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

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, monitoring, and emergency response 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 designed to help assure that activities at DOE facilities are protective of the public health and safety and the environment. Such assurance will be accomplished through assessment of DOE's compliance with applicable laws, including rules, regulations, and standards; 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 solely described within the provisions of this Agreement and within the provisions of the Statement of Joint Objectives, (attached hereto) and the Scope of Work contained in Grant Instrument DE-FG04-91AL65779, the funding vehicle by which the provisions of this Agreement will be implemented. Grant Instrument DE-FG04-91AL65779, Mod. No. A006, is being executed concurrently with this Agreement and incorporated herewith by specific 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 financial support for an enhanced 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 instrument. DOE will provide funds to New Mexico consistent with DOE Financial Assistance Rules set forth in 10 C.F.R. 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 provisions 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 the Grant. 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 its accompanying 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 an integrated schedule and to prioritize environmental management, environmental compliance, and permitting activities for the upcoming year. In active consultation with the State, DOE will also conduct investigations and evaluate the need for cleanup at inactive waste sites. Any such clean-up activities and associated schedules will be addressed in appropriate agreements or permits.
4. DOE will perform the actions described in this Agreement and in the Statement of Joint Objectives and the Scope of Work in the grant instrument, as applicable. The general intent of the DOE actions is to establish a comprehensive and integrated environmental management plan for compliance, environmental restoration (cleanup) and waste management and to facilitate a better understanding by the public in general of the emergency response capabilities, procedures, and standards used at the DOE sites. DOE will report regularly on the progress of these actions to the State in bi-monthly meetings and as further set forth in

this Agreement and in the grant Scope of Work. This Agreement does not affect the State's ability or right to object to or otherwise challenge DOE's plans, or any portion thereof.

5. The State will perform the actions described in this Agreement and in the Statement of Joint Objectives and the Scope of Work in the grant instrument, as applicable. 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; 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. To minimize duplication and to seek the most efficient use of taxpayer dollars, DOE encourages the State to coordinate its monitoring and emergency response 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 also coordinate its emergency response activities and plans with local governments. The State will report on the progress of these actions to DOE in regular 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 have a designated coordinator whose function shall be to assure implementation and coordination of the provisions of this Agreement. DOE and the State will each have a designated 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 state-wide ("umbrella") and facility-specific (site-specific) protocols, health and safety plans, and work plans that establish the actual day-to-day 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 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. 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 specified in the grant shall be released to the other party within 90 days of receipt of the data from an analytical laboratory. 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 State personnel assigned to perform duties under the terms of this Agreement for security clearances, cleared State personnel do not have blanket 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 properly designated by DOE as "classified" or which is otherwise entitled to confidentiality and clearly marked as such, unless authorized by DOE pursuant to applicable laws, regulations, or executive orders.

11. 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.

12. 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.

13. 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.

14. This Agreement, as amended by the parties as necessary to maintain the stated objectives, shall continue in effect through September 30, 2000, and may be extended by mutual consent. The parties will review the terms, activities and funding levels of the Agreement and the grant instrument on an annual basis to determine if any modifications are necessary. Any amendments to this Agreement 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.

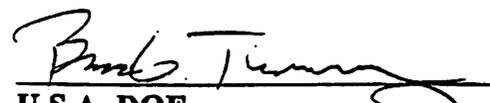
NOW, THEREFORE, the parties sign this Agreement in consideration of the provisions set forth above and in the Grant and pledge their cooperation and good faith in achieving the purposes of this Agreement and the Grant.


NEW MEXICO
Gary E. Johnson
Governor

Date: 9/14, 1995


Mark E. Weidler, Secretary
Environment Department

Date: 9/13, 1995


U.S.A. DOE
Bruce G. Twining, Manager
AL Operations Office

Date: 9/13, 1995

**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...." Since the goal is the implementation of a non-regulatory environmental oversight and monitoring program that supports and provides enhanced environmental monitoring by the State to produce independent validation of environmental compliance data at the DOE facilities in New Mexico, DOE and the State are committed to fostering achievement of that goal. With the execution and implementation of this agreement, the State utilizes a mechanism that affords it access to DOE environmental data and documentation.

This agreement also re-enforces DOE's commitment to comply with all applicable federal, state and local environmental laws, including regulations, orders, and standards.

"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 the day-to-day operations between DOE, DOE contractors and the State. The protocol fosters 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 day-to-day 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.

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 resources and office space to support the activities described in the Agreement, in this Statement of Joint Objectives, and in the Grant Scope of Work that describes State activities.

The State, to facilitate achievement of the objectives of the Grant, agrees to undertake these responsibilities and perform those activities with the funding provided by DOE.

To achieve its goal of protecting the public health and safety and the environment, the State will develop and submit to DOE a work plan which outlines and specifies how it will conduct oversight and monitoring activities.

