



Department of Energy  
 Albuquerque Operations  
 Los Alamos Area Office  
 Los Alamos, New Mexico 87544

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JUN 06 1995

NM ENVIRONMENT DEPARTMENT  
 OFFICE OF THE SECRETARY

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 Jim S  
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 Steve Z SOB*

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Tracy Hughes, Esq.  
 General Counsel  
 New Mexico Environment Dept.  
 P.O. Box 26110  
 Santa Fe, NM 87502

Dear Tracy:

Enclosed for your consideration is a revised draft Order for enforcement of the proposed final Site Treatment Plan for the Los Alamos National Laboratory which was submitted to the New Mexico Environment Department (NMED) by the Department of Energy (DOE) as required by the Federal Facility Compliance Act. This revised draft Order is being concurrently reviewed by DOE Headquarters. The draft Order has been revised to include some of the provisions which were deleted from the Site Treatment Plan at NMED's suggestion and the revision of other provisions as suggested by NMED.

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 LANC*

As Karen Griffith has discussed with you, we hope that we can begin discussions the week of June 12, 1995, on the draft Order and any legal issues you have identified with regard to the Site Treatment Plan. Please call me at 667-4667 or Karen Griffith at 845-4687 to set up the meeting.

Sincerely yours,

*Joyce Hester Laeser*

Joyce Hester Laeser  
 Counsel

Enclosure

cc w/o enclosures:  
 Karen Griffith, Counsel, KAO  
 Sheila Brown, Staff Attorney, LANL,  
 MS-A187  
 Jody Plum, Office of Environment &  
 Projects, LAAO



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**STATE OF NEW MEXICO  
ENVIRONMENT DEPARTMENT**

**IN THE MATTER OF  
UNITED STATES DEPARTMENT OF ENERGY  
LOS ALAMOS NATIONAL LABORATORY  
LOS ALAMOS, NEW MEXICO**

**DRAFT ORDER**

~~CONFIDENTIAL~~

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**IN THE MATTER OF  
UNITED STATES DEPARTMENT OF ENERGY  
LOS ALAMOS NATIONAL LABORATORY  
LOS ALAMOS, NEW MEXICO**

**ORDER**

This Order is issued by the New Mexico Environment Department (NMED) to require compliance by the United States Department of Energy (DOE) with a Site Treatment Plan for the treatment of mixed waste at the Los Alamos National Laboratory (LANL).

**I. BACKGROUND/HISTORY**

A. LANL is a federal facility, owned by DOE. LANL is co-operated by The Regents of the University of California (the University) pursuant to a management and operating contract with DOE.

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

C. LANL was chosen in 1942 as the site for the wartime development of the atomic bomb. The area was established as a military reservation, and operations began in 1943. Since 1943, the primary mission of LANL has been nuclear weapons research and development. In addition, the facility does work in magnetic and inertial fusion, nuclear fission, nuclear safeguards and security, laser isotope separation, and medical isotope

development. In association with the activities identified above, DOE currently generates and stores mixed waste.

D. On May 13, 1992, DOE notified the United States Environmental Protection Agency (EPA) that it was storing at LANL mixed waste not for the purpose of accumulating quantities necessary to facilitate proper recovery, treatment, or disposal of such waste and, therefore, not in compliance with 40 Code of Federal Regulations (CFR) Section 268.50, relating to the storage of waste restricted from land disposal. DOE stated that available or adequate treatment capacity did not currently exist to treat LANL's mixed waste streams and requested that EPA enter into negotiations for a federal facility compliance agreement pursuant to Executive Order 12088. Subsequently, on September 30, 1992, EPA Region 6 issued a Notice of Noncompliance against DOE alleging violations of the storage prohibitions

E. While negotiations on the compliance agreement between EPA and DOE were proceeding, Congress passed the Federal Facility Compliance Act of 1992 (Public Law 102-386) (the FCC Act), which became effective October 6, 1992. In passing the FCC Act, Congress recognized that adequate treatment capacity and technology does not currently exist for mixed waste generated at DOE facilities. The FCC Act requires DOE, for each facility at which it generates or stores mixed waste, to submit a plan, within three years of the effective date of the FCC Act, for developing treatment capacities and technologies to treat all the facility's mixed waste, regardless of the time it was generated,

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to the standards required for waste subject to the land disposal prohibition.

