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**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES DEPARTMENT OF ENERGY
CARLSBAD FIELD OFFICE &
THE
SHERIFF OF LEA COUNTY
CONCERNING
LOCAL LAW ENFORCEMENT SUPPORT**

This Memorandum of Understanding (MOU) is between the United States Department of Energy (DOE), Carlsbad Field Office (CBFO)/US District Attorney, represented by the WIPP MANAGER/DESIGNEE and the Chief Law Enforcement Officers of LEA County, represented by the SHERIFF/DESIGNEE OF LEA COUNTY.

WHEREAS, all parties have certain responsibilities for protecting workers, the general public, the environment, and property; and

WHEREAS, all parties have developed and maintain capabilities to accomplish these respective responsibilities; and

WHEREAS, all parties recognize that developing and maintaining a program of mutual assistance will enhance each agencies ability to accomplish their respective responsibilities in a more effective and efficient manner; and

WHEREAS, all parties are willing to enter into this MOU; and

WHEREAS, the DOE-CBFO is authorized to enter into this agreement by Public Law 95-91; and

WHEREAS, the SHERIFF OF LEA COUNTY is authorized to enter into this agreement to the extent provided by New Mexico law.

It is understood and agreed by the parties as follows:

1. General:

a. Definitions

- (1) Waste Isolation Pilot Plant (WIPP) - Any current or future site of the DOE in the County of LEA, State of New Mexico.
- (2) Protective Force - Includes personnel, services, and equipment utilized in crime prevention programs, the protection of life, operations, and property from criminal activities and investigation of security incidents
- (3) Underground - Mined facilities at the WIPP.
- (4) Authorized Representative - Any member of the WIPP site protective force, operations organization, management team or DOE personnel acting in the interest

of the DOE pursuant to the WIPP security mission.

(5) Significant threat - Any act, real or implied, which could by its very nature prevent the successful completion of the stated mission of WIPP protective force programs.

b. This MOU is entered into on behalf of the DOE-CBFO/US ATTORNEY by the WIPP PROJECT MANAGER/DESIGNEE, and on behalf of LEA County by the SHERIFF OF LEA COUNTY.

c. The provisions of this MOU apply to any actual or potential protective force incidents that:

(1) Involve a significant threat to employees of the Waste Isolation Pilot Plant (WIPP), other DOE-CBFO/DOE-Contractor personnel, or the general public;

(2) Involve property under the control or jurisdiction of either the DOE or other Federal agency for which the DOE has oversight;

(3) Involves a threat to the environment that is reportable to an off-site agency;

(4) Involves any other incident for which a joint determination has been made by the DOE-CBFO and the jurisdiction that the provisions of the MOU will apply.

d. Purpose

The DOE-CBFO has the responsibility to administer and conduct Protective Force Programs designed to protect the WIPP Project from theft, sabotage, and other hostile or non-hostile acts that may cause adverse impacts to the project's continuity and/or to the health and safety of the public and the environment.

These activities are conducted at the Skeen-Whitlock Building, 4021 National Parks Highway, and other leased or contracted locations in the City of Carlsbad, EDDY County, and LEA County, New Mexico as well as the site location, 26 miles southeast of Carlsbad, and other future locations established for the benefit of the DOE.

The purpose of this agreement is to provide for the assistance of LEA County law enforcement during those incidents in which routine site protective force responses are unsuccessful or inadequate to guarantee project security.

e. Indemnity

Each party agrees to indemnify and hold harmless the other party, its officers, agents and employees, from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, judgments, including costs, attorneys' fees and witness fees, and expenses thereto for injuries to persons (including death) and for loss or damage to or destruction of property arising out of or in connection with this Agreement caused, in whole or in part, by the negligence or gross negligence of the indemnifying party, its officers, agents or employees.

