MEMORANDUM OF AGREEMENT
BETWEEN THE SENECA NATION OF INDIANS
AND THE U.S. DEPARTMENT OF ENERGY

This Memorandum of Agreement (Agreement) is entered into between the Seneca Nation of Indians and the U.S. Department of Energy (DOE) to provide for notification to the Seneca Nation in advance of any shipments of West Valley spent nuclear fuel and high level waste and Foreign Research Reactor spent fuel (hereafter referred to as "spent nuclear fuel and high level waste") across Seneca Nation lands and to provide for the safe and secure transportation of such material, including the development of culturally sensitive risk management strategies and emergency planning and response, in coordination with the Seneca Nation.

Recitals

WHEREAS the Seneca Nation is a federally recognized Indian tribe with sovereign governmental authority over its lands, including over activities affecting the health or welfare of the Seneca Nation; and

WHEREAS the DOE has an American Indian Policy to ensure an effective implementation of a government to government relationship with tribal governments, including fulfillment of trust obligations and equal protection measures arising from DOE actions which may potentially impact American Indian traditional, cultural and religious values and practices, natural resources, treaty and other federally recognized and reserved rights; and

WHEREAS the DOE is considering the shipment of spent nuclear fuel and high level waste from its West Valley Demonstration Project across Seneca Nation land en route to storage at the Idaho National Engineering and Environmental Laboratory or disposition at a geologic repository; and

WHEREAS the DOE is also considering the shipment of spent nuclear fuel from research reactors in Canada across Seneca Nation land en route to the DOE Savannah River Site; and

WHEREAS the DOE may consider shipping other radioactive material across Seneca Nation land in the future; and

WHEREAS the Seneca Nation and the DOE desire to work together to ensure the safe and secure transportation of such spent nuclear fuel and high-level waste, with advance notification to the Seneca Nation, through the Nation's President and Treasurer, of any such shipments;

Now, therefore, in consideration of the foregoing recitals and the following terms and conditions, the Seneca Nation and the DOE agree as follows:

I. Purposes and Authority

A. Purposes. This Agreement identifies Seneca Nation points of contact. The DOE agrees to notify those contacts in advance of any shipments of spent nuclear fuel and high-level waste across Seneca Nation land, in accordance with applicable federal law, DOE directives, and the provisions set forth herein. The DOE agrees to provide emergency planning and response with regard to such shipments, in cooperation and consultation with the Seneca Nation and in compliance with applicable federal law and the provisions set forth herein; and establishes a government-to-government relationship between the Seneca Nation and the DOE in the administration and implementation of this Agreement. For purposes of this Agreement, the term "Seneca Nation land" means all land within the territorial boundaries of the Seneca Nation, including all land within the exterior boundaries of the Allegany, Cattaraugus and Oil Spring Reservations, and all other land over which the Seneca Nation exercises governmental jurisdiction.

B. Authority. The DOE is authorized to enter into this Agreement by the Atomic Energy Act of 1954, as amended; Executive Order 13084, May 14, 1998 (published May 19, 1998 in 63 Fed. Reg. 27655), Consultation and Coordination with Indian Tribal Governments; Presidential Memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (published May 4, 1994 in 59 Fed. Reg. 22951); and DOE Order 460.2, Transportation and Packaging. The Seneca Nation is authorized to enter into this Agreement by Resolution of the Seneca Nation Council, attached hereto as Attachment A.

II. Specific Responsibilities

A. Notification. The Seneca Nation President and Seneca Nation Treasurer are hereby designated the points of contact for all communications from DOE regarding the transportation of spent nuclear fuel and high-level waste across Seneca Nation land. The DOE will ensure that notification will be delivered by mail and postmarked at least 7 days before the beginning of the 7-day period during which departure of the shipment is estimated to occur. Notification will be sent to the following addresses:

President/Treasurer
Seneca Nation of Indians
Allegany Reservation
P.O. Box 231
8183 Center Road
Salamanca, NY 14779
fax: (716) 945-1565

President/Treasurer
Seneca Nation of Indians
Cattaraugus Reservation
1490 Route 438
Irving, NY 14081
fax: (716) 532-6272

Such notification shall comply with the applicable provisions of 10 Code of Federal Regulations (CFR) parts 71 and 73 and DOE Order 460.2 and, in instances where

there is no applicable regulation for tribes, shall comply with the regulations for states for the applicable type of spent nuclear fuel and high level waste being transported, codified in 10 CFR 71.97, 73.37(f), and DOE Order 460.2. In addition, DOE commits in this Agreement to contact the President and the Treasurer by telephone at 716-945-1790 (Allegany) and 716-532-4900 (Cattaraugus) as soon as practical after the DOE plans to ship spent nuclear fuel and high-level waste across Seneca Nation land, even if such plans are not finalized, and to continue to provide the President and Treasurer with updates regarding such shipment. The DOE also shall contact the President and the Treasurer by telephone at least 5 days before any such shipment takes place.

