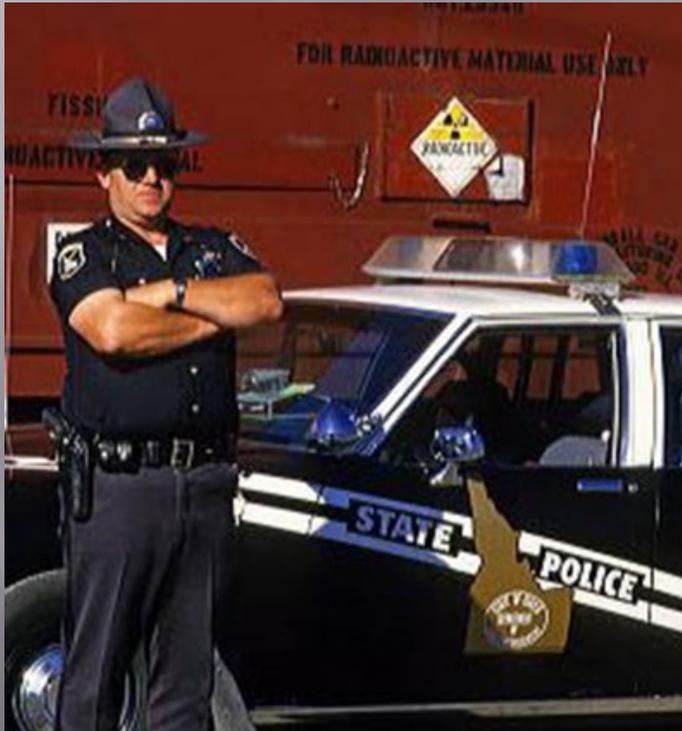


Tank Farm

# Context







**PUBLIC SERVICE COMPANY OF COLORADO, Plaintiff,**  
**v.**  
**Cecil D. ANDRUS, individually and as Governor of the State of**  
**Idaho, Defendant.**

**UNITED STATES of America, Plaintiff,**  
**v.**  
**Cecil D. ANDRUS, in his official capacity as Governor of the State**  
**of Idaho; State of Idaho, Defendants.**

Civ. Nos. 91-0035-S-HLR, 91-0054-S-HLR.

Clean Air Act  
Nuclear Waste Policy Act  
National Environmental Policy Act

# 1995 Context

**Department of Energy Programmatic  
Spent Nuclear Fuel Management  
and  
Idaho National Engineering Laboratory  
Environmental Restoration and  
Waste Management Programs  
Final Environmental Impact Statement**

**Volume 2  
Part A**



**April 1995**

**U.S. Department of Energy  
Office of Environmental Management  
Idaho Operations Office**

# 1995 Context

## Governor Batt's

### 3 Guiding Principles

- ▣ Idaho must not become default repository.
- ▣ DOE must address waste already in Idaho.
- ▣ “INL” must be a viable national lab.

# 1995 Settlement: Deal with repository wastes

- ▣ Deadlines for waste removal
- ▣ Requirements for treatment & safer interim storage
- ▣ Limits on incoming spent fuel shipments
  - Spent nuclear fuel (removal by 1/1/2035)
  - Transuranic waste (removal by 12/31/2018)
  - High-level waste (“road-ready” by 2035)

# Separation of Navy & DOE obligations



# Economic Aspects

- ▣ Economic Diversification
- ▣ DOE Lead Lab for Spent Nuclear Fuel
- ▣ DOE Facilities
- ▣ Navy Commitments

# An Historic and Unique Agreement

- ▣ The 1995 Settlement Agreement is an historic and unique agreement in the DOE complex. It represents a compromise by both the State and the DOE of complex litigation in which each side agreed to accept obligations and risks in exchange for benefits.
  - The State agreed to allow DOE and Navy to bring limited quantities of Spent Nuclear Fuel into Idaho for the next forty years.
  - The DOE agreed that it would not ship certain types of SNF to Idaho and that it would expedite the treatment and permanent removal of waste and SNF from Idaho.

# BACKLASH

- ▣ Petition to Recall Governor Batt
- ▣ Initiative Drive to void the Agreement
- ▣ Voters uphold the Agreement

# The Times They Are A Changing

*Come gather 'round, people  
Wherever you roam  
And admit that the waters  
Around you have grown  
And accept it that soon  
You'll be drenched to the bone  
If your time to you is worth savin'  
And you better start swimmin'  
Or you'll sink like a stone  
For the times they are a-changin'*

Bob Dylan and The Band

# Key Assumptions

- ▣ Nuclear Energy was a dying industry – Focus was “clean up and close.”
  - See 1995 Agreement Section F – Research for “treatment testing and disposal technologies.”
- ▣ WIPP would open and operate continuously
  - See 1995 Agreement Section B(1)(c) – 2000 cubic meter running average of TRU waste.
- ▣ Continuous Operation of the Waste Calcine Facility
  - See 1995 Agreement Section E.5.
- ▣ Different Interpretation of “all Transuranic Waste.”

