

DEPARTMENT OF DEFENSE AND STATE MEMORANDUM OF AGREEMENT (DSMOA)

In order to expedite the cleanup of hazardous waste sites on Department of Defense (DoD) installations within the State of New Mexico and ensure compliance with the applicable State law and regulations of the State, DoD and the New Mexico Health and Environment Department (NMHED) on behalf of the State of New Mexico enter into this Agreement.

Except as otherwise specified, the terms in this document are unique to this document only.

**SECTION I
REIMBURSEMENT OF STATE COSTS**

A. COVERAGE

1. This Agreement covers reimbursement of the costs associated with providing State services to Department of Defense installations for activities funded under the Environmental Restoration, Defense (ER,D) appropriation. Eligible activities are those authorized for the Defense Environmental Restoration Program (DERP), and funded by the Defense Environmental Restoration Account (DERA), Sections 2701 *et seq.*, Title 10 U.S.C., and as specified in this Agreement. Installations covered by this Agreement are those owned by the Federal government on the effective date of the Agreement including installations with sites on the National Priorities List (NPL) and installations with sites not on the NPL. The installations covered by this Agreement are listed in Attachment A. This Agreement does not cover the costs of services rendered prior to October 17, 1986; services at properties not owned by the Federal government; and activities funded from sources other than ER,D appropriation.

2. Unless a site-specific agreement provides otherwise, this Agreement is the mechanism for payment of the costs incurred by the State in providing the services listed in Paragraph B of this Agreement in relation to ER,D funded activities at the installations covered by this Agreement. Full payment of State costs pursuant to this Agreement constitutes final settlement of any claims the State of New Mexico may have for performance of services outlined in Section I(B) with respect to ER,D funded work carried out after October 17, 1986, at all of the installations covered by this Agreement, except for those State costs covered by a site-specific agreement.

3. DoD agrees to seek sufficient funding through the DoD budgetary process in accordance with Section II and to pay the State of New Mexico for the services specified in paragraph B for all ER,D funded activities at installations covered by this Agreement, subject to the conditions and limitations set forth in this section.

B. SERVICES

State services that qualify for payment under this Agreement include the following types of assistance provided by the State commencing at site identification and continuing through construction, as well as any other activities that are funded by ER,D:

1. Technical review, comments and recommendations on all documents or data required to be submitted to the State under an agreement between the State and a DoD Component, all documents or data that a DoD Component requests the State to review, and all documents or data that are provided by a DoD Component to the State for review as a result of a request from the State made under applicable State law.
2. Identification and explanation of State applicable or relevant and appropriate requirements related to response actions at DoD installations.
3. Site visits to review DoD response actions and ensure their consistency with appropriate State requirements, or in accordance with site-specific requirements established in other agreements between the State and DoD Component.
4. Participation in cooperation with DoD in the conduct of public education and public participation activities in accordance with Federal and State requirements for public involvement.
5. Services provided at the request of DoD in connection with participation in Technical Review Committees.
6. Preparation and administration of a cooperative agreement (CA) to implement this Agreement, including the estimates of State costs.
7. Preparation and administration of the DSMOA and amendments, including estimates of State costs.
8. Technical review, comments and recommendations on all documents and data regarding prioritization of sites

pursuant to Section II.B., including model development, testing and application.

9. Determination of scope of agreements, determination of legal and technical applicability of agreements, and assurance of satisfactory performance of interagency agreements, but excluding any costs which may be incurred preparing for litigation against the U.S. Government.

10. Costs associated with independent quality assurance/quality control (QA/QC) efforts by the State of up to 10% of samples collected at each DoD installation covered by this Agreement.

11. Other services that the State will provide that are set out in this Agreement or are included in installation-specific agreements.

C. ACCOUNTING PROCEDURES

1. Subject to the provisions of paragraphs D and E, reimbursement of eligible State costs incurred between October 17, 1986, and the date of this Agreement shall be paid if the costs have been documented using accounting procedures and practices that reasonably identify the nature of the costs involved, the date the costs were incurred, and show that the costs were entirely attributable to activities at an installation covered by this Agreement.

2. Payment of eligible State costs for services provided after the effective date of this Agreement must comply with all applicable Federal procurement and auditing requirements.

D. MAXIMUM REIMBURSEMENT

Reimbursement for services provided under paragraph B for all installations included in Attachment A shall not exceed one (1) percent of the estimated total costs for all of the work that has been funded by ER,D since October 17, 1986, and that will in the future be funded by ER,D or a total of \$50,000, whichever is greater. Estimates of cleanup costs developed under this Agreement are provided solely for the purpose of calculating the amount of funding the State is eligible to receive.

