

UNCLASSIFIED FACSIMILE MESSAGE

TO: Ed Horst

FROM: Lisa Cummings, DOE/LAO, FTS (505) 667-5105

DATE: May 13, 1992

NUMBER OF PAGES: Cover +

As promised, the draft Federal Facility Compliance Agreement (FFCA) that will be discussed at EPA tomorrow. Please give a copy to Gini.



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duties to assure compliance with the environmental laws under RCRA and Executive Order 12088. The authority to enter into this Agreement has been delegated by the EPA Administrator to the Regional Administrator of EPA, Region 6, and subsequently to the Director, Waste Management Division, Region 6.

4. Section 6001 of RCRA provides that each department, agency, and instrumentality of the Executive Branch of the Federal Government having jurisdiction over any solid waste management facility or disposal site, or engaged in any activity resulting in, or which may result in, the disposal or management of solid or hazardous waste shall be subject to, and comply with all federal, state, interstate, and local requirements, both substantive and procedural, respecting control and abatement of solid waste or hazardous waste disposal in the same manner, and to the same extent, as any person is subject to such requirements.

5. DOE recognizes its obligations to comply with RCRA as set forth in §6001 of RCRA, and Executive Order 12088, §1-3, which authorizes EPA to monitor federal compliance with applicable pollution control standards. EPA and DOE have reached agreement as to the steps that DOE/LAEO must take to achieve compliance and to resolve those matters related herein.

6. This Agreement is not and shall not be construed as a permit and in no way affects requirements for DOE to obtain any applicable federal, state or local hazardous waste management permits. This Agreement does not relieve DOE of any legal

obligations under RCRA.

7. DOE consents to jurisdiction for purposes of entry and enforcement of this Agreement by EPA, provided however, that DOE does not admit, accept, concede, or acknowledge the determinations, allegations, statements of fact, and conclusions of law set forth in this Agreement and specifically reserves the right to contest any such determinations, allegations, statements of fact, and conclusions of law in any proceeding other than actions brought by EPA to enforce this Agreement.

## II. DEFINITIONS AND ABBREVIATIONS

1. Except as provided below or otherwise explicitly stated herein, the definitions provided in RCRA and its implementing regulations shall control the meaning of the terms used in this Agreement.

2. Additional work means any work agreed upon by the Parties under Section XVI (Additional Work) to this Agreement.

3. Agreement means this document and shall include all appendices to this document.

4. AEA means the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 et seq.

5. Days means calendar days, unless business days are specified. Any submittal or written statement of dispute that under the terms of this Agreement would be due on a Saturday, Sunday, or holiday shall be due the following business day.

6. DOE means the United States Department of Energy,

including the Los Alamos Area Office, and its authorized representatives.

7. EPA means the United States Environmental Protection Agency and its authorized representatives.

8. Hazardous Waste shall have the meaning set forth in §1004(5) of RCRA and 40 CFR Parts 260 and 261.

9. LANL means the Los Alamos National Laboratory.

10. LDR means Land Disposal Restrictions as set forth in 40 CFR Part 268.

11. LDR Waste means mixed waste and other hazardous waste for which no treatment option exists which are subject to the regulations at 40 CFR Part 268.

12. Mixed Waste means waste that contains radioactive components subject to the AEA as well as hazardous waste.

13. NMED means the New Mexico Environment Department and its predecessor agency, the New Mexico Health and Environment Department, Environmental Improvement Division.

14. RCRA means the Resource Conservation and Recovery Act 42 U.S.C. Section 6901 et seq. as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, and their implementing regulations.

15. Solid Waste shall have the meaning set forth by §1004(7) of RCRA and 40 CFR Part 261.

16. Storage means the holding of hazardous or mixed waste for a temporary period, at the end of which the hazardous or mixed waste is treated, disposed of, or stored elsewhere.

### III. STATEMENT OF FACTS AND CONCLUSIONS OF LAW

1. DOE is a department, agency or instrumentality of the Executive Branch of the Federal Government and must comply with the requirements of §6001 of RCRA.

2. LANL is located principally in Los Alamos County, New Mexico, approximately 60 miles northeast of Albuquerque and 25 miles northwest of Santa Fe. The site encompasses approximately 43 square miles.

