



M E M O R A N D U M

TO: Dennis Boyd, Secretary  
FROM: Louis W. Rose, Deputy General Counsel *LWR*  
DATE: May 21, 1990  
RE: New Mexico/DOE Agreement

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Attached is a copy of the revised, proposed Environmental Safety and Health Cooperative Agreement between USDOE and the State of New Mexico.

LWR/vjg

cc: Michael J. Burkhart  
Kirkland D. Jones

ENVIRONMENTAL SAFETY AND HEALTH COOPERATIVE AGREEMENT

Between the United States Department of Energy  
and the State of New Mexico

THIS AGREEMENT is entered into between the United States Department of Energy ("DOE") through its Albuquerque Operations Office ("DOE-AOO") under the authority of 42 U.S.C. §7101 et seq., and the State of New Mexico ("the State"). The State's designated lead agency for the purposes of this Agreement is the New Mexico Health and Environment Department ("HED"). 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, monitoring, access, emergency response and health-related initiatives to ensure compliance with applicable federal, state, and local laws, rules, regulations and standards at (1) Los Alamos National Laboratory ("LANL"); (2) Sandia National Laboratory ("SNL"); (3) the Waste Isolation Pilot Plant ("WIPP"); and (4) the Inhalation Toxicology Research Institute ("ITRI") (collectively referred to as "the facilities").

The Agreement is designed to assure the citizens of New Mexico that public health, safety and the environment are being protected through existing programs, DOE's compliance with all laws, rules, regulations and standards, substantial new commitments by DOE, acceleration and prioritization of cleanup and compliance activities, and a vigorous program of independent monitoring and oversight by the State of New Mexico. The understandings between the parties are further described below and in the Attachments to this Agreement. The Attachments are incorporated herein by reference and made a part of this Agreement. The Attachments are:

Attachment A: Oversight and Monitoring  
Attachment B: DOE Actions  
Attachment C: New Mexico Actions  
Attachment D: Grant Instrument (to be negotiated between DOE and the State of New Mexico)

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.

2. DOE will provide financial support for an expanded State environmental oversight and monitoring program for the facilities as outlined in Attachment A and for other State actions as outlined in Attachment C. DOE will provide funds to New Mexico as described in Attachment D and consistent with DOE Financial Assistance Rules set forth in 10 C.F.R. Subpart H, Part 600. The State's obligation

to perform under this Agreement is contingent upon adequate funding by DOE. In the event DOE does not provide the State with sufficient funds to carry out the provision of this Agreement, the parties will attempt to resolve the funding issue. All funds provided to New Mexico under this Agreement are federal funds to be administered exclusively by the State consistent with the provisions of Attachment D. DOE will provide technical support requested by the State to the extent it has such technical capability available.

3. DOE will comply with all applicable requirements, substantive and procedural, including all federal, state and local environmental laws, regulations, orders, standards, and permit conditions.

4. DOE and the State will meet on an annual basis to develop an integrated schedule and prioritization of cleanup (environmental restoration), environmental compliance, and permitting activities, taking into account such schedules and priorities, and any need to accelerate existing schedules and priorities. In active consultation with the State, DOE will also conduct investigations and evaluate the need for cleanup and associated cleanup schedules for inactive waste sites.

5. DOE will perform the actions described in Attachment A, as applicable, and Attachment B. The general intent of these DOE actions is to establish a comprehensive and integrated environmental management plan consistent with DOE's five (5) year planning period for compliance, environmental restoration (cleanup) and waste management, as applicable. DOE will report regularly on progress of these items to the State in the bimonthly meetings described in Attachment B and as further set out in this Agreement. This Agreement does not affect the State's ability or right to object to or otherwise challenge DOE's five (5) year plan, or any portion thereof.

6. The State will perform the actions described in Attachment A, as applicable, and Attachment C. The general intent of these State actions is to establish a comprehensive, coordinated environmental oversight and monitoring program; to assess DOE's compliance with applicable requirements at the facilities; to update and maintain the emergency response capabilities of the State; to perform a health risk assessment study or studies of the facilities' operations, as the State deems necessary and appropriate; and to facilitate a better understanding by local and tribal governments and the general public of the State's perspective on the environmental impacts and health risks, if any, associated with the facilities' operations. The State will report regularly on the progress of these items to DOE in the bimonthly meetings described in Attachment B and as further set forth in this Agreement.

