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April 24, 1993 Draft

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 6,  
THE U.S. DEPARTMENT OF ENERGY  
AND  
THE STATE OF NEW MEXICO  
(THROUGH THE NEW MEXICO ENVIRONMENT DEPARTMENT)  
CONCERNING LOS ALAMOS NATIONAL LABORATORY**

**I. INTRODUCTION**

This Memorandum of Agreement ("the MOA") is entered into by and between the United States Environmental Protection Agency Region 6 ("the EPA" or "EPA"), the United States Department of Energy ("DOE" or "the DOE") and the State of New Mexico ("the State"), through the New Mexico Environment Department ("NMED" or "the NMED"), collectively referred to as "the Parties" for effective use of Federal and State resources at DOE facility known as Los Alamos National Laboratory ("LANL"), located in Los Alamos, Santa Fe County, New Mexico.

**II. PURPOSES**

The Parties enter into this MOA to ensure consistency with the Federal Facility Compliance Act of 1992 (42 U.S.C. § 6940) ("the Act"); to have LANL continue its compliance activities that are ongoing pursuant to the , 1993 Federal Facility Compliance Agreement (sometimes referred to herein as "the Agreement"); to develop and document a stream-lined mechanism for transfer of regulatory authority for compliance, enforcement and oversight for the aforementioned compliance activities until such

time as there is a plan in effect, as contemplated by the Act; and effective use Federal and State resources.

Specifically, the MOA is intended to ensure 1) there are clear procedures in place for a transition of regulatory authority to the State, 2) to ensure that adequate regulatory oversight of the compliance activities being conducted by LANL pursuant to the Agreement during the transition period; and 3) there is a bridge between the Agreement and the implementation of the waste management plan required by the Act.

### III. SCOPE

This MOA is limited to the Federal Facility Agreement dated , 1993, and any amendments thereto, between EPA and LANL, and the activities conducted pursuant to the Agreement.

### IV. BACKGROUND

On , 1992 EPA issued a Notice of Noncompliance to LANL because of the storage of mixed waste in violation of the RCRA regulations. EPA and LANL commenced negotiations of the terms and conditions of the Agreement on , approximately ten months prior to the passage of the Act.. These negotiations were substantially completed by October 6, 1992, the effective date of the Act. EPA and the LANL wished to complete the Agreement so that the facility could commence management of its mixed waste in such a way that compliance with the RCRA regulatory requirements would eventually be achieved. Upon the passage of the Act, EPA and

LANL determined that it would be beneficial to complete the Agreement and to develop a method, with the State, to ensure that the actions contemplated by EPA and LANL would be consistent with the Act, which envisions the states as the lead regulatory authority, provided the states have authorization for land disposal restricted wastes (LDR) in their authorized programs.

The Act, stays the Section 6001 of RCRA (42 U.S.C. § 6961) waiver of sovereign immunity until October 6, 1995 for Section 3004 (j) of RCRA violations which pertain to the storage of mixed waste. This stay pertains to mixed waste which, as of the effective date of the Act, was not subject to an existing agreement, permit or order, and the waiver is stayed so long as the waste is managed in compliance with all other applicable requirements.

The Act provides for a continuation of the stay of the waiver after October 6, 1995 for the DOE provided that DOE has a waste management plan (for each of its affected facilities) which is in effect and which has been submitted and approved pursuant to the Act, and there is an order has been issued and the order requires compliance with the aforementioned plan.

Section 105 of the Act requires DOE to have submitted within one-hundred eighty (180) days of the Act's effective date to the State and to the Administrator of EPA a mixed waste inventory for its facilities located within the State's boundaries. The Act also require DOE to submit a waste management plan for developing treatment capacities and technologies that meet the standards identified in Section 3004 (m) of RCRA (42 U.S.C. § 6924 (m)), for

all its mixed wastes.

For each DOE facility located in a state where the state has state authority to prohibit land disposal of untreated mixed waste and has authority under state law and authorization under Section 3006 of RCRA (42 U.S.C. § 6926) to regulate the hazardous components of mixed wastes., DOE shall provide the state with the plan for its review and approval.

The State has the aforementioned authorities (add state cites), but has not been authorized under Section 3006 of RCRA for land disposal restricted wastes, HWMR-7 (add year).

