

General



Department of Energy
National Nuclear Security Administration
Washington, DC 20585



March 24, 2005

The Honorable Ron Curry
Cabinet Secretary
New Mexico Environment Department
Harold Runnels Building
1190 St. Francis Drive
Santa Fe, NM 87502-6110



Dear Secretary Curry:

For many years, the United States Department of Energy (DOE) has voluntarily provided the New Mexico Environment Department (NMED) with radionuclide data for contaminated sites and surface water at the Los Alamos National Laboratory (LANL). We have provided this information as a matter of comity consistent with long-standing DOE policy. That policy is described in: (1) the joint guidance developed by the National Association of Attorneys General (NAAG) and the NAAG/DOE Working Group, *Sharing of Radionuclide Information with States*, dated September 1998 (Enclosure 1), and (2) the data-sharing provisions of the Agreement-in-Principle between DOE and the State of New Mexico for Environmental Oversight and Monitoring, dated November 29, 2000 (Enclosure 2).

DOE's environmental programs at LANL are responsible for addressing sites suspected of being contaminated in the past. At such sites, DOE investigates sites for the presence of hazardous wastes and hazardous constituents, pursuant to the New Mexico Hazardous Waste Act, and monitors storm water and surface water, for the presence of radionuclides, pursuant to the Atomic Energy Act of 1954, as amended. The radionuclide data that DOE provided to the State of New Mexico voluntarily in the past was collected in accordance with the procedures that DOE developed pursuant to the Atomic Energy Act and its implementing regulations, orders and guidance documents. This letter confirms DOE's intent to continue to collect radionuclide data during the monitoring of storm water and surface water consistent with its procedures and to provide such data to NMED and the U.S. Environmental Protection Agency (EPA) voluntarily. DOE intends to collect and provide such data to NMED and EPA in the manner described in the enclosed document, entitled "Voluntary Provision of Radionuclide Data" (Enclosure 3).

As a matter of comity, DOE will submit the radionuclide data to NMED at the same time that it submits data reports for non-radionuclide constituents to EPA required under the Federal Facility Compliance Agreement (FFCA) between DOE and EPA. The FFCA does not impose any requirements for radionuclides.



In addition to investigating sites suspected of contamination and monitoring storm water and surface water, DOE's environmental programs are responsible for performing assessments of all data collected including, but not limited to, radionuclide data. This letter confirms that DOE intends to provide voluntarily to EPA and NMED the total dose for radionuclides of potential concern and the equivalent total radionuclide risk level for each site that is the subject of an environmental investigation or monitoring. DOE intends to provide such information voluntarily to EPA and NMED at the same time it submits reports and monitoring data called for under the FFCA. DOE commits that this voluntary reporting shall continue for the duration of the FFCA.

To ensure that the foregoing information is provided to your staff in the format and on the schedule described above and in the enclosed document, DOE has sent a letter to The Regents of the University of California (Enclosure 4), reminding them of their obligation to ensure continued compliance with DOE's information-sharing policy.

Finally, I understand that NMED believes it has the authority to compel production of radionuclide information in the future. As you know, we disagree with that position and would challenge any attempt by NMED to impose such requirements. We hope that our voluntary provision of radionuclide information serves your needs and resolves our dispute concerning this issue.

I assure you that DOE will continue to provide radionuclide information to EPA and NMED about operations at LANL. If you experience any delay or difficulty in receiving such information, please contact Ed Wilmot, Manager, Los Alamos Site Office, at (505) 667-5105.

Sincerely,



Everet H. Beckner
Deputy Administrator
for Defense Programs

cc:

The Honorable Richard Greene, U.S. Environmental Protection Agency
Ines Triay, Deputy Chief Operating Officer, DOE
Edwin L. Wilmot, Manager, LASO
Deb Woitte, LANL

Enclosure 1

Sharing of Radionuclide Information With States

Developed by the

National Association of Attorneys General (NAAG)

September 1998

**SHARING OF
RADIONUCLIDE
INFORMATION
WITH STATES**

Attachment 27

**PRODUCED FOR
THE OFFICES OF THE STATE ATTORNEYS GENERAL
AND DOE FIELD OFFICE PERSONNEL**

To: DOE Field Office Personnel
Members of the NAAG/DOE Workgroup

From: Christine Milliken *CM*
Executive Director and General Counsel
National Association of Attorneys General

Martha Crosland *MC*
Director, Office of Intergovernmental and Public Accountability
U.S. Department of Energy

Date: September, 1998

Re: Announcement and Issuance of Guidance:
Sharing of Radionuclide Information with States

After years of hard-work and discussion the U.S. Department of Energy and the National Association of Attorneys General are pleased to announce the completion and issuance of a joint effort, the enclosed guidance. "*Sharing of Radionuclide Information with States.*" This truly important occasion marks the first time that DOE and the National Association of Attorneys General have combined their efforts to produce a jointly created guidance document.