F. On March 15, 1994, a Federal Facility Compliance Agreement between DOE and EPA became effective. The Agreement is intended to resolve issues relating to the Notice of Noncompliance issued by EPA on September 30, 1992, relating to violations of the storage prohibitions by requiring DOE to comply with a schedule for developing treatment capacity and technologies. By its terms, the Federal Facility Compliance Agreement terminates when the State of New Mexico issues an order requiring DOE compliance with a plan for the treatment of mixed waste at LANL which has been approved by the State of New Mexico.

G. The plan required by the FCC Act must be submitted to the appropriate State regulatory officials in the State where the facility is located, provided the State has authority under State law to prohibit land disposal of mixed waste until the waste has been treated and has both authority under State law to regulate the hazardous components of mixed waste and authorization from EPA to regulate the hazardous components of mixed waste. The State of New Mexico meets these criteria. Accordingly, on March 31, 1995, DOE submitted its plan to the Secretary of NMED for review, public comment, and approval by NMED.

## II. PARTIES BOUND

This Order and the LANL Site Treatment Plan, Attachment A to this Order, shall apply to and be binding on NMED and DOE. DOE shall  
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notify its agents, employees, current operating and other contractors at LANL, and all subsequent operating and other contractors at LANL of the existence of this Order, and DOE shall direct them to comply fully with the requirements of this Order and the Site Treatment Plan.

### III. JURISDICTION AND AUTHORITY

A. This Order is issued pursuant to the New Mexico Hazardous Waste Act (the HWA), Section 74-4-1 *et seq.*, NMSA 1978, and the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 *et seq.*, and the Federal Facility Compliance Act of 1992 (the FFC Act), Pub. L. No. 102-386, 106 Stat. 1505 (1992), which, along with Executive Order 12088, require each department, agency and instrumentality of the federal government engaged in the disposal or management of hazardous waste to comply with all federal and state requirements respecting the control and abatement of hazardous waste disposal and management. DOE, a department of the executive branch of the federal government, owns and co-operates LANL, a nuclear research and development facility.

B. NMED is an agency of the State of New Mexico (1) with authority under State law to prohibit land disposal of mixed waste until the waste has been treated and (2) with both authority under State law to regulate the hazardous components of mixed waste and authorization from the Environmental Protection Agency (EPA) under RCRA section 3006 to regulate the hazardous

components of mixed waste, as such authorities are described in Section 105 of the FFC Act.

C. DOE generates, transports, and manages hazardous waste, including mixed waste, at LANL and is therefore subject to and must comply with all applicable federal and state requirements respecting hazardous and mixed waste, including the HWA and New Mexico's Hazardous Waste Management Regulations (HWMR-8).

D. This Order fulfills the requirements contained in Section 105 of the FFC Act (RCRA Section 3021(b)(5)) and stands in lieu of any other interpretations of the requirement for DOE to develop and submit a plan for the development of treatment capacities and technologies to treat all of LANL's mixed waste.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### V. DEFINITIONS

Except as provided below or otherwise explicitly stated herein, the terms used in this Order shall have the same meaning as used in the HWA, HWMR-8, RCRA, and EPA's regulations at 40 C.F.R. Parts 124, 260 through 268, and 270.

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

B. Order means this document and all Attachments to this document referred to herein, including the Site Treatment Plan in two volumes, Attachment A to this Order.