7. Within sixty (60) days after execution of this Agreement, DOE and the State will each designate a coordinator whose function shall be to assure implementation and coordination of the provisions of this Agreement. Unless otherwise provided herein, all reports, documents or notifications required by this Agreement will be submitted to the appropriate coordinator.

8. DOE and the State will promptly commence discussions to modify this Agreement, as appropriate, to address any new federal, state, or local issues that arise relating to conditions or activities at the facilities 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 all contracts, agreements, implementation plans, orders, procedures and guidelines pertinent to monitoring activities at the facilities. DOE will ensure that the State has access to all monitoring data relating to the facilities generated by or available to DOE.

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 shall not release information properly designated by DOE as "classified" or which is otherwise entitled to confidentiality, unless authorized by DOE pursuant to applicable law or ordered to do so by a court of competent jurisdiction. Where DOE has determined that information or documents are entitled to confidentiality, the State will be provided access to review such information or documents. Nothing in this Agreement shall affect the rights either party may have under the Freedom of Information Act or other applicable laws and regulations.

11. This Agreement does not diminish or otherwise affect the authority of the State to carry out its rights and responsibilities under applicable law and regulations, nor will it affect DOE's ability or right to raise any defenses available under law if the State initiates an administrative or judicial enforcement action against DOE. Subject to applicable security, classification, and other confidentiality laws and regulations, this Agreement shall not prohibit the parties from using information developed under this Agreement in furtherance of their statutory and regulatory duties, rights, and obligations.

12. DOE will take all necessary steps and use its best efforts to obtain timely funding to meet all commitments under this Agreement. The parties' performance of this Agreement is subject to the availability of funds. The Agreement does not require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341.

13. This Agreement, as amended by the parties as necessary to maintain the stated objectives, shall continue in effect through \_\_\_\_\_, and may be extended by mutual consent. The parties will review the terms, activities and funding levels of the Agreement to determine if any modifications are necessary. Final amendments will be in writing and signed by all signatories to this Agreement or their successors. The Agreement may be terminated, in whole or in part, by either party upon one hundred eighty (180) days' written notice to the other.

NOW, THEREFORE, the parties sign this Agreement in consideration of the provisions set forth above and in the Attachments hereto and pledge their cooperation and good faith in achieving the purposes of this Agreement.

\_\_\_\_\_  
Dennis Boyd, Secretary  
New Mexico Health and Environment  
Department

\_\_\_\_\_, Manager  
DOE Albuquerque Operations  
Office

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTACHMENT A  
OVERSIGHT AND MONITORING

The following oversight and monitoring activities, which are underway or which will be implemented, are to assist in assuring DOE's compliance with applicable environmental laws and regulations at the facilities. DOE will provide the State with resources to support the following independent oversight, monitoring, and verification activities:

A. Monitoring of On-Site Discharges and Emissions

1. The State will review all on-site discharges, including intermittent discharges, and emissions monitoring systems and will identify any modifications or improvements needed to meet applicable requirements. DOE will ensure that all above systems are in full compliance with applicable requirements, including laws, rules, orders, regulations, standards, and permit conditions.
2. The State will continue, and modify or improve where appropriate, its monitoring activities and review of DOE-generated data.
3. The State, as it deems necessary, will augment its current monitoring program to include, but not be limited to, periodic sampling of on-site discharges and emissions, including discharges to on-site impoundments, from on-site wastewater treatment facilities, from stormwater outfalls, to disposal wells, and to municipal wastewater treatment plants. The State may perform periodic monitoring of plants and animals and other biological parameters.

B. Water Quality Monitoring

1. The State will review the current groundwater monitoring systems and will identify any modifications or improvements needed to meet applicable requirements. The analysis may include, but is not limited to, examination of the location, depth, sampling practices, and water quality of all wells. DOE will ensure that all above systems are in full compliance with applicable requirements, including laws, rules, regulations, orders, standards, and permit conditions.
2. The State will continue, and modify or improve where appropriate, its current water quality monitoring activities and review of DOE-generated data.
3. The State will inspect all the facilities' drinking water, wastewater treatment, and land application systems,

and injection, monitoring, and production wells and will identify any modifications or improvements needed to meet applicable requirements. DOE will ensure that all above systems are in full compliance with applicable requirements, including laws, rules, regulations, orders, standards, and permit conditions.