B. **Protection Against Unauthorized Disclosure.** The Seneca Nation commits that information provided to the President and Treasurer pursuant to paragraph A above shall be protected against unauthorized disclosure until at least ten days after a shipment has entered Seneca Nation land, provided that the President and Treasurer may disclose information contained in the notification to emergency response authorities at any time. The information to be protected is that information specified in the applicable provisions of 10 CFR 73 and in DOE Order 460.2 and, in instances where there are no applicable regulations for tribes, in the regulations for states for the applicable type of high-level waste being transported, codified in 10 CFR 73.21.

C. **Emergency Response and Mitigation/Remediation.** The DOE will provide for emergency response, mitigation and remediation, which shall include both the personnel and the equipment necessary to perform such activities, in the event of any incident or accident involving the transportation of spent nuclear fuel and high-level waste across Seneca Nation land. The Seneca Nation will provide a tribal monitor at the incident site to oversee an effective cleanup. The DOE has been working with the Seneca Nation to develop culturally sensitive risk management strategies and emergency planning to prepare for and implement protective actions when responding to incidents and accidents. The DOE shall incorporate such strategies into its emergency response plans and actions.

D. **Information on Route Conditions.** The Seneca Nation President and Treasurer will be the point of contact for information on weather, highway conditions and any other conditions which might impact a shipment traveling across Seneca Nation land. The President and Treasurer will be available to provide information on such conditions, and also will contact the person identified by the DOE as the DOE's point of contact whenever the President and Treasurer become aware of conditions that may impact an impending shipment.

E. **Other DOE Responsibilities Under Federal Law.** The DOE shall remain responsible for performing its responsibilities under federal law connected with shipments of spent nuclear fuel and high-level waste, including but not limited to ensuring compliance with requirements for driver qualification, driving rules,

vehicle and equipment inspections, packaging and labeling, registration, permitting and licensing.

III. Other Terms and Conditions

A. **Effective Date.** This Agreement shall become effective upon execution by the Seneca Nation and the DOE.

B. **Term.** This Agreement shall remain in effect until terminated by either party, or until superseded by an amendment which explicitly modifies or replaces this Agreement.

C. **Termination.** Either the Seneca Nation or the DOE may terminate this Agreement without cause by giving at least 30 days written notice to the other.

D. **Amendment.** This Agreement is intended to be a working document which may be modified by the parties by written amendment executed by both the Seneca Nation Tribal Council and the DOE. For example, the parties may expand this Agreement to cover other spent nuclear fuel and waste materials, to provide for training of Seneca Nation personnel, and to add additional parties to the Agreement.

E. **Cooperation.** The Seneca Nation and the DOE shall cooperate fully with each other, consult with and assist each other and act reasonably, in good faith and without delay in the performance of all activities hereunder.

F. **Dispute Resolution.** All disputes under this Agreement shall be resolved, if possible, through mutual cooperation between the Seneca Nation and the DOE, provided that where such resolution is not possible, this Agreement may be terminated pursuant to section IV.C. No action may be taken in any court to enforce this Agreement against the Seneca Nation or the DOE. However, DOE remains liable for compliance with applicable federal statutes, regulations, and other requirements.

G. **Sovereign Immunity.** This Agreement is not intended and shall not be construed to waive in any way the sovereign immunity of the Seneca Nation, the DOE, or any of their agencies or instrumentalities.

H. **Severability.** If any provision of this Agreement is held invalid, such holding shall not invalidate any other provision hereof.

IN WITNESS WHEREOF the Seneca Nation and the DOE have caused this Agreement to be executed and approved.

Carolyn L Huntoon

Date: 7-31-2000

Dr. Carolyn Huntoon, Assistant Secretary
Office of Environmental Management
U.S. Department of Energy

Gregory P Rudy

Date: 7-26-00

Gregory P. Rudy, Manager
Savannah River Operations Office
U.S. Department of Energy

Elizabeth Lowes

Date: 7-26-2000

Elizabeth Lowes, Acting Director
West Valley Demonstration Project
U.S. Department of Energy

Duane James Ray

Date: 07-19-00

Duane J. Ray, President
Seneca Nation of Indians