# Subsequent Events

- ▣ Agreement to Implement
- ▣ Navy Addendum
- ▣ Commercial Fuel MOA
- ▣ Supplemental Agreement
- ▣ ATR Agreement

# “All means all!”

- ▣ Section B.1:

“DOE shall ship all transuranic waste now located at the INEL, currently estimated at 65,000 cubic meters in volume, to the Waste Isolation Pilot Plant (WIPP) or such other facility designated by DOE, by a target date of December 31, 2013, and in no event later than December 31, 2018.”

# “All means all!”

- ▣ Post 1995 – Actions by DOE indicated intent to leave buried TRU waste in place.

“As the State knows, the 95 SA commitment to ship 65,000 cubic meters of transuranic waste out of state by 2018 referred to only the post-1970 retrievably stored waste and not to any of the pre-1970 buried waste.”

- ▣ Motion to Re-open litigation for Declaratory Relief – 4/18/2002.

U.S. District Court Judge Edward Lodge Ruling in May 2006:

Transuranic Waste Definition does not include alpha low level waste and DOE not obligated to remove.

DOE must remove all "transuranic waste" buried in the  
Subsurface Disposal Area.

But: How and when that was to be done is governed by CERCLA  
and the FFA/CO.

# AGREEMENT TO IMPLEMENT

What does “all” really mean?

- Technical Considerations
- Legal Considerations
- Policy Considerations

# Subsurface Disposal Area

- 35 acres of waste disposal in 97-acre area
- 15 acres of pits and trenches containing shipments from Rocky Flats (Rocky Flats barrels were retrieved in 1970s from 2 of the pits)



# Structure of 2008 Agreement

- Retrieval of 5 Waste Types most likely to contain transuranics + uranium waste form.
- Retrieval of at least 5.7 acres and up to 7.4 acres likely to contain most transuranics, hazardous solvents & uranium.
- Shipment of at least 7,485 cubic meters of Targeted Waste out of Idaho.
- Coordinates w/ Superfund cleanup to ensure protection of Aquifer where contamination is left in place.

# Structure of 2008 Agreement (continued)

- Establishes checks & balances to review assumptions and ensure performance.
- Requires review of assumptions & revisiting them if they do not prove out.
- Allows vigorous oversight by State & U.S. EPA.

# NAVY ADDENDUM



# WHY?

- ▣ Late 2004 - Navy Approached the State with concern about uncertainty regarding the future of the NRF in the post 2035 Era.
- ▣ 2023 deadline for wet/dry inconsistent with need for cooling of Navy SNF. Meant possibly closing active receipt at the NRF even earlier.
- ▣ Wanted to invest in new infrastructure but uncertain if welcome in Idaho.
- ▣ Resolve uncertainty by agreeing to terms concerning future receipt and management of Navy SNF at the INL.

# WHAT IT DOES

- ▣ Allows the Navy to continue operation of the NRF in Idaho including keeping some SNF in Idaho after 2035.
- ▣ Requires all the Navy SNF arriving before 2026 to leave Idaho by 2035. After 2026 it can stay only for as long as “reasonably necessary.”
- ▣ Caps the amount of Navy SNF that can be in Idaho at any one time post 2035 at nine (9) MTHM
- ▣ Caps the number of shipments allowed to the INL at twenty (20) per year on a running average.
- ▣ Allows Navy to cool SNF in water pools for six (6) years.
- ▣ Allows Navy to store a small amount of SNF (750 kg.) for archival study.

# What it does...

- ▣ Makes the remedies of the original 1995 Agreement applicable to new provisions if Navy does not meet the Navy Addendum.
  - Stop Shipments of SNF
  - Penalties of \$60,000 per day.

# COMMERCIAL FUEL MOA



# WHY

- ▣ Section D.2.e: “Except as set forth in Section D.2.d above, DOE will make no shipments of spent fuel from commercial nuclear power plants to INEL.”
- ▣ Section F.1: “DOE shall,... designate INEL as the Department’s lead laboratory for spent fuel.” \*\*\*
- ▣ Section J.1: \*\*\* “Idaho shall have the ability, in its sole discretion, to waive performance by the federal parties of any terms, conditions and obligations contained in this Agreement.”

# North Anna Fuel Shipment

- ▣ 2004 – DOE approached the State to ask for a waiver to allow shipment of fuel from the North Anna Powerplant to INL for research.
- ▣ Idaho agreed with specific conditions:
  - Limited quantity (4 fuel rods & 2 control rods)
  - Counted against the annual shipment limit and material remaining counted against total limit.
  - All materials except for destructive examination wastes would leave by the end of 2006.