This effort was enhanced through a cooperative agreement between the U.S. Department of Energy and the National Association of Attorneys General (NAAG). A working group, which was formed of both DOE personnel and Assistant Attorneys General, was established to formulate procedures for DOE personnel to use as guidance when responding to state requests for radionuclide information. The guidance can be used to respond to requests from all states where DOE facilities are located as well as states affected by DOE activities or facilities.

Sharing of Radionuclide Information with States lays out the scheme whereby DOE intends to work cooperatively with states to accommodate radionuclide information requests as a matter of comity and in the interests of open communication. It does not, however waive any legal defenses either party may have against a state's efforts to impose mandatory requirements to provide radionuclide information. This guidance will help to improve the state-federal relationship and provide a smooth response to state requests.

We jointly believe the NAAG/DOE effort that produced this guidance will assist both the states and DOE with more effective communication and hope that this guidance will serve as a first step towards greater understanding of state and federal needs for timely information.

July, 1998

GUIDANCE SHARING OF RADIONUCLIDE INFORMATION WITH STATES

I. Background

The Office of Environmental Policy and Assistance had a cooperative agreement with the National Association of Attorneys General to improve communication among the States and DOE on environmental compliance issues related to DOE facilities. This work is continuing under an agreement with the Office of Environmental Management. NAAG, in its role as the membership organization of the Attorneys General of the 50 states, Commonwealth, Territories, and the District of Columbia, assists the legal officers in fulfilling the responsibilities of their offices. Therefore, NAAG is particularly well-suited to facilitate communication among DOE and the States.

Discussions associated with these agreements has led to the identification of several issues that DOE and NAAG considered important and warranted further evaluation. One of these issues is the States' position that DOE should establish a policy to provide radionuclide information as requested by individual States.

The States believe that there are cases where DOE has not been forthcoming in providing radionuclide information. NAAG has provided DOE the results of a survey on State experiences in receiving radionuclide information from DOE. The eight States responding to the survey (Idaho, Kentucky, Nevada, New Mexico, Ohio, Oregon, Tennessee, Washington) indicated that DOE generally provides, on a voluntary basis, radionuclide information requested. However, in some cases, the provision of data has been delayed or resisted by DOE. Moreover, DOE has occasionally resisted States' attempts to require the submission of such information unless statutory authority is clear. This resistance has, in a few cases, resulted in litigation or administrative appeal. In an effort to minimize such instances, it is important to remember that DOE currently has policies which address the sharing of environment, safety and health information with stakeholders. However, based on discussions with NAAG and the States, there appears to be some need to clarify these policies as they relate to the provision of radionuclide information.

The purpose of this guidance is to restate DOE's current policies and to provide assistance to DOE personnel sharing radionuclide information. This guidance will apply equally to requests from States where DOE facilities are located and from other States affected by DOE activities or facilities. This guidance is not applicable to a request for radionuclide information where a State has authority.

II. Existing Policy

Then Secretary of Energy Hazel O'Leary issued a memorandum, "Environment Safety and Health Policy for the Department of Energy Complex" on July 20, 1993 (copy attached). The purpose of this memorandum was to set forth the Department's vision of personal commitment, mutual trust, open

communication, continuous improvement and full involvement of all interested parties. The guiding principles emphasized DOE's strong commitment to the health and safety of our workers and the public and the protection of the environment. One of these guiding principles is "to encourage and promote the sharing of environment, safety and health information and resources." On July 29, 1994, then Secretary O'Leary issued another memorandum, "Implementation of the Department's Public Participation Policy" (copy attached). One of the critical policy elements contained in this guidance is that the "Department will foster candid information exchanges and ongoing two-way communications using a variety of mediums."

III. Guidance

Consistent with the policies discussed above, DOE intends to work cooperatively with the States to accommodate their requests for radionuclide information as a matter of comity and in accordance with the following guidance and conditions set forth below:

This guidance and any DOE actions taken in reliance on this guidance does not waive, or eliminate any legal defenses or arguments DOE may have against a state's effort to impose mandatory State requirements to provide radionuclide information. Further, this guidance does not act to waive, eliminate or preempt any legal privileges or other bases DOE may have regarding the release of such information, nor will it create any legally binding commitments. This guidance is intended solely to clarify DOE's policy on providing the release and exchange of radionuclide information in an effort to limit instances in which DOE might object to providing radionuclide information.

In those instances where a DOE field office is unable to reach agreement with a State, the issue should be raised to the appropriate Headquarters Program Office and the Office of General Counsel for assistance.

A. Existing And New Information

Upon request by a State, DOE will make radionuclide information promptly available, when the requested information exists.

When information requested by the State does not exist or is not readily compatible for a State's use, DOE personnel should use their best efforts to develop the information and should resolve the issue on a case by case basis, taking into consideration cost, available resources, and the extent the result will be informative on an issue of public interest. DOE will first explore alternative ways of satisfying the State's request for information. In order to do so, DOE personnel should request that the State provide DOE with the reasons the requested information is needed and the uses to which it will be put. DOE personnel should keep in mind that the goal is to provide the requested information.