3. Los Alamos was chosen in 1942 as the site for "Project Y," a secret project for the wartime development of the atomic bomb. The area was established as a military reservation, and operations began in 1943. Activities at LANL include research and development of nuclear and non-nuclear weapons and energy and other research.

4. The United States is the owner and a co-operator of LANL. The Regents of the University of California (the University) is the management and operating contractor for LANL pursuant to a contract with DOE, and is a co-operator of LANL.

5. DOE is a "generator" of hazardous waste at LANL as that term is defined in 40 CFR §260.10.

6. LANL is a "facility" as that term is defined at 40 CFR Part 260.10.

7. On January 25, 1985, EPA granted the state of New Mexico final authority to administer a hazardous waste program equivalent to the federal program.

8. In November 1989, EID issued a hazardous waste facility

operating permit for LANL.

9. On July 25, 1990, EPA granted final authorization to the State of New Mexico to regulate mixed waste.

10. On January 25, 1991, DOE submitted "Part A" of its mixed waste management permit application to EPA.

11. DOE brought to EPA's attention the fact that DOE is currently storing certain LDR waste, and that such storage may be considered as not for the purpose of accumulating quantities necessary to facilitate proper recovery. Specifically solvent wastes F001, F002, F003, F004, and F005 and "California list" wastes are being stored beyond the time limits permitted by the LDRs. Upon expiration of the May 8, 1992, national capacity variance, scheduled wastes are also being stored beyond the time limits permitted by the LDRs. The storage of such LDR waste has not been for the purpose of accumulating quantities necessary to facilitate proper recovery, treatment, or disposal of such wastes, and constitutes a violation of applicable hazardous waste laws and regulations, including LDR regulations set forth at 40 CFR Section 268.50.

12. Additionally, waste which was generated prior to promulgation of LDR regulations is in retrievable storage at LANL. These wastes are stored in two soil covered storage pads (Pads 1 and 2) and the pads are included in the mixed waste Part A submitted to NMED in January 1991. Pursuant to direction from NMED, remediation at these pads will soon be necessary. Activities such as exhuming and recontainerizing the wastes and

placing them in an inspectable array, will subject these wastes to LDR storage and disposal restrictions.

#### IV. Covered Matters

1. Except as specifically set forth elsewhere in this Agreement, this Agreement shall apply to the LDR requirements pertaining to storage, treatment and disposal of LDR waste at LANL which is subject to LDR as described in Paragraph 2 of this Section.

2. This Agreement shall apply to all LDR waste streams identified which are regulated under 40 CFR Part 268 at the time of the execution of this Agreement. The Agreement shall also apply to mixed waste which was stored at TA-54, Area G, TRU-waste storage pads 1, 2 and 4 before promulgation of pertinent LDR regulations. LDR waste will be generated in connection with remedial activities connected with those storage pads.

3. The parties acknowledge that this Agreement does not address corrective action pursuant to RCRA or HSWA.

4. This Agreement does not address RCRA compliance issues other than those issues specifically addressed herein.

Therefore, the parties acknowledge that this Agreement does not affect the rights of EPA to address any RCRA violations which exist or may exist at LANL, which are not specifically covered by this Agreement.

#### V. COMPLIANCE SCHEDULE

The compliance schedule for the LANL facility is intended to bring LANL into compliance as expeditiously as practicable, pursuant to Section 1-601 of Executive Order 12088. The schedule is set forth in Appendix A, which is attached to and incorporated into this Agreement. The compliance schedule was developed after consultation between EPA and DOE. Whenever reasonably possible, DOE will expedite the schedule.

#### VI SUBMITTAL, REVIEW AND APPROVAL OF DELIVERABLES

1. Unless otherwise noted, all deliverables developed by DOE pursuant to this Agreement shall be submitted by DOE to both EPA and NMED. DOE shall complete and transmit each deliverable required by this Agreement upon the deadline established pursuant to this Agreement for completion of each such deliverable. All deadlines set forth herein, including those established pursuant to Paragraph 4 of this Section, and those set forth in any deliverables approved pursuant to this Agreement, constitute enforceable requirements of this Agreement. A transmittal letter will accompany each deliverable specifying the section of this Agreement requiring submittal of that deliverable.