2. Specifics

a. Law Enforcement Services

- (1) DOE and LEA County law enforcement agencies will mutually assist each other in the coordination of protective force activities involving armed responses or arrest authority.
- (2) Upon request to a representative of the county by an authorized representative of the DOE, personnel and equipment will be dispatched to any specified location within the WIPP site.
- (3) Any dispatch of personnel or equipment pursuant to this agreement is subject to the following conditions:
 - (a) Response to requests for aid shall be subject to prior commitment, the availability of equipment, personnel and other resources at the time the request is made.
 - (b) Requests for aid, hereunder, need be acted upon only if made by those persons designated as representatives of the WIPP.
 - (c) Any request for aid, hereunder, shall include a statement of the potential threat being encountered, the anticipated response and number of personnel requested, and shall specify the location to which equipment and personnel are to be dispatched. The amount and type of equipment and number of personnel to be furnished shall be determined by a representative of the responding organization. The responding organization shall advise the requestor as to the extent of the expected response.
 - (d) The responding organization shall report to the representative in charge of the requesting organization at the location to which the response is dispatched. The responding local law enforcement agency, in conjunction with the FBI shall be in charge of all issues involving law enforcement outside the authority of the protective force as stated by 10 CFR 1047--LIMITED ARREST AUTHORITY AND USE OF FORCE BY PROTECTIVE FORCE OFFICERS. (See Attachment A)
 - (e) The responding organization shall render appropriate services as determined by the responding agency. In all cases, actions shall be appropriate to the officer's judgment of the situation, and in compliance with the laws of LEA County, The State of New Mexico, and The United States of America.
 - (f) WIPP will provide qualified escorts to law enforcement responding to underground events.
- (4) It is recognized that in appropriate cases, governed by Federal statutes, regulations and orders, Federal Law Enforcement Agencies may have sole jurisdiction over particular Federal offenses committed at the WIPP facility. In those cases in which concurrent Federal and State jurisdiction is appropriate, the parties agree to cooperate in the execution of such jurisdiction.
- (5) WIPP and county law enforcement agencies will mutually assist each other in the

coordination of loss prevention and property recovery programs.

- (6) Security and law enforcement training exercises, classes, and drills between and among the WIPP and county agencies will be encouraged under this agreement.
- (7) Nothing in this MOU authorizes access to or disclosure of US Government classified information required to be protected in accordance with Federal Law for regulation in the interest of National Security.
- (8) Recapture/Recovery and Pursuit. In keeping with (3)a. of this section, the Sheriff's Department of LEA County will commit resources to the pursuit, recapture, and recovery of Department of Energy interests outside jurisdictional lines of the WIPP site. If those interests are radiological in nature the Department of Energy will provide necessary and appropriate support for safe recovery.

b. Radio Communications

- (1) WIPP authorizes LEA County to utilize the WIPP radio frequencies for coordination and cooperation during responses and at other times when such communications are deemed necessary for the relaying of information. Likewise, LEA County authorizes WIPP to utilize the county frequencies for the same response, cooperation and coordination purposes.
- (2) Both parties agree to comply with FCC rules and regulations, proper radio conduct, and protocols.

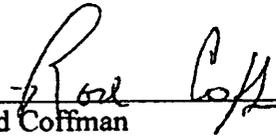
3. Anti-Deficiency

- a. Nothing in this MOU commits the DOE to expend funds which have not been authorized by the US Congress.
- b. Nothing in this MOU commits the county to expend funds which have not been authorized by the appropriate county representative.
- c. Nothing in this MOU commits the Office of the District Attorney, Fifth Judicial District to expend funds which have not been authorized by the appropriate state representative.

4. Term, Modification and Termination

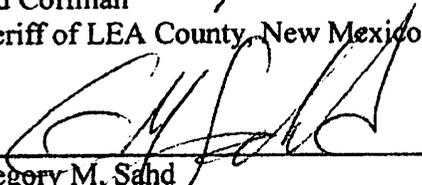
- a. This MOU will become effective on being signed by the DOE, and the SHERIFF OF LEA COUNTY.
- b. This MOU may be terminated by either party upon giving thirty (30) days notice to the other party.
- c. This MOU shall continue in effect until modified by written agreement of the parties involved or terminated as stated in item "b" above, in any case, this MOU shall be in effect for no longer than five years.

- d. The parties agree that it is not intended that by any of the provisions of this agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to this agreement to maintain suit for wrongful death, bodily and/or personal injury to persons, damage to property, and/or any claim whatsoever pursuant to the provisions of this agreement.
- e. By entering this agreement Lea County and it's public employees as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and/or do not waive any limitation of liability pursuant to law.



Rod Coffman
Sheriff of LEA County, New Mexico

07/14/09
Date:



Gregory M. Sand
DOE Security & Emergency Ops Program Manager, Carlsbad Field Office

14 JUL 09
Date:

(ATTACHMENT A)

**10 CFR 1047 PART 1047--LIMITED ARREST AUTHORITY AND USE OF FORCE
BY PROTECTIVE FORCE OFFICERS**

Sec. 1047.4 Arrest Authority.

(a) Under the Act, the authority of a DOE protective force officer to arrest without warrant is limited to the performance of official duties and should be exercised only in the enforcement of:

(1) The following laws only if property of the United States which is in the custody of the DOE or its contractors is involved:

(i) Felonies:

(A) Arson--18 U.S.C. 81--(only applicable to "special maritime and territorial jurisdiction of the United States" as defined by 18 U.S.C. 7).

(B) Building or property within special maritime and territorial jurisdiction--18 U.S.C. 1363--(only applicable to "special maritime and territorial jurisdiction of United States" as defined by 18 U.S.C. 7).