If DOE determines that it is unreasonable to generate the information requested, DOE should continue to work with the State to address its concerns. For example, in cases where it has been determined by DOE that it is cost prohibitive for DOE to generate the information, sharing the cost of generating the information with the States should be explored.

B. Mandatory v. Voluntary Provision

In the spirit of cooperation, DOE should focus discussions with the States on accommodating each other's needs and constraints and should attempt to avoid arguments concerning statutory or regulatory authority. In particular, DOE personnel should work to structure their interactions with the States such that issues of regulatory authority need not be addressed.

On some occasions the State's request for radionuclide information may come in the form of a mandatory requirement contained in a permit, agreement, etc. On those occasions, DOE personnel, in consultation with field office counsel, should attempt to resolve the issue by agreeing to voluntarily provide the information, as a matter of comity. In the event that the proposed resolution is unacceptable to the State, DOE field office personnel should determine whether to accept or challenge the requirement and/or reach an acceptable compromise with the State.

Although DOE's policy is to work with the States to accommodate their requests for radionuclide information by voluntarily providing this information in accordance with this guidance, it should be recognized that this policy does not eliminate any legal arguments DOE may have against a State's attempt to impose mandatory requirements to provide radionuclide information in the absence of a regulatory or legislative mandate to do so. However, it is hoped that by providing information on a voluntary basis the instances where States would unilaterally seek to impose mandatory requirements would be minimized.

C. Classified Information

When the information requested by a State is available, but cannot be released because the information is classified or controlled as provided by law, such as section 120(j) of CERCLA, or section 2168 of 42 United States Code (Dissemination of Unclassified Controlled Nuclear Information), DOE should consult with the appropriate classification officers or other appropriate officials to initiate a declassification review or in the case of sensitive information, to determine if the information can be released in accordance with applicable procedures for proper handling. If the information can be declassified in a meaningful form, or otherwise released, steps should be taken to accomplish this and the State should be notified of the approximate release date. If the information cannot be declassified in a meaningful form, or otherwise released, DOE personnel and the State should work together to determine if there are other alternatives to meeting State information needs.

IV. Conclusion

DOE is committed to continuous improvement in achieving excellence in worker, public, and environmental protection. One of the ways this can be accomplished is through open communications, such as sharing of information with all interested persons. Sharing includes providing radionuclide information to States in a manner consistent with the law and DOE policy. Circumstances which could hinder or prevent the release of requested information should be resolved, whenever practicable, through discussion with State authorities.

Enclosure 2

Agreement-in-Principle Between

The Department of Energy (DOE) and the

State of New Mexico for Environmental Oversight and Monitoring

November 29, 2000

AGREEMENT-IN-PRINCIPLE
Between the United States Department of Energy
and the State of New Mexico
for
Environmental Oversight and Monitoring

THIS AGREEMENT-IN-PRINCIPLE (AIP) is entered into between the United States Department of Energy (DOE) through its Albuquerque Operations Office (DOE-AL.), under the authority of 42 U.S.C. §7101 et seq., the Department of Energy Organization Act, and the State of New Mexico (the State). The New Mexico Environment Department (NMED) is the State's designated lead agency for the purposes of this Agreement. This Agreement reflects the understanding and commitments between the parties regarding DOE's provision to New Mexico of additional technical and financial support for State activities in environmental oversight and monitoring to provide independent verification of DOE's compliance with applicable federal, state, and local laws, including rules, regulations, and standards at the (1) Los Alamos National Laboratory (LANL), (2) Sandia National Laboratories/New Mexico (SNL/NM), (3) Waste Isolation Pilot Plant (WIPP), and (4) Inhalation Toxicology Research Institute (ITRI), (collectively referred to as "the facilities") and at such other DOE sites in New Mexico as the parties may subsequently identify and mutually agree to incorporate under the auspices of the program identified herein.

The Agreement is intended to help assure that activities at DOE facilities are protective of the public health and environment. Such assurance will be accomplished through a vigorous program of independent monitoring and oversight by the State of New Mexico. The parties to this Agreement understand that the oversight activities authorized by this Agreement are intended to supplement activities conducted under applicable environmental laws and regulations, but are not intended to support specific State regulatory, permitting, and legally-required environmental oversight activities such as issuance of regulatory permits, the review of DOE regulatory submissions when such review is intended to serve as the primary basis for State action under regulatory programs, required regulatory inspections, required monitoring, issuance of regulatory notices of violation and other citations. The Agreement is also not intended to support the activities of the Citizen Advisory Boards. The Agreement is intended to support non-regulatory activities of the State of New Mexico in working with the DOE to evaluate the adequacy of DOE activities related to environmental monitoring and to support periodic State monitoring of discharges, emissions, or biological parameters as necessary to verify the effectiveness of the DOE programs. The Agreement recognizes the continued need for the State of New Mexico to have access to DOE facilities and to exchange relevant technical information with the DOE to support the State's environmental monitoring efforts.