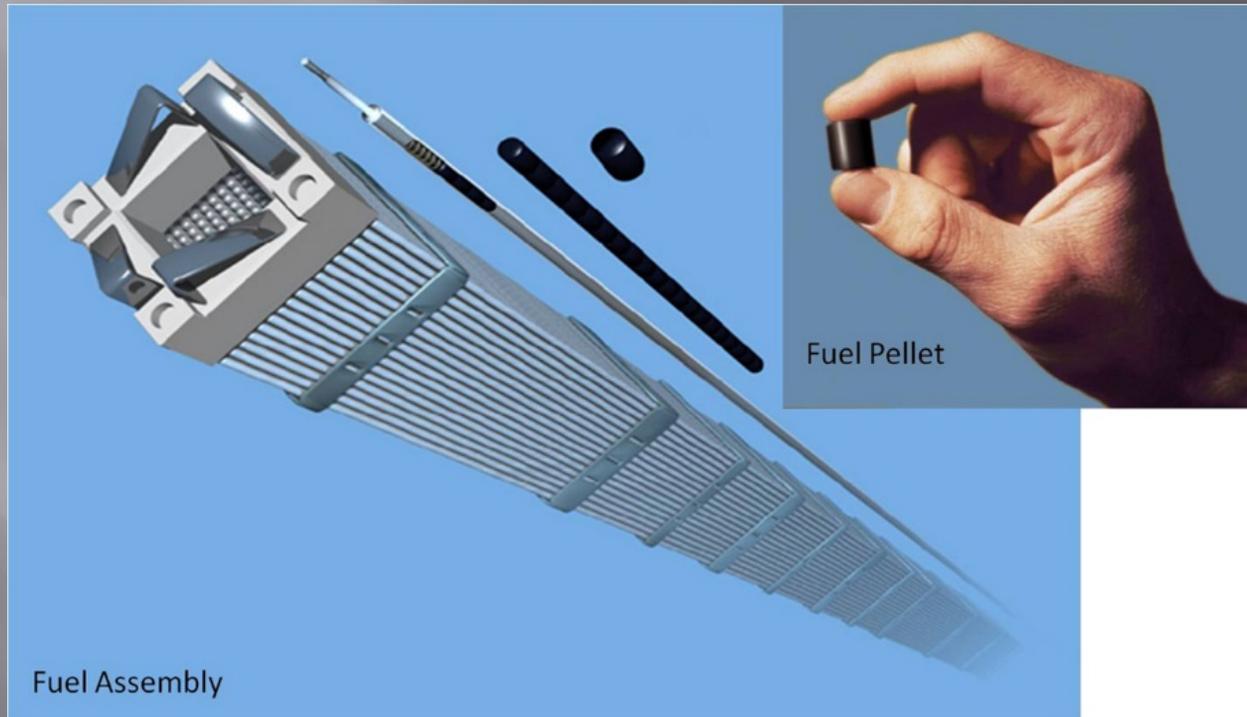
# 2011 MOA

- ▣ DOE/INL engaged Idaho and explained that lack of certainty concerning Commercial SNF research was impairing the lab's ability to compete for research.
- ▣ Idaho agreed to an MOA to allow “research quantities” of Commercial SNF to INL upon certain conditions.

# TERMS

- ▣ Is a “conditional waiver” not a contract amendment.
- ▣ Terminable “at will” by Idaho.
- ▣ Allows only “research quantities” = only what is necessary for the specific research project.
- ▣ Not more than 400 kg. in any calendar year
- ▣ Shipments count against the annual cap of shipments – regardless of size.
- ▣ Volume MTHM remaining onsite counts against the total cap.
- ▣ Allows for a “library” of not more than 10 kg.
- ▣ Notification/documentation and reports.

# 2019 Supplemental Agreement



# Why

- ▣ DOE failed to treat all the liquid High Level Waste onsite by end of 2012 as required by 1995 Agreement.
- ▣ Stop shipments remedy of the Agreement goes into place.
- ▣ 12/31/2014 DOE - Requests consent of Idaho to bring two shipments of Commercial SNF to INL for research –
  - Nine Days to Reply
- ▣ Idaho Attorney General refuses to consent unless DOE demonstrates cure of breach.

# As time goes by...

- ▣ Over the next four years, DOE and the State engaged in intermittent efforts to resolve the impasse – but events kept complicating matters
  - WIPP Shuts Down
  - DOE made one of the shipments to Oakridge Laboratory in lieu of sending it to Idaho.
  - 2017 – DOE breaches term of Agreement to ship running average of 2000 cubic meters
  - 2018 DOE breaches term of Agreement to ship “all” TRU from Idaho
  - Throughout – DOE Headquarters was unwilling to meaningful negotiate with the State.

