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6/16/99
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MEMORANDUM OF AGREEMENT

The United States Department of Energy (DOE) and the New Mexico Environment Department (NMED) enter into this Memorandum of Agreement (Agreement) on the 16th day of June 1999 concerning the exchange of information prior to a final decision on the Waste Isolation Pilot Plant's (WIPP) application for a permit under the New Mexico Hazardous Waste Act (HWA). NMED and DOE hereby agree to the following principles and terms:

SECTION I: FACTUAL BACKGROUND AND PRINCIPLES OF COOPERATION

- A. DOE is the owner and co-operator of WIPP and is responsible for ensuring that the facility complies with all applicable state and federal environmental requirements.
- B. NMED has been authorized by the United States Environmental Protection Agency to administer and implement a hazardous waste program under the Resource Conservation and Recovery Act (RCRA).
- C. The management, storage, and disposal of mixed transuranic waste at WIPP is regulated by RCRA.
- D. DOE is responsible for ensuring that WIPP manages, stores, and disposes of all transuranic waste in a manner that complies with all applicable laws.
- E. This agreement does not apply to the wastes identified as TA-55-43, Lot No. 01 and 42 drums of waste stream IDC 300 that DOE shipped to WIPP from Idaho in April 1999.

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F. NMED has not approved the waste determination or waste characterization of future waste streams DOE intends to send to WIPP prior to a final permit.

G. NMED and DOE recognize that a high degree of cooperation is beneficial and critical to achieve their mutual goal of ensuring that all transuranic waste is managed, stored and disposed of at WIPP in a manner that complies with all applicable requirements and protects human health and the environment.

H. DOE believes that this agreement will assist it in planning for future shipments and related transportation issues.

In light of these principles, NMED and DOE have reached the following agreement regarding the management, storage, and disposal of transuranic waste at WIPP while NMED completes the permitting process.

SECTION II: PROVIDING NMED WITH INFORMATION ABOUT TRANSURANIC WASTE

A. After the effective date of this Agreement, DOE may decide to send specific and selected waste streams to WIPP (specifically, IDC 300 from Rocky Flats and RF005.01 from Rocky Flats). At least one week prior to shipment of RF005.01 from Rocky Flats, DOE shall provide NMED with a Hazardous Waste Determination Report that includes any physical and chemical analyses DOE performed to confirm the hazardous waste determination as to the waste stream, and a summary of the results and conclusions of the above. The DOE will also continue to provide NMED with access to the WIPP Waste Information System (WWIS) providing specific characterization results on the individual waste containers covered by this agreement.

B. After the effective date of this Agreement, DOR may decide to send additional transuranic waste to WIPP other than waste specified in Paragraph A of this section. No later than 45 days before the first shipment of such waste, unless the parties mutually agree in writing to a shorter time, DOE agrees to provide NMED with a Hazardous Waste Determination Report that includes any physical and chemical analyses DOE performed to confirm the hazardous waste determination as to the waste stream, and a summary of the results and conclusions of the above. The DOE will also continue to provide NMED with access to the WIPP Waste Information System (WWIS) providing specific characterization results on the individual waste containers covered by this agreement.

C. DOE and NMED agree to work toward a mutually-acceptable Interim Audit Report. No later than 45 days after DOE and NMED agree on the contents of the Interim Audit Report, DOE agrees to provide NMED with Interim Audit Report information that DOE has available. Failure to reach agreement on the Interim Audit Report will not affect the agreement reached in paragraph A and B of this section.

D. NMED agrees that it will raise any questions about the waste documentation for the generator/storage site, waste streams, or individual waste containers with DOE as soon as possible. DOE agrees that it will in good faith attempt to address those questions as quickly as possible to NMED's satisfaction. DOE agrees and acknowledges that NMED retains all of its enforcement authority under the HWA and RCRA. NMED agrees and acknowledges that DOE reserves all of its rights and any defenses it may have to such enforcement actions including, but not limited to, that the waste is not mixed and that WIPP has interim status.

SECTION III. MISCELLANEOUS PROVISIONS

A. NMED intends to inspect WIPP. DOE in good faith will cooperate with NMED to facilitate this inspection. NMED and DOE agree that they will work together in good faith to resolve any findings from all inspections, provided, however, that both NMED and DOE acknowledge and agree that they retain all of their respective rights, authorities, and defenses regarding any such findings. In addition to this inspection, NMED may observe any activities at WIPP prior to issuance of a final permit directly related to health, safety, and the environment. However, nothing in this Memorandum Agreement shall be deemed or construed to expand or restrict NMED's enforcement authority under any state or federal statute.

B. DOE agrees to manage, store, and dispose all waste placed in WIPP prior to issuance of a final permit in the same manner, regardless of whether it is mixed or non-mixed transuranic waste and in a manner that is consistent with applicable law.

C. DOE and NMED acknowledge and agree that nothing in this Agreement shall be deemed or construed to prevent either party from raising or contesting any issue in the HWA permitting process, or from defending or challenging any provisions in a final permit.

D. Nothing in this Agreement shall be deemed to preclude NMED from requiring additional waste characterization.

E. DOE agrees to provide NMED with sufficient funding (not to exceed \$250,000) to review the waste documentation that DOE submits to NMED pursuant to this Agreement and to conduct any inspections.

SENT BY:

16-99 : 4:29PM : NM ENVIRONMENT DEPT-

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6-16-99 : 3:48PM : NM ENVIRONMENT DEPT-

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F. The Parties to this Agreement recognize and acknowledge that the obligations of DOE under Section III Paragraph E of this Agreement can only be paid for or performed with appropriated funds legally available for such purpose. Nothing in this Agreement shall be interpreted or construed as a commitment or requirement that DOE obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

G. This Agreement shall terminate upon the effective date of a final FWA permit.

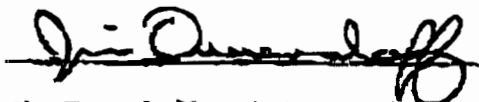
H. This Agreement represents the entire agreement between NMED and DOE.

I. The terms of this Agreement cannot be changed except by express written consent of both NMED and DOE.

J. Nothing in this Agreement shall be deemed to create or confer any rights or obligations on any parties other than DOE and NMED.

K. All disputes concerning the terms of this Agreement shall first be subject to informal dispute resolution between the parties. If within 30 days the parties cannot resolve the dispute, or if prior to the conclusion of such 30-day period the parties agree that they cannot resolve their dispute, then either party may withdraw from the Agreement, at which point both parties shall have whatever rights they may have under applicable law.


Pete Hines
NMED, on behalf of the
New Mexico Environment Department


Jim Owendoff, on behalf of the
United States Department of Energy