4. Within twelve (12) months after the execution of this Agreement, DOE will provide the State with a comprehensive inventory of all wells (monitoring, production and disposal) at or relating to activities at the facilities. This inventory will include information on the total depth of each well and depth to water, detailed well construction information, well logs, usage information, including detailed information on quantity and quality of fluids discharged, and dates of installation and retooling. DOE will update such information to reflect any plans to construct and actual construction of new wells. DOE and the State will meet to review and discuss the inventory within four (4) months after its submittal by DOE.
5. If the State determines that any public drinking water source is potentially affected by the facilities' operations, the State, in consultation with affected local and tribal governments, will develop a program for increasing the frequency of independent analyses of potentially affected drinking water supplies. Analyses will be based on, but not limited to, facility discharges and sources of potential releases, including releases of organic chemicals and radionuclides.

C. Air Quality Monitoring

1. The State will conduct a comprehensive review of the current ambient air monitoring systems and will identify any modifications or improvements necessary for those systems.
2. The State will continue, and modify or improve where appropriate, its ambient air monitoring activities and review of DOE-generated data.
3. Within twelve (12) months after execution of this Agreement, DOE will submit a comprehensive inventory of Radionuclide, PM-10, TSP, and other regulated air contaminants. The State will review and comment on the inventory within three (3) months after its receipt from DOE. DOE will submit the final revised inventory within three (3) months after receiving the State's comments.

DOE will provide stack identification and will conduct stack testing necessary to verify the amount and type of emissions reported in the inventories, in accordance with applicable requirements.

4. Within \_\_\_\_\_ months after executing this Agreement, DOE will provide the State with a comprehensive materials balance of volatile organic compounds (VOC) at the facilities.
5. DOE will install continuous emission monitors at air emission sources, as required by applicable regulations or permit conditions, to ensure compliance with air quality requirements.
6. DOE will assist the State, through the use of accepted emission models, in predicting areas of off-site impact.

D. Off-Site Radioactivity Surveillance

1. The State will review the current radioactivity surveillance systems and will identify any modifications or improvements needed to meet applicable requirements. DOE will ensure that the above systems are in full compliance with applicable requirements, including laws, rules, regulations, orders, standards, and permit conditions.
2. The State will, as it deems necessary, sample and analyze air, water, and other physical and biological parameters within communities surrounding the facilities to detect any contamination, to verify the accuracy of the current surveillance systems, and to evaluate performance of on-site control measures.

E. State Environmental Oversight and Monitoring Program and Report

1. The State will prepare a plan for its independent oversight of activities at the facilities affecting the environment and its environmental monitoring and analysis of hazardous and radiological materials that may be present in the air, water, and soil on or about the facilities. In preparing the plan, the State will take into consideration and address, as appropriate, all monitoring activities relating to the facilities. The State will provide the plan to DOE, EPA, other appropriate federal and state agencies, and affected local and tribal governments, for review and consultation. In conducting monitoring or sampling, the State will allow DOE the opportunity to take split samples.



2. The State will issue annual reports on the results of its oversight, monitoring and analysis activities, and State findings relating to the quality and effectiveness of the facilities' environmental monitoring and surveillance programs.

F. Consultation With Other Agencies and Local Governments

In developing any monitoring program specified in this Agreement, the State, as appropriate, will consult with federal EPA, other appropriate federal and state agencies, and affected local and tribal governments.

ATTACHMENT B  
DOE ACTIONS

A. Waste Minimization Plan

DOE will develop a facility-wide waste minimization plan and schedule to define and evaluate how the use and volume of existing solid, hazardous, mixed and radioactive materials can be reduced or eliminated from facility operations. DOE will promptly submit to the State a draft of the plan and schedule for review and comment, prior to submitting the plan to DOE headquarters. DOE will report on this plan to the State after approval of the plan by DOE headquarters, which is anticipated to occur by \_\_\_\_\_, 1990.

B. Source Reduction Study

DOE will conduct a study of available methods to reduce or eliminate discharges and emissions of contaminants to the environment. This review will include a source reduction review. DOE will report the status of this study to the State within six (6) months after execution of this Agreement.