2. Unless otherwise noted, each deliverable shall be transmitted directly to the Project Managers responsible for implementation of this Agreement.

3. EPA will promptly review each deliverable submitted by DOE required to be approved pursuant to this Agreement. In the course of this review, EPA will consult with DOE regarding the

adequacy of each deliverable.

4. Upon completion of review, and any appropriate consultation, of a deliverable, which review and consultation shall be completed within 60 days of receipt of the deliverable, EPA may either approve the deliverable as submitted or return the deliverable to DOE with comments. In the event EPA returns the deliverable to DOE with comments pursuant to a deadline established by EPA for revision and resubmittal, the deadline shall provide DOE with a reasonable time period to revise and resubmit the deliverable in light of the nature and extent of EPA's comments. In the event that review and any appropriate consultation of a deliverable is not accomplished within 60 days, then the deadlines for all deliverables dependent on the particular deliverable being reviewed shall be extended to the same extent that review exceeds 60 days. DOE will notify EPA in its transmittal letter accompanying the deliverable whether any deadlines will be affected by a delay in reviewing the deliverable and, if so, which deadlines will be affected.

5. Unless otherwise set forth herein, all deliverables must be approved by EPA to satisfy the requirements of this Agreement.

6. Upon approval of a deliverable by EPA any requirements or obligations set forth in the deliverable shall be considered requirements of this Agreement. Therefore, upon approval of a deliverable by EPA, DOE shall implement the deliverable as approved.

7. In the event that DOE disputes EPA's determination respect to approval of a deliverable for which it is responsible, DOE may submit the dispute for resolution pursuant to Section (Dispute Resolution) of this Agreement.

#### VII. NOTIFICATION

Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices or other submissions related or required under this Agreement shall be in writing and shall be sent by certified mail, return receipt requested.

1. All documents to be submitted to EPA should be sent to EPA.
2. All documents sent to EPA will also be submitted to NMED and should be sent to:  
NMED and should be sent to:
3. All documents to be submitted to DOE should be sent to DOE.

#### VIII. EXTENSIONS

1. DOE agrees to implement this Agreement in accordance with the deadlines set forth herein, as well as deadlines developed pursuant to this Agreement. DOE further agrees to adopt all reasonable measures to avoid or minimize any delay in the implementation of this Agreement. Any request for an extension of thirty days or more for a schedule shall be made in writing and received by EPA at least thirty days prior to the scheduled deadline. EPA will render its decision within two business days of receipt of the extension request. Any request for an extension of a schedule for less than thirty days shall be made in writing and received by EPA at least ten days prior to the scheduled deadline. EPA will render its decision within two business days of receipt of the extension request.

either orally or in writing, at least seven days prior to the scheduled deadline. EPA will respond to the request, either orally or in writing, prior to the due date. Any request for an extension shall be provided to the parties in accordance with Section VI (Notification). The request shall specify:

- a. The schedule that is sought to be extended;
- b. The length of the extension sought;
- c. The good cause(s) for the extension; and
- d. Any related schedule(s) that would be affected if the extension was or was not granted.

2. Good cause may exist for an extension when sought in regard to:

- a. An event of force majeure (an unexpected or unforeseeable event or circumstance which is beyond the control of DOE and which could not have been overcome by the due diligence of DOE). DOE shall bear the burden of proof that any delay is due to an event of force majeure. DOE shall notify EPA of the event in writing within three business days of the time DOE becomes aware of an event of force majeure which it believes will necessitate the extension of a deadline or deadlines. The notification shall describe the event of force majeure, the duration of the anticipated delay, measures taken or to be taken to mitigate the delay, and the schedule for

implementation of mitigation measures.

- b. A delay caused by the good faith invocation of dispute resolution or the initiation of administrative or judicial action;
- c. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another schedule;
- d. A delay caused by additional work agreed to by the parties; and
- e. Any other event or series of events mutually agreed to by the parties as constituting good cause.