The understandings between the parties are described solely within the provisions of this Agreement, the Statement of Joint Objectives, (attached hereto) and the Scope of Work contained in Grant No. DE-FG04-91AL65779 the funding vehicle by which the provisions of this Agreement will be implemented. Grant No. DE-FG04-91AL65779 is

being executed concurrently with this Agreement and incorporated by reference as an enforceable part of this Agreement.

To achieve the above objectives, the parties agree as follows:

1. The State and DOE acknowledge that each has a general responsibility to provide the public with accurate, reliable information pertaining to matters covered by this Agreement. DOE will comply with all applicable federal, state and local environmental laws, including regulations, orders, and standards pertaining to the facilities.
2. DOE will provide resources for a State environmental oversight and monitoring program for the facilities, as outlined in the Statement of Joint Objectives and the Scope of Work in the Grant. DOE will provide funds to New Mexico consistent with the DOE Financial Assistance Rules set forth in 10 C.F.R. Part 600. The State's obligation to perform under this Agreement is contingent funding by DOE. In the event DOE does not provide the State with sufficient funds to carry out the provisions of this Agreement, the parties will attempt to resolve the funding issue and/or modify the Grant Scope of Work accordingly. All funds provided to New Mexico under this Agreement are federal funds to be administered exclusively by the State consistent with the provisions of the Grant and 10 C.F.R. Part 600. These funds shall not, however, be used by the State for the conduct of its regulatory functions. Costs for personnel and equipment funded through this Agreement and the Grant that will also be used to support other State programs shall be allocated proportionately. DOE will provide technical support requested by the State to the extent it has such technical capability available.
3. DOE and the State will meet periodically, but no less than bi-annually, to discuss planned activities for the upcoming year.
4. DOE will perform the actions described in this Agreement and in the Statement of Joint Objectives and the Grant Scope of Work, as applicable. The general intent of the DOE actions is to establish a comprehensive and integrated environmental management plan for compliance, environmental restoration and waste management and to facilitate a better understanding by the public in general of the procedures and standards used at the DOE sites. This Agreement does not affect the State's ability or right to object or otherwise challenge the DOE's plans.
5. The State will perform the activities described in this Agreement and in the Statement of Joint Objectives and the Grant Scope of Work, as applicable. The general intent of these State activities is to establish a comprehensive, coordinated environmental oversight and monitoring program and to facilitate a better understanding by local and tribal governments and the general public on the environmental impacts, if any, associated with the facilities' operations. To minimize duplication and to seek the most efficient use of taxpayer dollars, DOE encourages the State to coordinate its monitoring activities with those tribal governments (to be subsequently identified by DOE) that have entered into agreements with DOE similar to this Agreement. The State will report on the

progress of these actions to DOE in periodic meetings, in written quarterly performance reports, and as further set forth in this Agreement and in the Grant Scope of Work.

6. DOE and the State will each designate a coordinator whose function shall be to assure implementation and coordination of the provisions of this Agreement. DOE and the State will each designate a point of contact (POC) for each facility who will serve as the information point of transfer and as coordinator for Agreement provisions at each facility. Unless otherwise provided herein, all reports, documents or notifications required by this Agreement will be submitted through the appropriate POC to the appropriate coordinator. Initial designation and any subsequent changes in designation of the coordinators and POCs shall be in writing.

7. DOE and the State will mutually develop statewide ("umbrella") and facility-specific (site-specific) protocols, health and safety plans, and work plans that establish the operating procedures to be followed in implementing the terms of this Agreement and the Grant Scope of Work. The protocols and health and safety plans will be modified as needed, and will comply with all applicable site requirements and the work plans will be updated annually.

8. DOE and the State will promptly commence discussions to modify this Agreement, the Statement of Joint Objectives, and/or the Grant Scope of Work, as appropriate, to address any new federal, state, or local issues that arise relating to conditions or activities at the facilities or to new applicable regulations that could affect public health, safety, or the environment.

9. In carrying out this Agreement, the DOE and the State will fully cooperate with each other, with other federal and state agencies, and with local and tribal governments affected hereby. In preparing its oversight and monitoring plan, the State will consider the ongoing monitoring activities being conducted by DOE, DOE contractors, and others as may be applicable. DOE will make available to the State copies of all agreements, the relevant portions of all contracts, implementation plans, orders, procedures and guidelines pertinent to monitoring activities at the facilities (subject to the provisions of Paragraph 10 below). DOE will ensure that the State has timely access to all environmental monitoring data relating to the facilities generated by or available to DOE. Data to be provided by one party under the terms of this Agreement and as further stipulated in the attached Statement of Joint Objectives and the Scope of Work shall be released to the other party following validation of the data. Specific procedures for data release will be included in the protocols that describe day-to-day implementation of this program.