C. Waste Characterization Plans

1. DOE will develop, review, revise and/or update current waste and residue characterization plans. DOE will provide details on the nature, quantities, and hazards associated with all, hazardous, mixed, and radioactive waste produced, stored or disposed of at the facilities, or to be transported to the facilities.
2. DOE will provide the State with (1) a status report on the above matters within six (6) months after execution of this Agreement and (2) annual reports thereafter.

D. Characterization Studies

1. DOE will conduct "characterizations" of surface water, ground water and soils on and near the facilities to determine the level of radioactive and hazardous constituents.
2. DOE will provide the State with (1) draft reports based on available data within nine (9) months after execution of this Agreement and (2) final reports when available.

E. Environmental Monitoring and Review Documents

1. DOE will promptly make available to the State all final DOE or contractor-product documents or reviews concerning safety, environmental, or health concerns at the facilities.
2. DOE will promptly provide the State with the facilities' site environmental monitoring data annual and quarterly reports.
3. DOE will request that other entities engaged in monitoring and review activities at the facilities, if any, make their data available and provide their published reports relating to the facilities directly to the State in a timely fashion.

F. Information on Environmental Releases and Emissions.

1. Within six (6) months after execution of this Agreement, DOE will initiate a review to identify and confirm off-site soils, and surface and ground water contamination. The review shall include an analysis of the extent and nature of any contamination, including radioactive contamination, and recommend necessary remediation options. Where appropriate, DOE shall obtain public comment and review of such recommended options prior to making a final decision on their implementation.
2. Within three (3) months after execution of this Agreement, DOE will identify any past releases of a hazardous substance or radioactive material from the facilities which exceeded applicable requirements, including regulations, standards, or permit conditions, or which created a danger to human health or the environment and which were not previously reported to the State, and report such releases to the State. If the State requests, DOE will promptly provide additional information about previously reported releases.
3. Unless earlier notification is otherwise required by applicable laws, regulations, or permit conditions, DOE will provide the State, within forty-eight (48) hours of knowledge thereof, notice of any release of a hazardous substance, pollutant, contaminant or radioactive material at the facilities that exceeds applicable requirements or creates a danger to human health or the environment.
4. On at least a quarterly basis, DOE will provide the State with data on all hazardous, radioactive, and mixed waste emissions from the facilities.

G. DOE Compliance Assessments

1. DOE will perform, on an ongoing basis and in consultation with the State, a comprehensive assessment (appraisals/audits) of all activities at the facilities, including contractor activities, for compliance with all applicable requirements relating to safety, health or the environment. DOE will provide the State with a copy of its environmental appraisal schedule at the facilities as soon as they are available, and annually thereafter.
2. DOE will provide the State with access to all facilities-related environmental compliance assessments, including all DOE or contractor documents or reviews that address safety, health, environmental, or compliance matters at the facilities.
3. DOE will provide the State with access to all DOE orders, Secretarial notices, policies and procedures addressing DOE compliance assessments.
4. Within twelve (12) months after execution of this Agreement, DOE and the State will meet to review and discuss DOE's compliance assessment process for activities at the facilities. At that time, the State will provide DOE with any comments or recommendations it has regarding the compliance assessment process.
5. Within six (6) months after execution of this Agreement, DOE will provide the State with a description of all activities at the facilities affecting health, safety, or the environment over which DOE believes it is self-regulating, and its basis for the assertion of self-regulation.
6. DOE will actively involve the State in DOE Tiger Team compliance reviews of the facilities.

H. Health Investigation Reports

1. Within three (3) months of execution of this Agreement, DOE will identify and provide to the State all health investigation studies for the facilities that have been done and/or are planned by the United States or its contractors concerning workers and communities in the vicinity of the facilities.

I. Incineration Data

Within three (3) months after execution of this Agreement, DOE will provide the State with access to all information concerning the operation of any incinerator at the facilities.

J. NEPA Documents

1. Upon execution of this Agreement, DOE will provide the State on a monthly basis a list of all documents relating to the facilities prepared to comply with the National Environmental Policy Act (NEPA), its implementing regulations, and DOE NEPA Secretarial notices, orders, policies, and procedures.
2. DOE will make available to the State, as requested, all such NEPA documents including, but not limited to, specific environmental checklists (ECs), memoranda to file (MTFs), action description memoranda (ADMs), environmental assessments (EAs), findings of no significant impact (FONSIs), and environmental impact statements (EISs).