C. Days means calendar days, unless otherwise specified. Any notice, deliverable, or other requirement that under the terms of this Order would be due on a Saturday, Sunday or a state or federal holiday shall be due the first business day following the Saturday, Sunday, or state or federal holiday.

D. NMED means the New Mexico Environment Department or any of its successor agencies, employees, and authorized representatives.

E. DOE means the United States Department of Energy, its Los Alamos Area Office, successor agencies, employees, and authorized representatives.

F. EPA means the United States Environmental Protection Agency.

G. Fiscal Year means the federal fiscal year, which begins on October 1 of one calendar year and extends through September 30 of the following calendar year.

H. Hazardous Waste means hazardous waste as defined at Section 74-4-3.I. of the HWA and in HWMR-8, which incorporates federal regulations at 40 CFR Parts 260 and 261.

I. LANL means the Los Alamos National Laboratory including facilities and installations in or near Los Alamos, New Mexico.

J. Land Disposal Restrictions or LDR mean the land disposal restrictions set forth in RCRA, 42 U.S.C. Section 6942, and 40 CFR Part 268.

K. Milestone means a fixed, firm, and enforceable date on or before which a task must be completed in accordance with the schedules in the Compliance Plan Volume of the Site Treatment Plan, which date is approved by NMED and which falls within the current or next immediate fiscal year.

L. Mixed Waste means waste that contains both a hazardous waste component regulated under Subtitle C of RCRA and (1) a radioactive component consisting of source, special nuclear, or byproduct material regulated under the AEA, or, for purposes of this Order only, (2) a radioactive component derived from neutron or other subatomic particle activation from the use of radioactive materials used in biomedical research or from radionuclides not regulated under the AEA.

M. Off-Site means a location other than one at LANL.

N. On-site means a location at LANL or within the County of Los Alamos.

O. Secretary means the Secretary of NMED or her designee.

P. Target Date means an estimated, unenforceable, projected date for completing a task that has not yet been designated a milestone because it falls outside the current and next immediate fiscal years.

## VI. SITE TREATMENT PLAN

The Site Treatment Plan (STP) for LANL, Attachment A to this Order, is intended to bring LANL into compliance with LDR storage prohibitions. The Compliance Plan Volume of the STP provides overall schedules for achieving compliance with LDR storage and treatment requirements for mixed waste at LANL based on milestones and target dates as defined in Section V (Definitions). DOE shall carry out the activities described in the Compliance Plan Volume of the STP in accordance with the schedules and requirements set out in the Compliance Plan Volume and this Order.

## VII. COVERED MATTERS

The Compliance Plan Volume of the STP and this Order addresses LDR requirements pertaining to storage and treatment of covered waste at LANL regardless of the time of generation and accumulation.

A. Covered Waste. Covered waste is all mixed waste at LANL (including mixed waste that is newly discovered, identified, generated, or received from off site; mixed waste that is generated through environmental restoration and decontamination and decommissioning activities; and legacy material that has been evaluated and determined to be mixed waste) except that mixed waste which (1) meets LDR requirements regardless of the time of generation, or (2) is being stored, or will be stored when generated, solely for the purpose of accumulating sufficient

quantities as are necessary to facilitate proper recovery, treatment, or disposal.

B. Other Matters Covered in this Order. DOE anticipates that as it characterizes and sorts and surveys mixed waste currently in storage at LANL, it will ascertain that certain waste previously identified as mixed waste is actually hazardous waste without a radioactive component or radioactive waste without a hazardous component. In those cases where the waste is determined to be a hazardous waste without a radioactive component which is subject to LDR treatment standards, NMED shall consider such waste as a covered waste for a period of six months after DOE makes the determination that the waste is a hazardous waste which is not a mixed waste.