10. In carrying out the provisions of this Agreement, the parties will comply with applicable security laws and regulations, Privacy Act and Freedom of Information Act requirements, and trade secret, patent and related confidentiality requirements. The State acknowledges that, while DOE will process security clearance applications for State personnel assigned to perform duties under the terms of this Agreement, in accordance with DOE security requirements, cleared State personnel do not have automatic access to

DOE classified information. Instead, their need-to-know will have to be established on a case-by-case basis. The State shall not release information designated by DOE as "classified" or which is otherwise entitled to confidentiality under applicable laws, regulations or Executive Orders, unless authorized by DOE pursuant to applicable laws, regulations, or Executive Orders. As requested by the State, the DOE will clarify and provide written explanation to the State of the "need to know" security information requirements specified in DOE and other Federal security requirements governing classified and sensitive unclassified information (e.g., 10 C.F.R. Parts 1016 and 1917, Executive Order 12356, and DOE Order 5635.1A), that apply to access to certain types of information or areas at the DPE sites identified above

11. The State understands that the use of funds authorized by this Agreement are for services, personnel, and equipment that are directly related to AIP program activities. The State shall not use AIP program funds to support activities not related to the AIP program. To the extent that personnel, equipment, or services are used for both AIP and non-AIP activities, the State shall allocate its costs and charge to the AIP grant only that portion of the cost of the personnel, equipment, or services that is used to support AIP program activities.

12. Documents provided by either party under this Agreement shall be, unless otherwise agreed by the parties and consistent with applicable laws and regulations, agency documents representing the parties' considered position on the issues addressed therein. Where DOE has determined, pursuant to applicable laws and regulations, that information or documents are entitled to confidentiality, the State will be provided access to, but not copies of, such information or documents until it provides DOE with written assurance that the State will maintain the confidentiality of such information or documents, at which time copies will be provided to the State. Nothing in this Agreement shall affect the rights either party may have under the Freedom of Information Act or other applicable laws and regulations.

13. The parties to this Agreement understand that the Agreement does not represent an extension or enlargement of any regulatory authority the State has under applicable laws.

14. This Agreement will in no way diminish or otherwise affect the State's authority to fully carry out its rights and responsibilities under applicable laws and regulations, nor will it affect the DOE's ability or right to raise any defenses available under law in the event the State initiates an administrative or judicial enforcement action against DOE. Subject to applicable security, classification, and other confidentiality laws and regulations, nothing in this Agreement shall be construed to prohibit the parties from using information developed under this Agreement in furtherance of their statutory duties, rights, and obligations.

15. The DOE and the State will take all necessary steps and use their best efforts to obtain timely funding to meet their commitments under this Agreement. The DOE and the State will jointly assess the level of funding on a year-to-year basis. The annual funding level assessment will be based on the DOE budget for that year, the State's timely submittal of

an annual proposed scope of work, and consideration of actual expenditures from the previous program year. The parties' performance of this Agreement is subject to the availability of funds. No provisions herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U. S. C. §1341.

16. This Agreement shall continue in effect through September 30, 2005, and may be extended as mutually agreed. The parties agree that they will review terms, activities and funding levels of the Agreement on an annual basis to determine if any modifications are necessary. This Agreement shall only be amended or terminated by the written mutual agreement of both parties; provided, however, consistent with the laws and regulations applicable to the grant, DOE's funding obligations under this Agreement may be suspended or terminated by the DOE, in whole or in part, if DOE determines that the State is not in compliance with the terms and conditions of the Grant Provisions and provides the State ninety (90) days prior written notice specifying such noncompliance and the State's right to appeal.

17. The DOE will provide resources to the State to support the State's evaluation of the DOE's environmental monitoring programs as outlined in Statement of Joint Objectives and the Scope of Work in the grant instrument. The DOE will provide resources to the State as described in Paragraph 15 above. All funds provided to the State under this Agreement are federal funds to be administered by the State consistent with the terms and conditions of the grant and the DOE Financial Assistance Rules set forth in 10 C.F.R. Subchapter H, Part 600. The DOE will provide technical support requested by the State, to the extent it has such technical capability available.

"THIS AGREEMENT is voluntarily entered into between the United States Department of Energy (DOE), under the authority of 42 U.S.C. 7101 et seq., and the State of New Mexico, under NMSA 1978, section 74-1-6 (c). This Agreement supersedes the Agreement-in-Principle executed on September 14, 1995."

NOW, THEREFORE, the parties sign this Agreement in consideration of the provisions set forth above and in the Statement of Joint Objectives, and Grant No. DE-FG04-91AL65779 and pledge their cooperation and good faith in achieving the purposes there of.