E. ANNUAL BUDGET LIMITS

The State may ordinarily request that up to a maximum of twenty-five (25) percent of the total State services funds for all installations listed in Attachment A be provided in accordance with Section II during any fiscal year. DoD may

approve an annual budget limit that exceeds twenty-five (25) percent of the total State services funds if the State demonstrates the need for a higher percentage based on the scope of the work projected during the fiscal year. At least ten (10) percent of a State's services funding request will be provided in accordance with Section II of this agreement during a fiscal year if the State requests an allocation of ten (10) percent or more for services under this Agreement. The State may carry over unused funds into subsequent years. If the cost of State services during a fiscal year exceeds the annual budget limit, the State may expend its own funds to pay the cost of those services. To the extent allowable under Federal procedures for cooperative agreements, the State may then seek reimbursement of these costs in a subsequent year through a cooperative agreement as long as the total amount of the payments to the State does not exceed the one (1) percent ceiling, or the annual budget limit for that fiscal year. A payment schedule for reimbursement of past costs will be devised by the State of New Mexico and the DoD.

F. ADJUSTMENT OF COST ESTIMATES

The State or DoD may request a review of total estimated ER,D funded project costs covered by this Agreement once during the terms of a cooperative agreement. The total project costs shall be revised to reflect the new estimates. The ceiling of one (1) percent of the total project costs shall be adjusted based on the revisions of the total project costs since October 17, 1986. If the total project costs following the Record of Decision (ROD) or equivalent document are lower than previously estimated, the State remains entitled to payment as follows:

- a. the State is entitled to payment of all services rendered prior to completion of the new estimate so long as they are within the ceiling of the previous estimate; and,
- b. reimbursement of future incurred costs for providing services, at the option of the state, in an amount either:
 1. up to a total of previous and future costs of one (1) percent of the revised estimate; or,
 2. the lesser of:
 - i) one quarter (1/4) of one (1) percent of the post ROD or equivalent documents costs; or,
 - ii) the remaining balance of the one (1) percent entitlement under the previous estimate.

G. PROCEDURES FOR REIMBURSEMENT

Procedures for State reimbursement through cooperative agreements (CAs) are as described in Attachment B and in accordance with Office of Management and Budget (OMB) Circulars A-102, A-87, and A-128. After a CA is awarded, the NMHED may submit a request for advance or reimbursement to DoD on a quarterly basis. DoD will process the request and transfer funds in accordance with Circular A-102. Within 60 days after the end of each quarter, the NMHED shall submit to DoD a status report, including cost summaries which directly relate allowable costs actually incurred by the State under this Agreement during the quarter for services at each installation. Allowable costs shall be determined in accordance with this Agreement and Circular A-87. DoD shall reconcile continuing awards and close out completed awards in accordance with Circular A-102. Auditing of States programs shall be accomplished in accordance with Circular A-128.

H. ADDITIONAL WORK

When an installation requests that a State perform a specific technical study or similar technical support that could otherwise be done by a contractor, and NMHED agrees to do the work, funding will be negotiated between the installation and the State outside of this Agreement.

I. EMERGENCIES

In an emergency situation involving a threat to public health or the environment, the State must, unless the nature of the emergency does not permit notification, notify the DoD Component prior to taking removal action in order to be reimbursed for its reasonable costs. Reimbursement of the State for its work will be handled directly between the DoD component and the State, and outside of this Agreement. Disagreements that arise under this paragraph are subject to the Dispute Resolution process in Section IV.

SECTION II FUNDING AND THE PRIORITY SYSTEM

A. The Office of the Deputy Assistant Secretary of Defense (Environment), as the designee of the Office of the Secretary of Defense responsible for carrying out the Defense Environmental Restoration Program, and the DoD components shall seek sufficient funding through the DoD budgetary process to carry out their obligations for response actions at DoD installations within the State. Funds authorized and appropriated annually by Congress

under the ER,D appropriation in the DoD Appropriations Act shall be the source of funds for all work contemplated by this Agreement.

B. Should the ER,D appropriation be inadequate in any year to meet the total DoD requirements for cleanup of hazardous or toxic contaminants, DoD shall establish priorities among sites in a manner which maximizes the protection of human health and the environment. In the prioritization process, DoD shall employ a model which has been and will be further developed with the assistance of the States and the EPA. Future enhancements or refinements to the model shall occur in consultation with the States and the EPA. DoD shall also involve the States and the EPA in its use of this prioritization model through review of technical site data. The DoD components shall receive and give full consideration to information provided by the States regarding factors to be considered in decisionmaking in the annual prioritization process for allocating resources available for cleanups. The State accepts that a DoD prioritization system developed and operated as described in this subparagraph is needed and provides a reasonable basis for allocating funds among sites in the interest of a national worst first cleanup program. To that extent, the State will make every effort to abide by the priorities developed thereunder.