3. For extension requests by DOE, if EPA determines that good cause does not exist for all or part of a requested extension, the schedule will not be extended, except in accordance with a determination resulting from the dispute resolution process. DOE may seek and obtain a determination pursuant to the provisions of the Dispute Resolution section (Section IX) of this Agreement within fourteen days of EPA's decision on the extension request. If DOE fails to invoke dispute resolution within the fourteen-day period, DOE is deemed to accept EPA's non-concurrence and the existing schedule.

4. If EPA determines that the requested extension is warranted, the parties shall extend the affected schedule accordingly.

5. When a timely request for an extension is made, EPA shall refrain from taking any enforcement action against DOE regarding the affected schedule until a decision is reached on whether the requested extension will be approved. Following the grant of an extension, EPA may take enforcement action only to compel compliance with the schedule as most recently extended.

6. For extension requests by EPA, if DOE does not invoke dispute resolution within fourteen days after written notice of the requested extension, the extension shall be deemed approved.

#### IX MODIFICATION/TERMINATION

1. This Agreement may be modified only by agreement of the parties. All modifications shall be in writing and shall be effective when signed by both parties. EPA shall be the last signatory on any modifications to this Agreement.

2. Except as otherwise set forth herein, this Agreement shall terminate upon completion of the activities referenced in Section IV (Compliance Schedule).

3. This Agreement may be terminated at any time upon mutual agreement of the parties.

4. Except as otherwise set forth in this Agreement, the parties agree, subject to relevant considerations, including the facts, circumstances, and status of DOE's compliance with this Agreement, to meet and negotiate in good faith the amendment of this Agreement with respect to any LDR waste including, but not limited to, the incorporation of all LDR wastes not addressed in

Appendix A, Compliance Schedule, and all LDR wastes which become subject to LDR regulations subsequent to the execution of this Agreement.

5. DOE warrants that it will exercise good faith and due diligence in identifying LDR wastes located at LANL. In the event that despite such diligence, DOE identifies previously unidentified LDR waste, DOE will notify EPA in writing within five working days. The Parties agree to negotiate in good faith the modification of this Agreement to incorporate such newly-identified wastes.

#### X. DISPUTE RESOLUTION

1. Except as specifically set forth elsewhere in this Agreement, if a dispute arises among the parties to this Agreement, the procedures of this Section shall apply.

2. If a dispute arises, the disputing party shall engage the other party in informal dispute resolution. Such interaction shall be between EPA and DOE representatives identified in Section \_\_ (Notification) or their immediate supervisors. This informal dispute resolution shall be for a period of thirty days, during which time EPA and DOE shall meet as many times as necessary to discuss and attempt resolution of the dispute.

3. If the informal dispute resolution process is unsuccessful, within ten days after the expiration of the 30-day informal dispute resolution period, the disputing party shall submit to the other party a written statement of dispute setting

forth the nature of the dispute, the work affected by the dispute, the disputing party's position with respect to the dispute and the information which the disputing party is relying upon to support its position.

4. The disputing party shall forward the written statement of dispute to the Dispute Resolution Committee (DRC) for resolution. Upon submission of a dispute to the DRC, the other party shall, within fourteen days, submit a written statement formally establishing its position on the dispute.

5. The DRC shall be composed of a representative from EPA and a representative from DOE. EPA's representative shall be the \_\_\_\_\_ . DOE's representative shall be the \_\_\_\_\_ . If any delegation of this DRC responsibility is made by a designated DRC representative, notification of such delegation shall be supplied to the other party.

6. Following elevation of a dispute to the DRC, the DRC shall have 21 days to unanimously resolve the dispute and issue a written position. If the DRC is unable to unanimously resolve the dispute within this 21-day period, the EPA DRC representative shall issue a written position on the dispute by the twenty-eighth day following submittal. Within fourteen days after receipt of the EPA DRC representative's written position, DOE may submit a written notice of dispute to the Senior Executive Committee (SEC) for resolution. In the event that the dispute is not escalated to the SEC within the designated

fourteen-day escalation period, DOE shall be deemed to have agreed with the EPA DRC representative's position with respect to the dispute.

7. The SEC shall serve as the forum for resolution of disputes which are elevated pursuant to the procedures set out in this Section, and shall be composed of a representative from EPA and a representative from DOE. EPA's representative shall be the Regional Administrator of EPA Region 6. DOE's representative shall be the Area Manager of the Los Alamos Area Office. The SEC members shall meet, confer, and make their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within 21 days, the Regional Administrator shall issue a written position on the dispute within fourteen days following the 21-day resolution process.

