

PART III – SECTION J, ATTACHMENT M-1-B

**AGREEMENT CONCERNING HANDLING OF SPENT NUCLEAR FUEL GENERATED BY
THE ADVANCED TEST REACTOR**

Effective February 4, 2020

AGREEMENT CONCERNING HANDLING OF SPENT NUCLEAR FUEL GENERATED BY THE ADVANCED TEST REACTOR

The Parties to this Agreement Concerning Handling of Spent Nuclear Fuel Generated by the Advanced Test Reactor (“Agreement”), the State of Idaho, through the Governor of the State of Idaho and the Idaho Attorney General (Idaho), and the Department of Energy (DOE), hereby agree to the following terms and conditions:

I. PURPOSE OF AGREEMENT:

Consistent with the principles set forth in that certain 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.) (“1995 Agreement”), the purpose of this Agreement is to provide for handling of spent nuclear fuel (SNF) generated during operations of the Advanced Test Reactor (ATR) while continuing to assure that the 1995 Agreement commitment to eliminating wet storage facilities for SNF is met. This Agreement is necessary to provide definition to the Parties' relationship and to assure the ongoing mission of the ATR at the Idaho National Laboratory (INL).

II. NON-ADMISSION OF APPLICABILITY:

The Parties to this Agreement do not agree regarding the applicability of Section E.8 of the 1995 Agreement to the ATR operating canal. To resolve the handling of SNF in the ATR operating canal without litigation or controversy and without admitting or conceding whether such activities are or are not subject to the 1995 Agreement requirement to eliminate use of wet SNF storage facilities under Section E.8, the Parties enter into this Agreement.

III. DEFINITIONS:

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

For purposes of this Agreement, ATR fuel will be considered “spent nuclear fuel” when it has been used in the ATR to the extent that it can no longer effectively sustain a chain reaction, no longer meet quality assurance requirements for continued use, or is deemed no longer useable for future insertion into the reactor pursuant to Technical Safety Requirement (TSR) 186.

IV. EFFECTIVE DATE AND CONDITION:

The terms and conditions of this Agreement shall be effective on the date of the last signature to this Agreement. If the DOE is in material breach of any mandatory and applicable provisions of this Agreement, 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 DOE of the material breach.

V. TERMS AND CONDITIONS:

- A. Notwithstanding the provisions of paragraph C.1 of the 1995 Agreement, after January 1, 2035, the DOE may maintain a volume of SNF at INL associated with operation (exclusive of test specimen material) of the ATR operating canal for a timeframe reasonably necessary for thermal cooling, but in any event not to exceed six (6) years.
- B. SNF (exclusive of test specimen material) generated as a result of operation of the ATR after January 1, 2018, may be kept in the ATR operating canal, as described below for a timeframe reasonably necessary for thermal cooling before placement into dry storage but in any event not to exceed six (6) years.
- C. After January 1, 2035, all SNF (exclusive of test specimen material) generated from operation of the ATR shall be removed from the State of Idaho within twelve (12) months of placement into dry storage as required by V.B above.
- D. Commencing January 1, 2020, the DOE shall annually provide notice to the State of Idaho of: (1) the total quantity (in metric tons heavy metal¹) of SNF kept in the ATR canal and (2) the date on which each spent fuel element was determined to be “spent fuel.” Annual notice must be provided by May 1 of each calendar year, which provides the above information for the preceding calendar year.
- E. DOE shall perform technical assessments of the existing ATR canal, pursuant to TSR 186. If at any time it is determined that the integrity of the ATR canal is compromised, DOE shall notify the State of Idaho and immediately implement all applicable requirements of TSR 186.

VI. REMEDIES:

- A. If the DOE fails to satisfy the obligations or requirements of this Agreement, or fails to meet deadlines for satisfying such obligations or requirements, all SNF in the ATR canal will immediately be considered by all parties to this Agreement to be in wet storage within the meaning of Section E.8 of the 1995 Agreement.
- B. The Court may enforce the rights, obligations and requirements assigned by this Agreement pursuant to all legal and equitable remedies available to the courts of the United States, provided, however, that in the event Idaho invokes the remedy specified in paragraph VI.A, the Court's enforcement powers shall be limited to determining whether the substantive obligations or requirements alleged to have been breached have been satisfied.

¹ For purposes of this Agreement the Parties agree that the term “heavy metal” refers to all uranium, plutonium, thorium, and trace amounts of additional elements having an atomic number greater than or equal to 90, contained within materials such as SNF. Other SNF materials, such as cladding, alloys, and structural materials, are not included.

- C. No provision of this Agreement shall compel any Party to act without due legal authority. Performance by every Party under this Agreement shall be subject to and comply with all applicable federal statutes, regulations and orders, including the Anti-Deficiency Act.

- D. In the event that any Party to this Agreement contends that any other Party has violated any terms of the Agreement, the Parties shall seek to resolve their differences informally before asking for resolution by the Court.

DATED this 4th day of February, 2020
SO AGREED:

SIGNED: 
HON. RITA BARANWAL, ASSISTANT SECRETARY FOR NUCLEAR ENERGY
U.S. DEPARTMENT OF ENERGY

SIGNED: 
HON. BRAD LITTLE, GOVERNOR
STATE OF IDAHO

SIGNED: 
HON. LAWRENCE G. WASDEN, ATTORNEY GENERAL
STATE OF IDAHO