C. Nothing in this Agreement shall be interpreted to require obligation or payment with regard to a site remediation in violation of the Anti-Deficiency Act (31 U.S.C. 1341).

SECTION III LEAD AGENCIES

Each DoD Component shall designate an individual responsible for managing remedial and removal actions for each installation within the State. This individual shall be responsible for coordinating all tenant activities at the installation with regard to the remedial and removal action program. The individual will also act as remedial project manager (RPM) within the meaning of the National Contingency Plan (40 CFR Part 300).

The State designates the NMHED as the lead State agency for each DoD installation within the State. The NMHED shall coordinate among other State agencies to represent a single State position as to remedial/removal actions at the installation. The lead State agency will designate a staff member of the NMHED as the State Agency Coordinator (SAC) who shall be the single point-of-contact between the appropriate DoD component installation and the State regarding State involvement in the remedial and removal actions program at the installation.

SECTION IV
DISPUTE RESOLUTION

A. The Remedial Project Manager (RPM) and the State Agency Coordinator (SAC) shall be the primary points of contact to coordinate the remedial and removal program at each military installation within the State, including the resolution of disputes. With regard to installations or sites for which there are executed Federal Facility Agreements under CERCLA Section 120, dispute resolution provisions as specified in those agreements shall govern. For other sites, it is the intention of the parties that all disputes shall be resolved at the lowest possible level of authority as expeditiously as possible within the following framework. All timeframes for resolving disputes below may be lengthened by mutual consent.

1. Should the RPM and SAC be unable to agree, the matter shall be referred in writing as soon as practicable but in no event to exceed ten (10) working days after the failure to agree, to the installation commander and the Director of the Environmental Improvement Division of the NMHED or their mutually agreed upon representatives designated in writing.

2. Should the installation commander and the Director of the Environmental Improvement Division of the NMHED or their mutually agreed upon representatives designated in writing be unable to agree within ten (10) working days, the matter shall be elevated to the Secretary of the NMHED and a counterpart member of the lead Service involved who shall be a general/flag officer or a member of the senior executive service.

3. Should the Secretary of the NMHED and the counterpart DoD representative fail to resolve the dispute within twenty (20) working days the matter shall be referred to the Governor and the Service Secretary concerned for resolution.

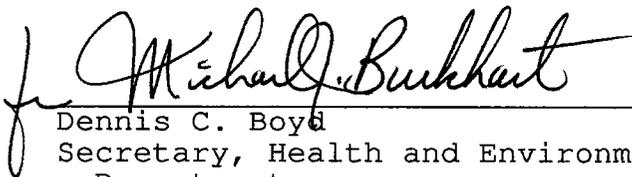
B. It is the intention of the parties that all disputes shall be resolved in this manner. Alternative dispute resolution methods may be used. In the event that the Governor and the Service Secretary are unable to resolve a dispute, the State retains any enforcement authority it may have under State and Federal law.

SECTION V
REOPENER

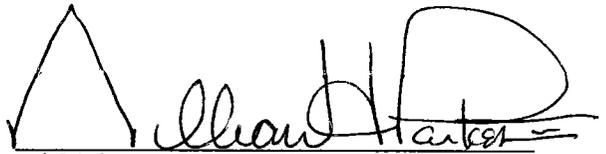
The terms of this Agreement may be modified at any time by mutual Agreement of the parties. If a party requests the Agreement to be reopened but the other party does not concur, the matter will be referred to an individual designated in writing by the signatories to this agreement. In the event they fail to agree within ten (10) working days the matter will be referred to the signatories of this agreement or their successors in office. If no resolution is reached within twenty (20) days, the Agreement shall not be reopened.

SECTION VI
TERMINATION

This Agreement may be terminated by either party at the expiration of any cooperative agreement entered into pursuant to this Agreement if the party seeking termination has notified the other party in writing at least ninety (90) days prior to the expiration of the cooperative agreement. After receiving a notice of termination, a party may invoke the dispute resolution process in Section IV. Each signatory of the agreement may involve other officials to whom they report in the process of resolution. The parties by mutual agreement may also refer the matter to the Governor of the State of New Mexico and his counterpart within the Department of Defense. Alternative dispute resolution methods may be used. Failing their agreement, this Agreement shall be considered terminated as of the date the cooperative agreement expires.



