

SUPERFUND MEMORANDUM of AGREEMENT

Between the

STATE OF NEW MEXICO

and the

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VI

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SUPERFUND MEMORANDUM OF AGREEMENT

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STATE OF NEW MEXICO and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Region VI

I. INTRODUCTION - PURPOSE - PRINCIPLES

A. Introduction

This Superfund Memorandum of Agreement (SMOA) is entered into by the United States Environmental Protection Agency (EPA), Region VI, and the New Mexico Environmental Improvement Division (NMEID), pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

B. Purpose

The purpose of this SMOA is to identify the respective roles and responsibilities of the NMEID and EPA as related to conducting a program to clean up hazardous waste sites in the State of New Mexico. Specifically, the purposes of this SMOA are to:

1. Clarify the relationship between NMEID and EPA with respect to remedial response activities at these sites, in order to maximize the number of completed response actions, and to facilitate a cooperative working relationship which best serves EPA and the NMEID.
2. Establish procedures for Superfund program coordination and communication between EPA and the NMEID;
3. Establish a key point of contact for both EPA and NMEID for all Superfund program activities, coordination and communication;
4. Define "lead agency" and "support agency" roles for each site identified on the National Priorities List (NPL), including Federal facilities.
5. Establish procedures for close cooperation and communication between EPA and NMEID in planning response activities, yearly Superfund Comprehensive Accomplishments Plan (SCAP) development (to make optimal use of EPA and NMEID resources), and to avoid conflicts and duplication of effort in conducting response activities;
6. Establish goals and procedures for the timely exchange of site-specific technical information, reports, studies or other pertinent materials and documents, including the identification of Applicable or Relevant and Appropriate Requirements (ARARs);

7. Assure that any response activities conducted at these sites are consistent with CERCLA and the NCP; and

8. Assure that Quality Assurance (QA) practices are developed and implemented pursuant to 40 CFR 30.503 for response activities, integrating data quality objectives, audits, reports, and corrective action.

C. Principles

1. The State of New Mexico has an important role to play in the management of hazardous waste. This is especially true in regard to Superfund. The NMEID has built a strong foundation for protecting and preserving New Mexico's environment, and benefits from quality programs and strong environmental legislation. However, it is incumbent on both EPA and NMEID to utilize, to the fullest practicable extent, the resources available to each agency.

2. For those Federal-lead sites nearing the remedial action phase and for which potentially responsible parties (PRPs) have either not been identified or for which PRPs have elected to not fund remedial action, the State is required to provide 10-percent match funding. Until EPA can be provided assurance of available State dollars for match funding, remedial action at a site can not begin. Therefore, it is incumbent on NMEID and EPA to anticipate future State funding needs as early as possible.

3. It is the role of the support agency to evaluate and comment on major decision points, broad issues and overall results. It is recognized that there are many ways to approach investigation and cleanup of hazardous substance sites. Therefore, the lead agency must have discretion in approaching site investigations and cleanups within constraints set by Federal and State law, the NCP, and Federal and State regulations, guidelines and policies. The support agency agrees to provide input on all issues, whether broad or technical, with the understanding that the lead agency has discretion to make final decisions.

4. Close cooperation and communication between EPA and the State in planning and carrying out response activities at NPL sites is necessary to obtain maximum effect and to avoid possible conflicts and duplication.

5. Aggressive and timely enforcement is an essential component of successful EPA and State response at NPL sites.

6. The lead agency is responsible for keeping the support agency informed of all important actions pertaining to any site.

7. EPA and NMEID will formally review this SMOA once a year, during the first quarter of each Federal fiscal year (October, November, December). In addition, EPA will prepare quarterly reviews of the State's Superfund program. Performance under this SMOA may be formally reviewed at least semi-annually (at a minimum) by the Director, Hazardous Waste Management Division. The SMOA may be modified, in writing, upon the request of either EPA or the NMEID. All modifications must be mutually agreed upon, in writing. If agreement on program modifications cannot be reached initially by EPA and NMEID primary contacts, the procedures for Resolution of Disputes as provided for in Section T of this SMOA shall be followed.

8. Indian Tribes - Section 207 of SARA establishes separate treatment for Indian tribes under CERCLA and generally requires EPA to treat such tribes as States. It exempts tribes from Operation and Maintenance cost-sharing, and designates Indian tribes as trustees for natural resource damage claims on Indian lands. EPA may also enter into cooperative agreements with Indian tribes to carry out response actions. Therefore, response actions on Indian lands will not be covered by this SMOA, and will be administered on a case-by-case, tribe-by-tribe basis.

9. Nothing in this agreement shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under CERCLA, as amended, or under regulations at 40 CFR Parts 30, 33 and 300.

10. EPA and NMEID will coordinate QA activities to ensure adequacy of Superfund data collection and generation activities, resources, and training.