#### VIII. DOCUMENTATION OF NEW COVERED WASTE

With regard to all covered waste which is newly discovered, identified, generated, or received from off site, DOE shall provide to NMED in the next regularly scheduled Annual Site Treatment Plan Update a description of the waste code, waste form, volumes, technology and capacity needs, and schedules for such covered waste consistent with the relevant provisions of this Order. If DOE cannot provide the information or schedules required by this Section because of inadequate characterization or it is otherwise impracticable to do so, DOE shall include appropriate justification, supporting information, and proposed

## X. ANNUAL SITE TREATMENT PLAN UPDATES

A. This Section provides a mechanism to assure adequate communication and exchange of information about schedule, technology development, funding, and other concerns that affect the implementation of the STP; to update the Background Volume, including information on new waste streams, in a timely fashion; to propose the next milestones and target dates; and to update and propose revisions to the Compliance Plan Volume.

B. No later than March 31 of each fiscal year after approval of the STP and issuance of this Order, DOE shall provide to NMED an Annual Update to the STP for review and comment. The Annual Update shall provide NMED with information to track progress on milestones and target dates. Each Annual Update to the STP will bring the STP current to the end of the previous federal fiscal year.

C. The Annual Update to the STP shall be divided into two volumes: an update to the Background Volume and an update to the Compliance Plan Volume.

*Background Volume.* The update to the Background Volume will provide the following information:

- \* the amount of each covered waste stored at LANL as follows:
  - (1) the estimated amount in storage at the end of the previous fiscal year; and
  - (2) the estimated amount anticipated to be placed in storage in the next five fiscal years.

- \* a description of progress made up to the end of the last fiscal year on treatment or technology development of each treatment facility or activity scheduled in the STP. If applicable, DOE will also describe current or anticipated alternative treatment technology that is being evaluated for use instead of treatment technologies or capacities identified in the STP. This description will include potential alternative commercial treatment and off-site DOE treatment capacity or technology development.
- \* a description of DOE's funding for STP-related activities and any funding issues that may affect the schedule.
- \* the status of any pending or planned extension, treatability variance or no-migration petition.
- \* information that has changed or has not been previously included regarding waste form, waste code, technology and capacity needs, including new covered waste.
- \* a description of waste deleted in accordance with Section IX (Deletion of Waste).

*Compliance Plan Volume.* The update to the Compliance Plan Volume may contain changes and revisions to the Compliance Plan Volume occurring since the previous Annual Update; proposed revisions; proposed conversion of target dates to milestones; and any other changes to the overall schedule. The Annual Update to the Compliance Plan Volume shall identify changes which DOE believes require NMED approval under Section XVII (Changes

Requiring NMED Approval) and revisions which DOE believes require NMED approval under Section XVI (Revisions).

D. DOE shall make the Annual Update publicly available.

#### XI. PROJECT MANAGERS

Within ten days of the effective date of this Order, DOE and NMED shall each designate a Project Manager. Each party shall each notify the other in writing of the Project Manager it has selected and that Project Manager's address. Each Project Manager shall be responsible for overseeing the implementation of this Order. Either party may change its designated Project Manager by notifying the other party, in writing, ten days before the change, to the extent possible. To the extent possible, communications between the parties concerning the terms and conditions of this Order shall be directed through the Project Managers.

#### XII. RESOLUTION OF DISPUTES

A. General. Except as specifically provided otherwise in this Order, any dispute arising out of this Order shall first be subject to this Section and this Section shall be followed and exhausted before pursuing any other legal remedy in any other forum. Exchange of documents under this Section shall be in accordance with Section XIII, Exchange of Documents. For purposes of this Section only, the term days shall mean work days.

B. Informal resolution. Any dispute subject to this Section shall in the first instance be the subject of informal negotiation between NMED and DOE. The period for informal negotiation shall not exceed 20 days from the time the disputing party notifies the other party in writing that it wishes to commence informal dispute resolution, unless an extension of time is requested in writing within the prescribed 20-day time and agreed to by NMED. The parties shall meet and confer as necessary to attempt to resolve the dispute within the 20-day informal resolution period.