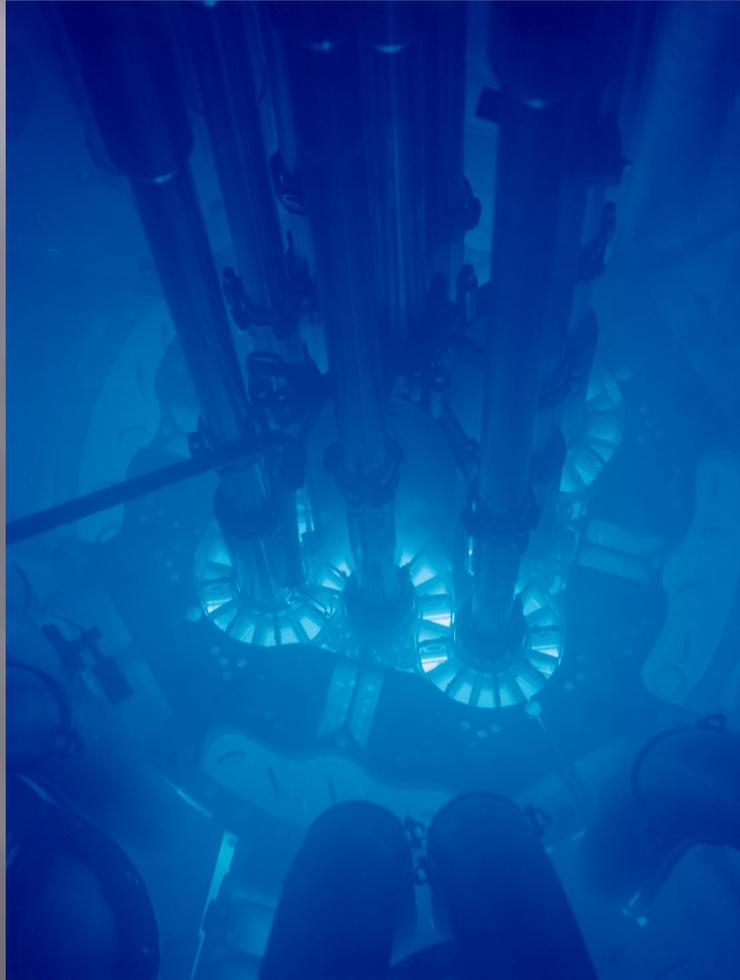
# The “New Deal” Era

- ▣ Starting in 2018 with new administration DOE took a different approach
  - Rick Perry, former Governor was now the Secretary of Energy –
  - Policy leaders at DOE were interested in making a “deal.”
  - Direct meetings with the Secretary, Governor and Attorney General
  - Clear direction from the Secretary to work with the State to resolve the issue – assignment of responsibility.

# The Deal

- ▣ Idaho agreed to allow a one time shipment of Commercial fuel if DOE met commitments
  - Treat at least one cask of Sodium Bearing HLW before any SNF comes to Idaho
  - Ship 300 lbs of special nuclear material out of Idaho
  - Treat Sodium Bonded Fuel
  - Commit that Idaho will receive 55% of all shipments to WIPP; and any unused shipping capacity goes to Idaho
- ▣ Future Shipments of commercial fuel?
  - After 100 casks
  - Sustained operation of the IWTU

# ATR Agreement



# Why

- ▣ 1995 Agreement Requires that all SNF be removed from wet storage into dry storage by 2023
- ▣ 1995 Agreement also requires that all SNF be removed from Idaho by 2035
- ▣ The ATR has a safe useful life well beyond 2035 and an ongoing mission.
- ▣ DOE has an active fuel management canal at the ATR where it “stores” or “manages” spent nuclear fuel for up to 6 years before moving to dry storage
- ▣ Parties disagreed over applicability but both wanted certainty

# The Agreement

- ▣ DOE can keep using the canal to “store” or “manage” SNF after 2018, but can only keep fuel in water for 6 years.
- ▣ DOE can keep SNF “stored” in the canal in Idaho after 2035
- ▣ After 2035, DOE must remove all SNF that put into dry storage within 12 months.
- ▣ Continuous technical assessments of ATR canal integrity – and notice.

# Common Problems and Common Solutions

- ▣ Was there a commitment to negotiate and find a solution that worked for both sides?
- ▣ Did the parties listen to each others concerns and respect each others needs?
- ▣ Were the right people in the room?
- ▣ Is there something the other side wants that they need from you?
  - What is your “leverage.”
- ▣ Do the parties trust each other?
- ▣ Do you have the knowledge to understand the other side?