Gary E. Johnson
New Mexico
Gary E. Johnson
Governor

Richard E. Glass
U.S.A. DOE
Richard E. Glass
AL Operations Office

Date: 11/29, 2000

Date: 11/21, 2000

Peter Maggione
Environment Department
Peter Maggione

Date: 10/24, 2000

**STATEMENT OF JOINT OBJECTIVES
FOR
AGREEMENT-IN-PRINCIPLE**

The parties to this agreement, the Department of Energy (DOE) and the State of New Mexico, have developed this statement of jointly agreed upon work objectives. These work objectives target the goal embodied in the Agreement-in-Principle: "to help assure that activities at DOE facilities are protective of the public health and environment." DOE and the State are committed to achievement of the goal of implementing a non-regulatory environmental oversight and monitoring program at the DOE facilities in New Mexico, and will work cooperatively to achieve and maintain a safe living and working environment for the citizens of New Mexico.

RESPONSIBILITIES AND RESOURCES

The State will verify that activities at DOE facilities are protective of the public health and safety and the environment. The DOE will, in turn, provide the State with the funds, resources (including office space at DOE facilities for State "site representatives") and access required to support the activities described in the Agreement, this Statement of Joint Objectives, and the Scope of Work.

The State, to facilitate achievement of the objectives of the Grant, agrees to undertake these responsibilities and perform those activities listed in the attached Scope of Work.

"UMBRELLA" AND SITE SPECIFIC PROTOCOL

Both DOE and the State agree to develop and subsequently adhere to the terms stated in the "umbrella" protocol which delineates procedures between DOE and the State for their effective interaction in fulfilling their respective responsibilities under the Agreement and to provide guidance to DOE Area Offices and the State site representatives for establishing procedures and guidelines for routine interactions between DOE, DOE contractors and the State. The protocol provides a framework to facilitate the working relationship between the respective organizations while still preserving formality so that independent responsibilities and requirements of all involved organizations are preserved.

In addition, each site will develop a Site Specific Protocol (SSP) which describes the procedures for activities and interactions involving NMED and site personnel at the New Mexico DOE facilities. Specific details will be provided on management and transfer of documents and information, meetings, public affairs, reporting, roles of site representatives, security and training.

WORK PLANS

The State will prepare program wide and site specific work plans for its independent oversight of programs for monitoring the environment at and in the vicinity of the facilities and for assessing the effectiveness of DOE's programs. In preparing the plans, the State will

take into consideration and address, as appropriate, all monitoring activities relating to the facilities. The State will provide the plans for review and consultation to DOE, other federal and state agencies, and local and tribal governments as appropriate. In conducting monitoring or sampling, the State will allow DOE the opportunity to take split samples.

DATA SHARING

DOE facility data relevant to protection of the environment and the public's health and safety will be released to the State within 90 days after receipt from the analytical laboratory and appropriate level of review and quality control/quality assurance (QA/QC) validation. Prior to the completion of QA/QC procedures, the State can examine and review the data in a manner acceptable to DOE.

The State will release data to DOE relative to its monitoring and environmental surveillance activities after such data has been analyzed in the laboratory and has been validated by appropriate QA/QC procedures. Prior to the completion of QA/QC procedures, the DOE can examine and review the data at the State facilities.

COMMUNICATION AND ACCESS TO FACILITIES

DOE and the State will hold regularly scheduled meetings and schedule other meetings as needed to ensure mutual understanding and resolution, where possible, of technical and administrative issues. Further, dialogue between representatives from DOE, the facilities and the State is necessary and encouraged to ensure environmental oversight and monitoring activities are coordinated effectively.

To assist the State in executing its oversight responsibilities under this Agreement, DOE will process security clearance applications of state representatives in appropriate numbers, as necessary, on a timely basis. The State will comply with all applicable DOE security requirements, including the need-to-know requirement.

STATE WORKER HEALTH AND SAFETY

The State will develop and implement in consultation with DOE, appropriate program-wide and site specific worker health and safety plans for all State representatives involved in oversight, monitoring and inspection activities at the facilities. Such site-specific plans shall comply with site requirements for worker health and safety.

ACCOUNTABILITY AND REPORTS

The State shall submit an original and two copies of a written quarterly performance report that summarizes the results of its accomplishments relative to the objectives established for that program quarter. Quarterly performance reports shall be submitted within thirty (30) days after the end of the quarter. Performance reports shall contain brief information on the following:

- (i) A project narrative in sufficient detail to describe the program objectives addressed in the scope of work for that period.
- (ii) A description of the accomplishments, significant changes from the intentions, and significant issues for each program objective established for that quarter.
- (iii) A description of program area total expenditures for each major program activity and a comparison of actual expenditures to budgeted expenditures for the quarter. Discuss in detail significant variances.
- (iv) A projection of key events and milestones and open items from the existing quarter that will be completed during the next quarter.