8. DOE may, within fourteen days of the receipt of the Regional Administrator's written position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. If DOE does not elevate the dispute to the Administrator of EPA within the time frame designated, DOE shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

9. Upon escalation of a dispute to the Administrator pursuant to this Section, the Administrator will review and resolve the dispute within 21 days. Upon request, and prior to

resolving the dispute, the EPA Administrator shall meet and confer with the Secretary of Energy to discuss the issue(s) in dispute. Upon resolution, the Administrator shall provide DOE with a written final decision setting forth resolution of the dispute.

10. The pendency of any dispute under this Section shall not affect the parties' timely performance of their respective responsibilities pursuant to this Agreement, except that the time period for completion of work affected by such dispute(s) shall be extended for a period of time not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable schedule. The determination of elements of work, submittals or actions affected by the dispute shall be determined by EPA pending final resolution of the dispute.

11. When dispute resolution is in progress, work underway to fulfill DOE's obligations under this Agreement will be immediately discontinued if the EPA DRC representative requests, in writing, that work related to the dispute be stopped because, in EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment. To the extent possible, EPA shall give DOE prior notification that a stop-work request is forthcoming. After stopping work, if DOE believes that the

stop-work request is inappropriate or may have potential significant adverse impacts, DOE may meet with the EPA DRC representative to discuss the stop-work request. Following this meeting, and further consideration of the issues, the EPA DRC representative will issue, in writing, a final decision with respect to the stop-work request. The final written decision of the EPA DRC representative may immediately be subjected to formal dispute resolution. Such dispute resolution may be brought directly to either the DRC or the SEC, at the discretion of DOE.

12. Upon resolution of a dispute pursuant to the procedures specified in this Section, the resolution and final determination will be incorporated into the appropriate plan, schedule or procedures. DOE will implement this Agreement according to the amended plan, schedule or procedures.

13. Resolution of a dispute pursuant to this Section of the Agreement shall be in accordance with all applicable laws, regulations and requirements and constitutes a final resolution of any dispute arising under this Agreement. The parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of the Agreement. Such resolution shall contain a finding as to whether the invocation of this Section was made in good faith.

#### XI. FUNDING

1. It is the expectation of the parties that all obligations and commitments established by this Agreement will be

fully funded by DOE. DOE shall take all necessary steps and use its best efforts to obtain timely and sufficient funding to meet its obligations and commitments under this Agreement, including but not limited to the submission of timely budget requests. Nothing herein shall affect DOE's authority over its budget and funding level submissions. Section 1-5 of Executive Order 12088 states that "[t]he head of each executive agency shall ensure that sufficient funds for compliance with applicable pollution control standards are requested in the Agency budget." Any requirement for the payment or obligation of funds by DOE established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341, as amended. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

2. Failure to obtain adequate funds or appropriations from Congress does not in any way release DOE from its ultimate obligation to comply with RCRA. Subject to the terms of this Agreement, if appropriated funds are not available to fulfill DOE's obligations under this Agreement, EPA reserves the right to initiate any other remedy that it would have absent this Agreement.

3. DOE is preparing an Environmental Restoration and Waste

Management Plan (5-Year Plan) which will identify, integrate, and prioritize environmental restoration and waste management activities at all DOE nuclear facilities and sites, and provide a consistent basis for DOE to address environmental requirements and develop and support its budget requests. The 5-Year Plan will be updated annually to incorporate any changes that occur in the program including changes due to the following factors: the availability of Congressional funding; the completion or modification of Federal Facility Agreements; application of the national prioritization system to environmental restoration and waste management activities conducted under the 5-Year Plan; conditions determined as the result of assessment and characterization activities at DOE facilities and sites; and new or amended regulatory requirements. The activities and related milestones in the 5-Year Plan shall be consistent with the provisions, including requirements and schedules, of this Agreement. It is the intent of DOE that the 5-Year Plan be drafted to ensure that the provisions of this Agreement are incorporated into the DOE planning and budget process. Nothing in the 5-Year Plan shall be construed to affect the provisions in this Agreement. However, the Parties recognize that application of the 5-Year Plan's national prioritization system may result in a proposed implementation schedule for environmental restoration and waste management activities that is different from the schedules specified in this Agreement. The Parties shall work to address and resolve any such differences and reserve the right to