C. Formal Resolution by Technical Group.

1. Composition. The Technical Group shall consist of the LAAO Assistant Area Manager for Environment and Projects for DOE and the Bureau Chief of the Hazardous and Radioactive Materials Bureau for NMED.

2. Invoking formal procedure. In the event that the parties cannot resolve a dispute by informal negotiation, then the disputing party may invoke formal dispute resolution by submitting to the members of the Technical Group a written Statement of Position on the matter in dispute, including, but not limited to any factual data, analysis, opinion, or documentation supporting its position.

3. Responses. Within 15 days of receipt of the disputing party's Statement of Position, the responding party shall submit to the members of the Technical Group its Statement

of Position, including but not limited to any factual data, analysis, opinion, or documentation supporting that position.

4. Technical Group Resolution. After receipt of the responding party's Statement of Position, the Technical Group shall have 15 days to resolve the dispute.

D. Formal Resolution by Advisory Group.

1. Composition. The Advisory Group shall consist of the LAAO Area Manager for DOE and the NMED Deputy Secretary for NMED.

2. Invoking formal procedure. In the event the Technical Group has been unable to resolve the dispute within the time prescribed, the disputing party shall, within 15 days after such period, submit to the members of the Advisory Group copies of all documents furnished to the Technical Group.

3. Advisory Group Resolution. After receipt of this documentation, the Advisory Group shall have 15 days to resolve the dispute.

E. Final Decision by the Secretary. In the event the Advisory Group has been unable to resolve the dispute within the time prescribed, the disputing party shall submit a written Request for Final Decision to the Secretary. The written request shall be accompanied by all documentation furnished to the Technical and Advisory Groups. Within 30 days of receipt of the written Request for Final Decision, the Secretary shall issue a final decision, including a written statement of the reasons for

the decision. The Secretary's decision shall be binding upon the parties unless a timely appeal is taken.

F. Consultation with the Governor of New Mexico and with Other Affected States. The requirements of this Order have the potential to affect national interests and the interests of other States and, in some instances, it may be necessary for DOE to consult with the Governor of New Mexico and for DOE and NMED to consult with officials of other affected States in order to resolve issues under this Section in an equitable manner. Such consultations shall occur as agreed upon by the parties consistent with the needs of the particular situation.

G. Extension of Time for Formal Dispute Resolution. If, during the formal dispute resolution process, it appears that resolution may be achieved by an extension of time, the Technical Group may petition the NMED member of the Advisory Group, and the Advisory Group may petition the Secretary for an extension of time in which to resolve the dispute.

H. Effect of Dispute Resolution on Respondents' Obligations. DOE's obligations under this Order are not waived by the invocation of this dispute resolution process. However, such obligations shall be suspended until conclusion of the dispute resolution process of this Section.

I. Incorporation by Amendment. Upon resolution of a dispute pursuant to this Section, the resolution shall be incorporated into this Order by appropriate amendment.

### XIII. SITE ACCESS

DOE shall at all reasonable times afford NMED, its contractors, designees, and agents unrestricted access to the Site, with or without prior notice. DOE shall provide an authorized representative to accompany NMED's employees or contractors while at the Site. NMED, its contractors, designees, and agents shall abide by DOE and LANL site-specific safety requirements and procedures for access to and while at the Site.

### XIV. EXCHANGE OF DOCUMENTS

Whenever the terms of this Order require exchanges of documents, such exchanges shall be made by mail, by facsimile if followed within 24 hours by a mailed copy, or by hand delivery to the Project Managers. Exchanges of documents required under this Order shall be complete upon mailing or upon hand delivery Project Managers.

### XV. DOCUMENTS, INFORMATION, AND REPORTING REQUIREMENTS

A. Exchange of Information. DOE shall cooperate fully in providing information concerning the status and progress of the activities covered by this Order as requested by NMED. No communications of this type shall alter or waive any obligations of DOE under this Order, and no guidance, suggestions, or comments by NMED shall be construed as relieving DOE of its obligation to obtain formal approval where such approval is required by this Order. DOE is encouraged to confer with NMED at

any time prior to the submission of any proposals, plans, studies, reports, updates, or notifications required by this Order.