#### V. REGULATORY AUTHORITY/TRANSITION

The Parties believe the transition identified in this Section will accomplish the objective of LANL achieving compliance with the RCRA regulations in a consistent, non-duplicative manner, will be consistent with the Act, and will be the most effective use of Federal and State resources.

The Parties acknowledge that until such time as the State has authorization for LDR wastes in its authorized program, EPA will be the lead regulatory agency for the mixed waste at LANL that are in violation of Section 3004 (j) of RCRA (42 U.S.C. § 6924j)) and the Agreement will be the principle vehicle for management of the waste until such time as the plan and order identified in Section 102 C of the Act.

The Parties also agree that at such time as EPA has authorized the State for LDR wastes, which include the wastes identified in the

first paragraph of this Section, that regulatory authority will be transitioned to the NMED . The transition will include the Agreement, which shall remain in effect until such time as there is a waste management plan and order in effect for LANL's mixed waste, in accordance with Section 102 C of the Act. At such time as the State informs the EPA that it has a plan and order consistent with the Act in effect, EPA will then terminate the Agreement and so notify the Parties of the termination. Until such time as the transition is completed, the Agreement shall remain in effect.

#### VI. NOTIFICATION

Any notifications required by this MOA shall be made to the persons identified in this section or their designee. If a Party changes the person to whom notice is to be given or the address to which notice is to be sent, the other Parties must be given written notification.

EPA: Joel Dougherty  
RCRA Enforcement Branch, ALONM Section (6H-CS)  
U.S. Environmental Protection Agency  
1445 Ross Avenue  
Dallas, TX 75202-2733

NMED: To be added  
  
P. O. Box 26110  
Santa Fe, NM 87502

LANL: To be added

#### VII. RESERVATION OF RIGHTS

A. Nothing in this MOA shall be construed as a restriction or waiver of any rights EPA or NMED may have under the Solid Waste Disposal Act, as amended by the Resource Conservation Recovery Act

, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901, et. seq..

B. EPA reserves all of its rights to initiate enforcement actions against the federal facility under any federal law or regulation that is not covered by this MOA.

C. Nothing in this MOA shall be deemed to constitute a waiver on the part of NMED of its authority to require, issue, modify, revoke or enforce a RCRA permit or enforce its authority pursuant to applicable federal and state law to regulate interim status RCRA units which may be located at the facility or solid waste management units that are located on the facility and which are not subject to this MOA

D. The State reserves the right to take any action to the extent provided by law and after exhausting its remedies under this MOA, pursuant to RCRA and/or any other available legal authority, including any action it deems appropriate and to seek injunctive relief, monetary penalties, punitive damages, natural resource damages, and other damage claims for any violation of law.

#### VIII. AMENDMENT OF THIS MOA

This MOA can be amended or modified solely upon written consent of all Parties. Such amendments or modifications shall be effective on the date indicated in the amendment or modification.

#### IX. TERMINATION

A. The Parties agree that this MOA terminates at such time as the activities identified in Section V have been completed and

notification has been given to those persons identified in Section VI. This MOA may be terminated by EPA or the NMED by giving the other Parties one-hundred eighty (180) days notification of the intent .

The happening of either of these events will terminate this MOA, but will not terminate the Agreement or any plan or order that exists between the State and LANL.

B. The Parties agree that the plan and order identified in the Act, once the transition specified in Section V occurs, shall superseded the Agreement.

Q. Can the state of NM require treatment plan once agreement signed -

Further - once agreement is place DOE need not pursue the treatment plan as required ~~under~~ under the Act as long as agreement exists -

Q. What benefit to NM in signing MOA -  
resb plan - not very binding  
too flexible -

**X. INTERPRETATION/EFFECTIVE DATE**

If there is any inconsistency between this MOA and the Act, the Act shall prevail.

This MOA is effective after execution by all Parties and on the date indicated in this MOA.

This MOA can be executed in counterpart.

THIS MEMORANDUM OF AGREEMENT IS EFFECTIVE THIS DAY OF , 1993.

U.S. ENVIRONMENTAL PROTECTION AGENCY

By:

Joe D. Winkle  
Acting Regional Administrator  
U.S. Environmental Protection Agency  
Region 6

By:

Allyn M. Davis  
Director, Hazardous Waste Management Division  
U.S. Environmental Protection Agency  
Region 6

NEW MEXICO ENVIRONMENT DEPARTMENT

By:

Judith M. Espinosa,  
Secretary

Date:

DOE