Dennis C. Boyd
Secretary, Health and Environment
Department
State of New Mexico



William H. Parker, III, P.E.
Deputy Assistant Secretary
of Defense (Environment)
U.S. Department of Defense

Date: 6/14/90

Date: MAY 25, 1990

ATTACHMENT A TO DSMOA
DOD INSTALLATIONS COVERED BY THIS AGREEMENT
State of New Mexico

Army

1. Fort Wingate
2. White Sands Missile Range
3. Fort Bliss
4. Deming Army Airfield (FUDS)

Air Force

1. Kirtland Air Force Base
2. Cannon Air Force Base
3. Holloman Air Force Base
4. Air Force Plant #83
5. Melrose Air Force Base
6. Walker Air Force Base (FUDS)

INSTALLATIONS MAY BE ADDED TO THIS LIST PERIODICALLY AS NECESSARY
IN ACCORDANCE WITH SECTION V, REOPENER.

ATTACHMENT B to DSMOA
PROCEDURES FOR STATE REIMBURSEMENT

- The Deputy Assistant Secretary of Defense for (Environment) (DASD(E)) and the Head of the Agency signing on behalf of the State will sign the DSMOA.
- The DSMOA is the overarching agreement of commitment between the DoD and the State, but **does not** obligate or commit funds.
- Reimbursement will be accomplished, using Federal Procedures for cooperative agreements (CAs), with States that have signed DSMOAs. Eligible activities are limited to those authorized for the Defense Environmental Restoration Program (DERP), and funded by the Defense Environmental Restoration Account (DERA), Sections 2701 **et seq.**, of Title 10 U.S.C., and as specified in the DSMOA.
 - Reimbursement will commence as soon as possible with DERA funds.
- DoD policies and procedures for processing CA applications and payments will be developed with input from the States and announced in a **Federal Register** notice.
 - In general, these activities will be centralized in the ODASD(E).
 - It is anticipated that these policies and procedures will encompass the following: who may apply, what can be funded, evaluation criteria for awards, submission procedures and closing dates for receipt of applications, and State responsibilities.
 - Within this framework, it is anticipated that monitoring and quarterly reporting procedures for States' program status and financial status will be developed.
- Administration of CAs will be in accordance with Office of Management and Budget (OMB) Circular A-102, Grants and Cooperative Agreements with State and Local Governments, and Title 32 CFR 278, Office of the Secretary of Defense, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
 - A State will submit a complete application package for Federal assistance, consisting of Standard Form 424 (SF 424) and attachments, including a proposal narrative, the signed DSMOA, and a project management plan. The State's application must also include a description of the type and amount of support services

that the State plans to provide for each installation covered in the DSMOA for the specific award period of the CA.

- CAs will awarded for a term of two (2) years, based on an annual estimate of requirements. Applications will be accepted after signature of the DSMOA by both parties; DoD processing time for applications is expected to be two months.

- The DASD(E) will accept the application, review it, and make a decision as to the award. This CA agreement, when signed by both the DASD(E) and the Head of the Agency signing on behalf of the State, comprises the contractual relationship between the DoD and the State.

- States may request funds in accordance with the methods outlined in OMB Circular A-102 and 32 CFR 278. These documents provide for the following methods of payment: (1) Advances (Letter of Credit), (2) Reimbursement, and (3) Working Capital Advances. A State may request a payment method in its cooperative agreement application.

- Allowable costs will be determined in accordance with OMB Circular A-87, Cost Principles for State and Local Governments. Specific services to be provided by the States will be as described in the DSMOA.

- Auditing of States programs will be accomplished in accordance with OMB Circular A-128, Audits of State and Local Governments.

The following is additional information regarding the general procedures that DoD plans to use in implementing DSMOAs and CA's with the States:

1. DoD DASD(E) will invite States to sign DSMOAs and submit applications for CAs.

2. DASD(E) will send a memorandum (Attachment C) to the DoD Components (Army, Navy, Air Force, DLA, and other DoD agencies) asking them to cooperate with the States and compile necessary data. The States and Installations will communicate directly on response activities anticipated to take place over the next two years and on the total DERA cost estimate.

3. DoD Components will use their Chain-Of-Command to develop and pass on data to DASD(E): Component Headquarters will give the message to their Major Commands (e.g., Army Materiel Command), and the Major Commands will forward the message to their Installations (e.g., Sacramento Army Ammunition Depot).

4. The Components will provide information, obtained from their Installations and Major Commands, to DASD(E) by State.

5. Each State contacts DASD(E) about its desire to have a DSMOA and CA, and works with DoD to have State-specific information inserted into the provisions where indicated in the model language and to fill out the CA application.

6. DASD(E) and the State sign the DSMOA and the CA.

7. The State submits requests for payment in advance based on anticipated workload or for reimbursement of services provided under the CA, on a quarterly basis.

8. Quarterly In-Process Reviews (IPRs), or alternative arrangements by mutual consent, will be held between DASD(E) staff and the State agency. IPRs will include State progress reports concerning activities and funding.

9. CA audits will be carried out in accordance with OMB Circular A-128.