

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 40 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 purpose of this Agreement. This Agreement reflects the understanding and the 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), 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 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 the 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 understanding between the parties is 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 objective, 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, 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 not 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 the 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 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 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 that 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 secrets, patent and related confidentiality requirements. The State acknowledges that, while DOE will process security clearance applications for State personnel assigned to perform 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 under this Agreement are for services, personnel, and equipment that are related to the 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 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 the 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 of 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 under law in the event the State initiates and 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 the 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 the 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 the 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, 2010, 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. The Agreement shall only be amended or terminated by 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 (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 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 voluntary entered into between the United States Department of Energy (DOE) under 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, 2000.”

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.

New Mexico

Bill Richardson

Governor,

Date: _____, 2005

U.S.A. DOE

Richard E. Glass

AL Operations Office,

Date: _____, 2005

Environment Department

Ron Curry

Date _____, 2005

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-Principal: “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 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 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 the 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 the 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 advanced 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.

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,
- 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.

F. EMERGENCY MANAGEMENT

The State will coordinate with the appropriate federal, state, local, government, pueblo/tribal government and other relevant elements regarding emergency management activities to ensure DOE facilities in New Mexico address alerts, emergencies, and disasters that may affect public health, safety, and environmental protection.