modify this Agreement, and, where necessary, to invoke the appropriate dispute resolution provisions of this Agreement. Pending resolution of any such dispute, the provisions and deadlines in effect pursuant to this Agreement shall remain in effect and enforceable in accordance with the terms of this Agreement. Any modifications to this Agreement will be incorporated, as necessary, in the annual updates of the 5-Year Plan.

#### XI. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. DOE shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

#### XII. OTHER CLAIMS

Nothing in this Agreement shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from LANL.

XIII. ACCESS/DATA/DOCUMENT AVAILABILITY

1. EPA will be permitted to enter, upon the presentation of credentials and other documents as may be required by applicable laws, regulations or DOE Orders, all areas of LANL which handle hazardous waste, or which contain information referred to in this Section. EPA will be permitted to inspect records, logs, and other documents relevant to implementation of this Agreement; verify compliance by DOE with this Agreement; review the progress of DOE, its contractors, and lessees in carrying out the activities under this Agreement; conduct tests which EPA deems necessary; and verify data submitted to EPA by DOE. DOE shall honor all requests for access to LANL made by EPA, so long as the provisions of this Section are fulfilled. When on site, EPA shall comply with all applicable Occupational Safety and Health Administration regulations, and DOE site health and safety requirements. EPA access shall be subject to the applicable requirements of the Atomic Energy Act, 42 U.S.C. §2011 et seq., and any Executive Orders concerning the handling of unclassified controlled nuclear information, restricted data, and national security information.

2. Any information or documents produced under the terms of this Agreement by EPA and DOE shall be available to the public except:

- (a) those identified to EPA by DOE as classified, or unclassified but controlled, within the meaning of and in accordance with the AEA;

(b) those that could otherwise be withheld pursuant to the Freedom of Information Act or the Privacy Act, unless expressly authorized for release by the originating agency;

(c) those still considered to be in draft or unfinished form;

(d) those containing attorney work-product or attorney-client privileged material; or

(e) those subject to business confidentiality claims.

Documents or information so identified shall be handled in accordance with any applicable regulations. No document marked draft may be made available to the public without prior written approval of the generating party. Unless otherwise restricted by Subsections (a), (b) and (d), if the document is draft final (pending public review) or final and no confidentiality claim under Subsection (e) accompanies information which is submitted to any party, then the information may be made available to the public without further notice to the originating party. EPA reserves its right to seek to otherwise obtain access to such information or facilities in accordance with applicable law.

#### XIV. ENFORCEMENT ACTIONS AND RESERVATION OF RIGHTS

1. EPA agrees not to initiate any civil administrative enforcement action or to refer a civil judicial enforcement action to the Department of Justice, for violation of RCRA §3004(j) arising from the storage of LDR waste at LANL for so

long as DOE is in compliance with the requirements of this Agreement.

2. However, in the event that DOE is delayed in fulfilling its obligations as set forth in this Agreement as a result of insufficient availability of funding, and the parties are unable to agree to an extension of schedules as provided for in Section VII (Extensions), the covenant set forth above shall terminate.

3. Further, nothing herein shall preclude any actions by EPA to enforce the terms of this Agreement, or to address or bring any enforcement actions for (1) any pre-existing, current or future violations or conditions at LANL not specifically covered by this Agreement, or (2) any emergency condition or imminent hazard that may exist or arise at LANL.

#### XV. SEVERABILITY

If any provision or authority of this Agreement or the application of this Agreement to any party or circumstance is held by any judicial or administrative authority to be invalid, circumstances and the remainder of the Agreement shall remain in force and shall not be affected thereby.

#### XVI. ADDITIONAL WORK

1. EPA may at any time request additional work, including field modifications, investigatory work, or engineering evaluations, which they determine necessary to accomplish the

purposes of this Agreement. Such requests shall be in writing to DOE. DOE agrees to give full consideration to all such requests. DOE may either accept or reject any such requests and shall do so in writing, together with a statement of reasons, within forty-five days of receipt of any such requests. If there is no agreement concerning whether or not the requested additional work or modification to work should be conducted, then dispute resolution may be invoked.