B. Records Inspection and Copying. DOE shall permit NMED, its contractors, designees and agents to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and analytical data, in any way pertaining to the activities required by this Order, subject to the limitations of the Atomic Energy Act concerning the handling of unclassified controlled nuclear information, restricted data, and national security information.

C. Reporting Requirements.

1. DOE shall as expeditiously as possible, but in no event more than ten days after a milestone date, provide notice in writing to NMED of the completion of the activity required to be completed by that milestone date.

2. DOE shall submit an Annual Update to the STP as required by the relevant provisions of the Compliance Plan Volume of the STP.

3. DOE shall carry out all other reporting requirements through the designated Project Managers.

## XVI. REVISIONS

A. A revision is a change in the Compliance Plan Volume of the STP that requires, for those affected portions of the Compliance Plan Volume, publication of a notice of availability to the public and consultation with affected states and EPA pursuant Section 3021(b)(4) of RCRA. A revision is:

1. The addition of a treatment facility at LANL or treatment technology development not previously identified in the STP; or

2. An extension of a milestone for a period of one year or more.

Changes in waste volume; the addition or deletion of waste or waste types; changes to milestones for a period of less than a year; or changes to target dates shall not, by themselves, constitute revisions.

B. Revisions shall be made as follows:

1. NMED may require a change in the Compliance Plan Volume of the STP which constitutes a revision, or DOE may propose to NMED a change to the Compliance Plan Volume which constitutes a revision. When NMED requires a revision, it shall explain in writing its rationale for the change. When DOE proposes a revision to NMED, it shall explain in writing its rationale for the proposal, and such explanation shall include a plan for implementing the proposed revision and an estimated schedule for such implementation.

2. Within 30 days of NMED's initial presentation of a required revision to DOE or within 30 days of NMED's initial receipt of a proposed revision from DOE, NMED shall publish a Notice of Availability and make the revision available to the public for review and comment and to affected States and EPA for consideration and consultation. The public comment period generally shall be 30 days, but depending upon the complexity of the required or proposed revision, NMED may shorten or lengthen the comment general comment period.

3. NMED shall approve, approve with modification, or disapprove all revisions. MED shall notify DOE in advance of a determination to approve with modification or disapprove a revision. Such notice shall be in writing and shall describe NMED's supporting information and rationale for the modification or disapproval. After receipt of such notice, DOE shall have 30 days to discuss the modification or disapproval with NMED prior to NMED's issuance of a final decision on the revision.

4. NMED shall make every effort to issue its decision on a revision expeditiously, but in no event shall the time for issuing a determination exceed six months from NMED's initial presentation of a required revision to DOE or six months from NMED's initial receipt of a proposed revision from DOE.

C. In making a determination on a revision, NMED shall consider the need for regional treatment facilities.

D. NMED's approval, approval with modifications, or disapproval of a revision shall constitute a final agency action,

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which is not subject to dispute resolution under Section XII of this Order, and shall be binding on the parties unless a timely appeal is taken.

XVII. CHANGES REQUIRING NMED APPROVAL

A. Changes requiring NMED approval are changes to the Compliance Plan Volume of the STP, which do not constitute revisions and which are not otherwise addressed by other provisions of this Order, such as Sections VIII (Documentation of New Covered Waste), IX (Deletion of Waste), or XVIII (Extensions). This section provides procedures for such changes.

B. When DOE wishes to make changes to the Compliance Plan Volume of the STP under this section, it will propose such changes in the Annual Site Treatment Plan Update or at other times as necessary. DOE shall provide sufficient justification and rationale for such proposed changes at the time it proposes the change to NMED.