Copies of the state quarterly performance reports should be submitted to Steve Frank, Office of Intergovernmental and Public Accountability (EM-11), 1000 Independence Avenue, S.W., Room 1F-059, #28, Washington, D.C. 20585; and Deborah Griswold, Team Leader, Environmental Restoration Division (ERD), DOE Albuquerque Operations Office, P.O. Box 5400, Albuquerque New Mexico, 87185-5400.

DOE and the State regard accountability as a vital component in the execution of this program. The various reports submitted throughout the program further illustrate DOE's and the State's commitment to protect public health and safety and the environment and to use taxpayer's dollars efficiently and cost effectively. Continued accountability by DOE and the State during the term of the agreement will serve to reinforce and demonstrate that DOE's program goals are being achieved and warrant continued funding.

PUBLIC PARTICIPATION

DOE and the State will develop mutual public awareness goals. DOE and the State will communicate with the public and local and tribal governments to increase public knowledge of environmental issues and activities pertaining to DOE facilities.

The State will coordinate its public outreach activities with DOE through advance notification and staff representation at public meetings and press conferences related to AIP activities. DOE will likewise coordinate its outreach activities that relate to AIP oversight activities with the State. The State and DOE will share information for public dissemination.

Grant No. DE-FG04-91AL65779

SCOPE OF WORK

The State will perform the following oversight and monitoring activities to assess the adequacy of DOE's activities and verify the effectiveness of DOE's programs at the DOE facilities identified in the Agreement-in-Principle ("the facilities"), contingent upon DOE providing the State with resources to support such activities.

A. WASTE MANAGEMENT, DISCHARGES AND EMISSIONS

The State will review and assess DOE's management of wastes associated with activities at the facilities to assure that management practices are adequate and effective. The State may: (1) visit facilities which generate, treat, store, dispose, discharge or emit hazardous, radioactive or other categories of waste to evaluate whether the waste management practices employed are adequate and effective; (2) sample wastes; and (3) review waste management records and standard operating procedures, new regulations, waste management or minimization plans, and plans for new facilities.

B. CLEAN-UPS, SPILLS AND FACILITY DECOMMISSIONING

The State will review and assess DOE's cleanup of contaminated sites and decommissioning of DOE facilities to assure that risks to human health and the environment are effectively mitigated. The State will review plans, procedures, data and conclusions relating to site cleanup or facility decommissioning and will collect samples to confirm the adequacy of site characterization or cleanup. The State may evaluate risk assessments that address both human and ecological risk. The State will evaluate background studies and guidance documents for technical accuracy and adequacy, and may undertake independent studies to assure completeness of a facility's baseline information, or to verify facility-generated background data or conceptual models. The State will assess spills, leaks or other incidental releases of contamination to verify appropriate clean up.

C. ENVIRONMENTAL MONITORING

The State will review and assess environmental monitoring at DOE facilities to verify whether pathways of contaminant migration from sources related to activities at the facilities are being adequately monitored and reported to the public. Such reviews and assessments to include monitoring of discharges, emissions and biological parameters as necessary to verify the effectiveness of DOE's monitoring program. The State, as appropriate, may review the following activities or systems related to environmental monitoring:

- monitoring protocol,
- system design,
- construction,
- operation and maintenance;
- sampling methodology,
- locations,
- frequency,
- procedures and parameters;

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- quality assurance and quality control (QA/QC) methodology,
- plans and implementation;
- data collection,
- verification and management systems;
- chain-of-custody procedures and implementation; and
- reporting methods.

The State will sample and analyze environmental media such as air, biota, ground water, surface water and sediments to verify sampling data reported by the facilities. The State may also conduct independent sampling to evaluate the need to monitor additional pathways or locations. The State will allow DOE to collect split samples.

D. PUBLIC INFORMATION AND OUTREACH

The State will communicate with the public regarding their oversight and monitoring activities, and the results thereof, in order to increase public awareness and involvement regarding environmental issues and activities associated with DOE facilities in New Mexico.

- The State will issue reports, newsletters and pamphlets on the results of its oversight and monitoring activities, including any State findings relating to the quality and effectiveness of the facilities' environmental monitoring and surveillance programs. The State will issue an annual report covering its activities during the calendar year.
- The State will periodically conduct public information meetings in the communities surrounding the DOE facilities.
- The State will make presentations pertaining to oversight activities to groups or organizations.
- The State will conduct educational outreach, including presentations to science teachers or classes concerning a particular scientific discipline and its application to oversight activities at DOE facilities.

E. REPORTS AND INFORMATION SYSTEMS

The State will enhance its information systems that contain environmental oversight and monitoring information concerning DOE facilities and coordinate with DOE, the facilities, and where appropriate local and Tribal governments, to facilitate availability of all such information to the public.