DOE, as the provider to the state of New Mexico of funds and resources and access to DOE facilities, will verify the types and amounts of emissions at DOE facilities, ensure compliance with applicable laws and regulations, and assist the State in predicting areas of off-site impact.

ENVIRONMENTAL MONITORING AND DATA ACCESS

DOE data will be released to the State within 90 days after receipt from the laboratory and appropriate level of review and quality control/quality assurance (QA/QC) validation. Prior to the completed QA/QC procedures, the State can examine and review the data in a manner acceptable to the DOE facilities. Air and water quality data relevant to protection of the environment and the public's health and safety will be provided to the State as requested. Further, DOE encourages split sampling activities with the State and will cooperate in the expedient review and approval of split sampling plans utilizing accepted protocols. State review of DOE's environmental activity schedules is necessary for the efficient planning of the State's oversight and monitoring activities.

COMMUNICATION AND ACCESS TO FACILITIES

DOE and the State will employ modes of frequent and open communication which they view as central and critical to this oversight and monitoring process. Dialogue with representatives from DOE facilities and the State will ensure that the release of monitoring and environmental review activities, data and published reports relating to the facilities directly to the State will occur in a timely fashion.

To assist the State in executing the provisions of this agreement, DOE will expedite the processing of security clearance applications of State representatives in appropriate numbers and on an as needed basis, for oversight activities.

To maintain program continuity and proactive communication, DOE and the State will hold regularly scheduled meetings and schedule other meetings on an as needed basis to ensure thorough mutual understanding and ultimate resolution of technical and administrative problems.

ACCOUNTABILITY AND REPORTS

DOE will use Quarterly reports to chart the State's progress in achieving scheduled milestones and in tracking funds expended for tasks completed. DOE will utilize annual reports that

summarize overall task accomplishments for dollars expended for the total effort.

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 reenforce and demonstrate that DOE's program goals are being achieved and warrant continued funding.

PUBLIC PARTICIPATION

DOE and the State will endeavor to communicate with the public to increase public knowledge of oversight, monitoring, and environmental issues and solicit comments at meetings on environmental matters pertaining to the facilities.

In committing to these joint working objectives, DOE and the State will work cooperatively to achieve and maintain a safe living and working environment for the citizens of New Mexico.

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(September 1995)

SCOPE OF WORK

The State will perform the following oversight and monitoring activities, which are underway or which will be implemented. These activities are to assist in assessing DOE's compliance with applicable environmental laws and regulations at the DOE facilities, referred to hereinafter as "the facilities", and are contingent upon DOE providing the State with resources to support such activities:

A. MONITORING OF ON-SITE DISCHARGES AND EMISSIONS

1. The State will review the environmental monitoring systems at the facilities and will identify any modifications or improvements needed therein to meet applicable requirements so that DOE will ensure that all above systems are in full compliance with applicable environmental requirements, including laws, rules, regulations, and standards.

2. The State will continue its monitoring activities and review of DOE-generated data. 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 identify any modifications or improvements needed to meet applicable laws and regulations. The analysis may include, but is not limited to, examination of the location, depth, sampling practices, and water quality of all wells so that DOE can ensure that all above systems are in full compliance with applicable environmental requirements, including laws, rules, regulations, and standards.

2. The State will continue 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

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

4. 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 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 recommend to DOE 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. The State will review and comment on any comprehensive air inventories provided by DOE within three (3) months after its receipt from DOE.

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 laws and requirements, so that DOE can ensure that the above systems are in full compliance with applicable environmental requirements, including laws, rules, regulations, and standards.

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.

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E. EMERGENCY RESPONSE

1. The State will update and maintain state emergency response plans and assist local and tribal governments in updating and maintaining their emergency response plans, as such plans apply to emergencies at the facilities.
2. The State will conduct training jointly with DOE for local governments that could be affected by an emergency at the facilities.
3. The State will assist local, tribal and statewide emergency response authorities with respect to possible incidents involving the release of hazardous, mixed or radioactive materials at the facilities.

F. SAFETY AND DATA MANAGEMENT

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.

G. COORDINATION AND PUBLIC AWARENESS

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.

H. 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 compliance with applicable environmental laws and regulations. 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.

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I. ACCESS TO DATA

1. The State will release data to DOE relative to its monitoring and environmental surveillance activities within 90 days after such data has been analyzed in the laboratory and has been validated by appropriate QA/QC procedures. Prior to QA/QC procedures, the DOE can examine and review the data at the State facilities.

2. The State will enhance its geographic information system (GIS) capabilities to create a network of DOE, State, local and Tribal government automated information systems containing environmental oversight and monitoring information concerning DOE facilities and privately owned, Tribal, and publicly controlled lands in New Mexico. The State will initiate negotiations with the aforementioned entities to seek their participation in a GIS network.

J. REPORTS

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