2. Should additional work be required pursuant to this Section, deadlines and schedules for implementation of any activity shall be proposed by DOE and, if approved by EPA, shall be included as an appendix to this Agreement.

3. The discovery of previously unknown facts or conditions related to radionuclide emissions at LANL may be addressed as additional work under this Section or by other means as EPA in its discretion determines.

4. Any additional work or modifications to work proposed by DOE shall be proposed in writing and DOE shall not initiate such work prior to review and approval by EPA.

5. Any additional work or modification to work agreed to or required under this section shall be completed in accordance with the standards, specifications, and schedules determined by the Dispute Resolution Committee or approved by EPA and shall be governed by the provisions of this Agreement.

XVII. AMENDMENT

In the event there is an amendment of RCRA after the effective date of this Agreement, or changes to the regulations promulgated thereunder, the compliance schedule herein may be renegotiated to reflect these changes. Such renegotiation shall be governed by Executive Order 12088 and the provisions of this Agreement. During the pendency of any renegotiation, the compliance schedule, to the extent that it does not conflict with statutory or regulatory changes, shall remain in effect unless specifically waived by EPA.

XVIII. SANCTIONS

1. In the event that DOE fails to bring LANL into full compliance with the regulatory requirements as specified in this Agreement within the time periods indicated herein and in submittals approved by EPA pursuant to this Agreement, subject to the Funding, Modification, Extensions and Dispute Resolution sections of this Agreement, EPA reserves the right to pursue any remedies that it may have pursuant to Federal law.

2. In the event that DOE fails to comply with the schedules set forth herein, subject to the Funding, Modification, Extensions and Dispute Resolution Sections of this Agreement, the parties agree that EPA shall have the right to terminate this Agreement by written notice to the parties.

XX. EFFECTIVE DATE

The effective date of this Agreement shall be the date on which it is signed by the last signatory, which shall be EPA.

IT IS SO AGREED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jerry L. Bellows  
Area Manager  
Los Alamos Area Office  
U.S. Department of Energy

\_\_\_\_\_  
Date

\_\_\_\_\_  
U.S. Environmental Protection Agency,  
Region 6

10-1

## Appendix A Compliance Plan

1. DOE-LAAO will revise the existing waste minimization plan and submit a revised plan to EPA for review. The waste minimization program will provide for segregation of any solvent contaminated wipes from nonhazardous waste where possible, will substitute nonhazardous solvents for hazardous solvents where possible, and will pursue a program to minimize the generation of hazardous waste throughout the facility. Upon review and comment by EPA on the waste minimization program, the parties will meet and discuss any concerns raised by such review. Subsequent to these discussions and after giving appropriate consideration to EPA's concerns, if any, DOE-LAAO will implement the waste minimization program. The plan for the waste minimization program will be submitted to EPA within 30 days of the effective date of this agreement. A report updating the waste minimization plan shall be submitted annually, with the first report due January 30, 1993.

2. DOE-LAAO will segregate the storage of any LDR waste containers, where possible, excluding those located on the Transuranic (TRU) storage pads 1, 2, 3, 4 and pit 9, from other mixed waste. On the TRU storage pad 3, DOE-LAAO will segregate the storage of any LDR waste containers placed on this pad after the effective date of this agreement from other mixed wastes.

3. Within one hundred twenty (120) days of the effective date of this agreement, DOE-LAAO shall submit to EPA a report for all LDR wastes addressed by terms of this agreement. DOE-LAAO will update the report annually on January 31 of each year. This report shall:

- a. Provide justification why continued operation requires an alternate schedule for bringing into compliance rather than that available through regulatory relief mechanisms (creatability variance) provided by the LDR.
- b. Identify and describe LDR waste (s) at LAAO. The identification and description shall include the RCRA hazardous waste code; radioactive type; and the physical form of the waste.
- c. Provide a projection of annual generation rates for LDR wastes, including the estimated quantity of any LDR waste that will be generated by DOE-LAAO until final compliance with LDR is achieved. In each update of this report, DOE-LAAO shall state whether its previous estimates are still accurate and, if they are not, describe why the estimate must be revised.
- d. Provide an estimate of the quantity of stored waste described in b. above. In each update of this

report, DOE-LAAO shall state whether its previous estimates are still accurate and, if they are not, describe why the estimate must be revised.