C. Within 30 days of NMED's receipt of such proposed change, NMED shall notify whether it intends to approve the change, disapprove the change, or approve the change with modification. If NMED either disapproves the change or approves it with modification, it will provide DOE with a written justification for its intended determination and DOE will have 30

days to respond and consult with NMED before NMED issues a final decision on the proposed change.

D. The parties may mutually agree to extend the timelines specified in this section. If the parties agree to an extension of the period of time specified in this section, any milestone affected by such extension will automatically be extended an amount of time equivalent to the time taken beyond the specified time. DOE shall notify NMED in writing pursuant to the Extensions provision of any milestone that will need to be extended.

#### XVIII. EXTENSIONS

A. DOE shall carry out the requirements of this Order in accordance with the schedules set forth herein, including any schedules subsequently developed pursuant to this Order.

B. A milestone shall be extended upon receipt by NMED of a timely request for extension where good cause exists for the requested extension. A request for extension by DOE shall be made to NMED prior to the milestone date and shall specify:

1. The milestone that is sought to be extended.
2. The length of the extension sought.
3. The good cause(s) for the extension.
4. Any related milestone or target dates that would be affected if the extension were granted.

C. Good cause for an extension includes:

1. An event of *force majeure*, which is any event arising from a cause not foreseeable and beyond the control of DOE that could not be avoided or overcome by due diligence or contractual arrangement and that delays or prevents performance by a date required by the schedules in the STP.

2. A delay caused by the good faith invocation of dispute resolution or the initiation of administrative or judicial action.

3. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another milestone.

4. A delay in NMED's review of a permit application or issuance of a permit or permit modification required to meet a milestone or to conduct other work specified in the STP.

5. A delay caused by a change to an assumption, as specified in Section 3.0 of the Compliance Plan Volume of the STP, that results from either a request by NMED or is identified by DOE, but does not represent a failure of DOE or its contractors to properly manage the work required by this Order. Such a delay may include, for example, changes in other sites' schedules and the availability of mobile treatment units.

6. Any other event which DOE and NMED determine constitutes good cause.

D. Requests for extensions of one year or more, which constitute revisions, shall be processed as described in Section XVI (Revisions). The following procedures shall apply to requests for extensions of less than one year:

1. Except for extension requests sought on the basis of *force majeure*, a request for extension shall be made to NMED in writing no less than 30 days prior to the date of the milestone sought to be extended.

2. To request an extension on the basis of *force majeure*, DOE shall provide oral notification to NMED within 48 hours after the event which DOE knows or should know constitutes *force majeure*, and shall provide written notice within 7 days after the event. The written notice shall contain an estimate of the anticipated length of delay, a description of the cause of delay, a plan for implementing measures to correct the problem and avoid such delays in the future, and an estimated schedule for implementation of these measures. DOE shall adopt all reasonable measures to avoid and minimize the delay.

3. Within 14 days of receipt of a written request for an extension, NMED shall advise DOE in writing whether it will approve, approve in part, or deny the request. If NMED approves in part or denies the requested extension, it shall explain in its written response to DOE its reasons for the partial approval or denial of the requested extension.

4. Within 14 days of receipt of the NMED's written determination to approve in part or deny the extension request, DOE may invoke dispute resolution. If DOE does not invoke dispute resolution within this time period, DOE shall be deemed to have accepted NMED's determination and the existing milestone schedule set forth in the STP.

E. A timely request for extension shall stay any requirements related to the milestone sought to be extended pending resolution of any dispute related to the extension request.

#### XIX. AMENDMENTS

This Order and the STP may be amended by agreement of the parties, except that an amendment which constitutes a revision as defined in the FFC Act and the relevant provisions of the STP, shall be subject to the requirement for notice and public comment as required by the FFC Act. An amendment shall be in writing and signed by NMED and DOE and shall not become effective until approved in writing by the Secretary.