(C) Civil disorder--18 U.S.C. 231.

(D) Communication lines, stations or systems--18 U.S.C. 1362.

(E) Concealment, removal or mutilation generally--18 U.S.C. 2071.

(F) Conspiracy--18 U.S.C. 371--(violation of this section is a felony if the offense which is the object of the conspiracy is a felony).

(G) Destruction of motor vehicles or motor vehicle facilities--18 U.S.C. 33.

(H) Explosives--18 U.S.C. 844(f).

(I) Government property or contracts--18 U.S.C. 1361--(violation of section is a felony if property damage exceeds \$100).

(J) Military, naval or official passes--18 U.S.C. 499--(pertains to forging or altering official passes).

(K) Personal property of the United States--18 U.S.C. 2112.

(L) Public money, property, or records--18 U.S.C. 641--(violation of section is a felony if the property value exceeds \$100).

(M) Sabotage--18 U.S.C. 2151, 2153-2156.

(N) Violation under Physical Security Convention--18 U.S.C. 831.

(ii) Misdemeanors:

(A) Conspiracy--18 U.S.C. 371--(violation of section is a misdemeanor if the offense which is the object of the conspiracy is a misdemeanor).

(B) Explosives--18 U.S.C. 844(g).

(C) Government property or contracts--18 U.S.C. 1361--(violation of section is a misdemeanor if the property damage does not exceed \$100).

(D) Official badges, identification cards, other insignia--18 U.S.C. 701--(pertains to the manufacture, sale, and possession of official insignia).

(E) Public money, property or records--18 U.S.C. 641--
(violation of section is a misdemeanor if the property
value does not exceed \$100).

(2) The following criminal provisions of the Atomic Energy Act:

(i) Felonies:

- (A) Section 222. Violation of Specific Sections--42 U.S.C. 2272.
- (B) Section 223. Violation of Sections Generally. 42 U.S.C. 2273.
- (C) Section 224. Communication of Restricted Data--42 U.S.C. 2274.
- (D) Section 225. Receipt of Restricted Data--42 U.S.C. 2275.
- (E) Section 226. Tampering with Restricted Data--42 U.S.C. 2276.

(ii) Misdemeanors:

- (A) Section 227. Disclosure of Restricted Data--42 U.S.C. 2277.
- (B) Section 229. Trespass Upon Commission (DOE) Installations--42 U.S.C. 2278.
- (C) Section 230. Photographing, etc., of Commission (DOE) Installations--42 U.S.C. 2278.b.

(b) Felony Arrests. A protective force officer is authorized to make an arrest for any felony listed in paragraph (a) (1) (I) or (a) (2) (I) of this section if the offense is committed in the presence of the protective force officer or if he or she has reasonable grounds to believe that the individual to be arrested has committed or is committing the felony;

(1) In the presence of means that the criminal act must have taken place in the physical presence of (under the observation of) the protective force officer. Knowledge of the existence of a criminal violation obtained in any other way (e.g., information from other persons) is not sufficient to permit an arrest under this part of the Act.

(2) Reasonable grounds to believe means that, at the moment of arrest, either the facts and circumstances within the knowledge of the protective force officer, or of which the protective force officer had reasonably trustworthy information, were sufficient to cause a prudent person to believe that the suspect had committed or was committing the offense.

(c) Misdemeanor Arrest. A protective force officer is authorized to make an arrest for any misdemeanor listed in paragraph (a) (1) (ii) or (a) (2) (ii) of this section if the offense is committed in the presence of the protective force officer.

(d) Other Authority. The Act does not provide authority to arrest for violations of state criminal statutes or for violations of federal criminal statutes other than those listed in paragraph (a) of this section. Therefore, arrests for violations of such other criminal statutes shall be made by other peace officers (e.g., U.S. Marshals or Federal Bureau of Investigation (FBI) agents for federal offenses; LLEA officers for state or local offenses) unless:

- (1) The protective force officer can make a citizen's arrest for the criminal offense under the law of the state,
- (2) The protective force officer is an authorized state peace officer or otherwise deputized by the particular state to make arrests for state criminal offenses, or
- (3) The protective force officer has been deputized by the U.S. Marshals Service or other federal law enforcement agency to make arrests for the criminal offense.

(e) In those locations which are within the "special maritime and territorial jurisdiction of the United States," as defined in 18 U.S.C.7, the Assimilative Crimes Act (18 U.S.C. 13) adopts the law of the state for any

crime under state law not specifically prohibited by Federal statute and provides for federal enforcement of that state law. The local DOE Office of Chief Counsel, in coordination with contractor legal counsel, as appropriate, shall provide guidance in this matter.