- e. Describe the physical location and method of storage of waste identified in b. above.
- f. Identify treatment and disposal technologies and treatment capacity needed to manage these LDR wastes, assuming projected generation rates.
- g. Describe LDR compliance problems associated with the planned treatment and disposal technologies.

4. Within 13 months, describe the planned ultimate treatment and disposal unit for each waste identified in b. above, including a schedule for such treatment and disposal. In each update of this report, DOE-LAAO shall state whether this schedule can be met and, if not, describe why it must be revised.

5. Within one hundred twenty (120) days of the effective date of this agreement, DOE-LAAO will ensure that all areas with containers used for the storage of LDR mixed waste meet the container management regulations contained in 40 CFR 268, excluding containers located in accumulation areas subject to 40 CFR 268.04. Containers stored in TRU pads 1, 2, and 3. Containers stored in TRU pads 1, 2, and 3 will be managed pursuant to a compliance agreement negotiated with the NMEB.

DOE-LAAO will submit three comprehensive reports (Phase I, II, and III) for facilities to manage mixed LDR waste for treatment, storage and/or disposal. The reports will include the facility, their scope and waste management capabilities. Also included in the report, will be a schedule for permitting, design, construction, and start of operation. Facilities included in the Phase I report will be:

- \* Hazardous waste treatment facility
- \* Controlled Air Incinerator
- \* Shop and storage additions
- \* Mixed wastes storage building
- \* Mixed waste receiving and storage facility
- \* RCRA landfill
- \* Waste remedy facility
- \* Drum preparation facility

DOE-LAAO will submit the Phase I facility report within 12 months of the effective date of this agreement.

Facilities included in the Phase II report will be:

- \* Incinerator ash solidification facility
- \* TRU drum venting facility
- \* Short-term TRU storage facility
- \* Office complex

DOE-LAAO will submit Phase II facility report within 24 months of the effective date of this agreement.

Facilities included in the Phase III report will be:

- \* TRU processing facility
- \* Extended long-term TRU storage facility

DOE-LAAO will submit the Phase III facility report within 36 months of the effective date of this agreement.

7. DOE-LAAO will allow EPA Region VI employees dealing with mixed waste access, upon request and availability, to all appropriate training courses and seminars within DOE-LAAO control. EPA region VI will allow DOE-LAAO employees access, upon request and availability to all appropriate training courses and seminars dealing with hazardous waste. Listings of training opportunities will be provided annually to both parties.

8. Public Involvement Program; within 120 days of the effective date of this agreement DOE-LAAO will submit to EPA a comprehensive public participation and involvement program that addresses all major components of this agreement.

#### Project Managers

1. Within ten (10) days of the effective date of this agreement, EPA and DOE-LAAO shall each designate a Project Manager. The Parties shall each notify the other Parties in writing of the Project Manager they have selected. Each Project Manager shall be responsible for overseeing the implementation of this Agreement. Any Party may change its designated Project Manager by notifying the other Parties, in writing, ten (10) days before the change, to the extent possible. To the maximum extent possible, communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project managers. Each Project Manager shall be responsible for assuring that all communication from the other Parties and Project Managers is disseminated appropriately to that responsible Project Manager's organization.

2. The Project Managers shall meet quarterly to discuss progress and problems relating to all work under the Agreement. As a requirement of the agenda for each meeting, EPA shall notify DOE-LAAO of all potential issues or problems regarding compliance with the Agreement. Additionally, the status of the curing of any previously identified problems or issues of compliance shall be provided and discussed.

3. Draft meeting minutes shall be prepared by DOE-LAAO and provided to the other Parties within ten (10) days of the meeting. Any changes to the minutes shall be provided to DOE in writing within fourteen (14) days of the receipt of the draft minutes for incorporation into the final minutes. Failure to provide timely changes to the minutes shall constitute agreement.