#### XX. ENFORCEABILITY

Failure to comply with the terms of this Order may result in an enforcement action for any relief available under the HWA.

#### XXI. TERMINATION

This Order shall terminate when DOE is no longer storing mixed waste at LANL, which has not been treated to LDR standards, for any purposes other than the accumulation of sufficient quantities to facilitate proper recovery, treatment, or disposal and DOE submits to NMED a notification of completion of the requirements of this Order.

XXII. COMPLIANCE WITH OTHER APPLICABLE LAW

This Order shall not relieve DOE from its obligation to comply with any of the applicable provisions of the HWA or its implementing regulations or RCRA, including any permit, closure, post-closure, public notice and comment, or other hazardous waste requirement. This Order shall not relieve DOE from its obligation to comply with any other applicable federal, state, or local law, or any interagency or other agreements between NMED and DOE.

XXIII. COVENANT NOT TO SUE

As long as DOE remains in compliance with the terms of this Order, NMED will not initiate or pursue civil, criminal, or administrative relief of any kind in any forum based upon the matters covered by the STP and this Order or based upon violations of RCRA Section 3004(j) of RCRA with respect to covered waste at LANL which might otherwise be available under New Mexico or federal law, including without limitation, the right to seek and recover damages or penalties against DOE or its contractors, their successors, assigns, and employees for such violations. NMED expressly reserves the right to pursue civil or administrative relief for any other violations of New Mexico or federal law, past or future, which are not the subject of this Order.

#### XXIV. FUNDING

A. DOE shall provide NMED an opportunity to participate in formulating the LANL budget and setting the LANL budget priorities as outlined in the addendum to the STP, "Milestone Approach and Budget Formulation Process."

B. NMED understands that DOE's ability to carry out the obligations and meet the schedules set forth in the Compliance Plan Volume of the STP are dependent upon the availability of funds which may lawfully be used for such purposes. If at any time adequate funds or appropriations are not available to comply with this Order and the STP, DOE-LAAO shall notify NMED in writing within 30 days of DOE-LAAO's learning that funds are not available and DOE shall request an extension for good cause of any affected milestones pursuant to Section XVIII (Extensions) or shall propose a revisions pursuant to Section XVI (Revisions).

C. In connection with the annual update process of setting new milestones for the current and next immediate fiscal years and adjusting target dates in the outyears, NMED will consider the following factors: funding availability; new or emerging technologies; new technical information that may affect waste treatment options; site priorities identified through consultations among DOE, regulatory agencies, and other stakeholders; and any other factors which are relevant.

XXV. SEVERABILITY

The provisions of this Order are severable. If any provision of this Order is declared by a court of law to be invalid or unenforceable, all other provisions of this Order shall remain in full force and effect.

XXV. EFFECTIVE DATE

The effective date of this Order shall be the date of receipt by DOE.

plans for developing such information and schedules in the next regularly scheduled Annual Update.

#### IX. DELETION OF WASTE

A. Mixed waste ceases to be a covered waste when:

1. it is shipped off-site for treatment, disposal, or storage pending treatment or disposal;
2. it is determined not to be a mixed waste;
3. changes to statutes or regulations or determinations of the regulatory authority cause a mixed waste or waste category to be no longer subject to the requirements of RCRA or the New Mexico Hazardous Waste Act or LDR requirements of RCRA or the New Mexico Hazardous Waste Act;
4. it has been treated to meet LDR standards or treated in accordance with the conditions of an LDR treatability variance approved by the appropriate regulatory authority;
5. it has been determined to be exempt from or to meet the requirements of RCRA Section 3004(m); or
6. DOE and NMED agree that the waste should be deleted.

B. DOE shall provide to NMED in the next regularly scheduled Annual Site Treatment Plan Update a description of the waste code, waste form, volumes, and other relevant information regarding deleted waste, including schedules for the treatment of hazardous waste, subject to LDR treatment standards, which was previously identified as mixed waste covered by this Order.