K. Materials Reports

1. DOE will provide and/or continue to provide the State with access to the Radioactive Waste Management Information System Report and the Industrial Waste Management Information System Report.
2. DOE will provide the State with a report concerning LANL and SNL that identifies all (except for laboratory quantities and test specimens) spent or irradiated reactor fuel and radioactive, mixed, hazardous or toxic wastes to be transported to the facilities. The report will identify the nature (including constituents) and quantity of the material; source and owner of the material; to the extent known, transportation means, routes, and general time frames for shipping; what will be done with the material at the facilities, and at which units at the facilities; and the ultimate disposition of the material. The report will be submitted to the State within three (3) months after execution of this Agreement and promptly updated thereafter when any change substantively affects the accuracy of information in the report or when DOE develops plans to send such materials to the facilities.

3. The State may appoint a representative to attend meetings of the facilities' off-site waste acceptance committees.

L. Facilities' Operations Changes and State Emergency Response

DOE will consult with the State whenever there are changes in the facilities' operations that may have an impact on the State's emergency response program.

M. Access for State Representatives

1. Consistent with applicable security requirements, State representatives with the necessary security clearance will be granted access to the facilities and to the facilities' records to carry out the provisions of this Agreement and such other monitoring, inspection, or oversight activities as the State may conduct pursuant to its authority under applicable laws and regulations. Access will be granted without prior announcement and will be consistent with normal security procedures and necessary safety precautions. DOE will identify an individual as a point of contact for access to each unit of each facility.

N. Security Clearance

DOE will use its best efforts to expedite the processing of security clearance applications of State representatives in appropriate numbers necessary to carry out the provisions of this Agreement and such other monitoring, inspection or oversight activities as the State may conduct under applicable laws and regulations.

O. Office for State Representatives

1. DOE will provide office space and telephone facilities at LANL, SNL, and WIPP for daily use by State representatives to carry out the provisions of this Agreement and such other monitoring, inspections, and oversight activities as the State may conduct under applicable laws and regulations.
2. This office space will be available within thirty (30) days after execution of this Agreement. No permanent real property interest is conveyed by this provision.

P. Bimonthly Meetings

DOE will meet every two (2) months (bimonthly) with HED representatives and other appropriate State representatives to assure the exchange of data and information compiled pursuant to this Agreement. These bimonthly meetings may also include reports or briefings, as agreed by the parties, regarding the status of DOE's undertakings at the facilities to meet applicable federal, state and local requirements.

Q. Public Participation in the Facilities' Five Year Planning Process

1. DOE will make each facility's Waste Management and Environmental Restoration Site Specific Plan (SSP) available for public comment in a timely manner. Based on current schedules, the plans will be available for comment in \_\_\_\_\_ of each year commencing in 1990.
2. As part of each facility's community outreach program, DOE will give an overview of the SSP and solicit comments at meetings with the public.

ATTACHMENT C  
NEW MEXICO ACTIONS

A. Health Risk Assessments

The State will perform, or have performed through professionally qualified experts, such health risk assessments at each facility as it deems necessary and appropriate.

B. Emergency Response

1. The State will update and maintain state emergency response plans and assist local governments in updating and maintaining their emergency response plans, as such plans apply to facilities-related activities within the State of New Mexico.
2. The State will conduct training jointly with DOE for local governments that could be affected by an emergency at the facilities or by transportation of hazardous, mixed or radioactive materials to or from the facilities.
3. The State will assist local and statewide emergency response authorities with respect to possible incidents involving the release of hazardous, mixed or radioactive materials at the facilities or being transported to or from the facilities.
4. The State will provide annual reports to DOE and appropriate State agencies and local governments on these activities.

C. Safety and Data Management

The State will develop and implement, in consultation with DOE, an appropriate worker health safety plan for all State representatives involved in oversight, monitoring and inspection activities at the facilities.

D. Coordination and Public Awareness

1. The State will increase its efforts at State agency coordination on environmental matters pertaining to the facilities. In this regard, the State will designate a Facilities Coordinator whose function shall be to coordinate activities of the various State agencies.
2. The State will increase its efforts for better public understanding of oversight monitoring, and enforcement issues involving the facilities, including coordination with local and tribal governments.



3. The State will provide annual reports to DOE of its activities in these areas.

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