Enclosure 3

Voluntary Provision of Radionuclide Data

(Voluntary Provision of Radionuclide Data)

While conducting environmental investigation concerning radionuclides at the Los Alamos National Laboratory (LANL), the United States Department of Energy (DOE) ensures the quality of methods and procedures through DOE regulations, Orders and guidance documents, including 10 CFR 830.120, 10 CFR 835, DOE Orders 414.1a and 5400.5, and DOE Guidance Document 173T.

Laboratory Methods

DOE has developed laboratory protocols for analytical methods, quality assurance and quality control (QA/QC), which are set forth in the Los Alamos National Laboratory (LANL) site documents implementing the DOE-Albuquerque Model Statement of Work (Model SOW) for Analytical Laboratories. DOE, and its contractors, will follow these protocols in analyzing samples for radionuclides collected during the characterization of sites suspected of being contaminated from historic operations. The quality assurance protocols in the Model SOW for LANL are derived from DOE Order 414.1 for quality assurance and its predecessor document, DOE Order 5700 6C. The requirements of these Orders are consistent with the provisions of 10 CFR 830.120.

In addition to working under the Model SOW document, the laboratories that perform work for DOE are accredited by the National Environmental Laboratory Accreditation Program and routinely evaluated by the DOE Environmental Management Consolidated Audit Program (EMCAP). When EMCAP audits laboratory methods, including methods associated with LANL, it applies the Integrated Purchaser Contracting Team Statement of Work (IPCT) and ascertains whether the laboratory methods and quality assurance infrastructure employed are consistent with the terms of the IPCT.

The Model SOW and its updates will be available through the DOE Albuquerque Web site (www.doeal.gov). As a matter of comity, a copy of any updates to the Model SOW will be provided to NMED.

Field Methods

As noted in the enclosed letter, when DOE collects radionuclide data at a LANL site suspected of being contaminated from historic operations, DOE will provide such data to NMED voluntarily. DOE will voluntarily identify the methods and procedures used, and QA/QC protocols followed, with appropriate references to the LANL standard operating procedures (SOPs). The SOPs are available on the LANL Environmental Restoration web site (<http://erproject.lanl.gov>). The descriptions of methods and procedures in the SOPs will enable NMED to understand the nature and quality of the field methods used for gathering radionuclide information. In addition to identifying the SOPs followed, the reports will provide: (1) a brief description of methods used to conduct field work; (2) a description of any deviation from the SOPs; and (3) a description of any field sampling conditions that may have bearing on data quality.

Reporting

As noted in the enclosed letter, DOE will voluntarily report radiochemical results to NMED when it provides reports of non-radionuclide data after investigation or monitoring is performed at sites suspected of being contaminated from historic operations. Such radiochemistry data will include detection limits, radioactivity levels and variance terms (QA/QC). The radiochemistry data submissions to NMED will also include information consistent with: (1) information provided by DOE in reports for hazardous waste and hazardous constituents (e.g., sample identifier, date sampled, analytical result) under the Consent Order; and (2) the reporting format for hazardous waste and hazardous constituent data, as set forth in the Consent Order. DOE will voluntarily provide quality control information for radionuclide data in the form of data validation reports or QC summary tables.

Enclosure 4

Department of Energy (DOE)

Los Alamos Site Office Letter to

The Regents of the University of California

July 13, 2004



Department of Energy
National Nuclear Security Administration
Los Alamos Site Office
Los Alamos, New Mexico 87544

JUL 13 2004

The Regents of the University of California
Office of the President, Laboratory Administration
1111 Franklin Street, 5th Floor
Oakland, California 94607-5206

Dear Regents:

The U.S. Department of Energy (DOE) has a long-standing policy to voluntarily provide the New Mexico Environment Department (NMED) the radionuclide data that is gathered during implementation of environmental programs at the Los Alamos National Laboratory (LANL). That DOE policy is described in the following enclosed documents: (1) the joint guidance developed by the National Association of Attorneys General (NAAG) and the NAAG/DOE Working Group, *Sharing of Radionuclide Information with States*, dated September 1998, and (2) the data sharing provisions of the current Agreement-in-Principle between DOE and the State of New Mexico for Environmental Oversight and Monitoring, dated November 29, 2000, which is effective through September 30, 2005.

The purpose of this letter is to reaffirm the applicability of the DOE policy and the importance of the continued implementation of that policy by the University of California. I expect the University staff at LANL to continue to support full implementation of DOE's policy through its interactions with NMED.

Please address any questions you may have to me at (505) 665-5105, or Joe Vozella at (505) 665-6352.

Sincerely,

A handwritten signature in black ink, appearing to read "Edwin L. Wilmot".

Edwin L. Wilmot
Manager

OFO:3MJ-008

Enclosures (2)

JUL 13 2004

The Regents of the University of California 2

cc:w/o enclosures:

Hon. Ron Curry

Secretary

New Mexico Environment Department

Harold Runnels Building

1190 St. Francis Drive

P.O. Box 26110

Santa Fe, NM 87502-6110

Howard Hatayama (sp with UC)

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