11. Nothing in this agreement shall be construed to restrict in any way NMEID's authority to fulfill its responsibilities under applicable State laws.

II. AGREEMENT - NOW, THEREFORE, IT IS AGREED THAT:

A. Designated State Agency - The NMEID is the designated agency within the State of New Mexico for all response actions under CERCLA. As lead State agency, the NMEID will coordinate with the New Mexico Attorney General's Office, New Mexico Department of Health, New Mexico Department of Transportation, and other State offices as required.

B. NMEID Key Contact - The Key NMEID Contact for all State/EPA Superfund coordination, program communication and planning is:

Steven J. Cary
Superfund Section
Hazardous Waste Bureau
(505) 827-2898

C. EPA Key Contact - The Key EPA Contact for all State/EPA Superfund coordination, program communication and planning is:

Mark Satterwhite
Superfund State Programs Section (6H-SS)
(214) 655-6710

D. Key Contact Coordination - See paragraph F(3).

E. Lead/Support Agency Designations - The State and EPA will ensure that lead and support agency designations are made as soon as it is determined that a site may be proposed for inclusion on the NPL. A designation of lead responsibility, by site, is included in Attachment 1.

1. Lead agency and support agency designations will be made by mutual agreement. Some factors to be considered are: Staffing and current workload, technical expertise, contracting capability, fiscal management, past involvement at a site (both legal and technical), the ability to respond to the other agency's concerns, the ability to meet schedules, and an analysis of regulatory authorities.

2. It may be necessary to switch the lead agency designation during response activities at a site because of changing conditions such as a site going from State-lead, Fund-financed to Federal-lead enforcement. Factors for determining a lead change are generally the same as those discussed above; however, enforcement-lead can be impacted by potentially responsible party (PRP) requests to deal solely with EPA.

F. Points of Contact

1. General Program Communication, Coordination and Planning:

NMEID/EPA Key Contact

2. Cooperative Agreement Coordination and Negotiations:

NMEID/EPA Key Contact

3. Site-Specific Coordination - The main route of communication and resolution of site-specific technical issues will be through NMEID- and EPA-designated remedial project managers. If correspondence relating to site activities is sent by or to anyone other than the Key Contacts, information copies must be forwarded to the appropriate State or EPA Key Contact.

a. Remedial Project Manager Designation - Within thirty (30) days of the effective date of this SMOA, the State and EPA will each designate a remedial project manager for each site listed, or proposed for listing, on the NPL. This listing will be forwarded to the Key Contacts.

b. In the future, the NMEID and EPA will each designate a remedial project manager whenever a site is determined to have a high potential for listing on the NPL. This includes Federal facility sites. NMEID or EPA Key Contacts shall be notified, in writing, as soon as the designation is made.

G. Communication

1. General

The NMEID and EPA intend that general Superfund program communication be accomplished in accordance with the following procedures:

a. EPA and NMEID Key Contacts (at a minimum) will meet in Santa Fe at least monthly to keep each agency informed of ongoing and future activities, discuss and plan for mutual goals and develop a rapport between the agencies.

b. EPA and NMEID Key Contacts will engage in telephone conference calls on an as-needed basis. The purpose of these calls is to keep each other informed of ongoing and upcoming activities, to discover and resolve problems between the two agencies, and to keep lines of communication open.

c. EPA and NMEID agree that verbal approvals will be avoided, unless absolutely necessary and then, only in emergency situations. Any verbal approval(s) will be immediately brought to the attention of both EPA and NMEID Key Contacts, and followed-up within five days by written notification.

2. Non-Site-Specific Documents

a. EPA is responsible for providing the NMEID with copies of all EPA guidances, policies, regulations and laws that are relevant to Superfund activities.

b. The NMEID is responsible for providing EPA with copies of all State guidances, policies, regulations and laws that are relevant to Superfund activities.

3. Community Relations

a. A wide variety of agencies and groups, including affected cities and counties, citizens, environmental groups, governmental officials, tribal entities, and the media, must be informed and given meaningful opportunities for involvement in the decisionmaking process during the investigation and cleanup of a site.

b. The lead agency will follow community relations policies and procedures in CERCLA, the NCP and the Superfund Community Relations Handbook. State-prepared Community Relations Plans must be forwarded to EPA for review and approval prior to dissemination. Copies of written documents, such as Community Relations Plans and fact sheets, will be sent to the support agency for its information.

c. Preparation of press releases and contacts with the press are normally the responsibility of the lead agency. Notification of community relations activities required to be performed by the support agency is the responsibility of the lead agency. To the extent possible, press releases should be scheduled in advance, and may be issued jointly. The support agency may be asked to comment prior to release, and copies of the final document will be provided. Press releases will acknowledge the support agency's role whenever appropriate. Occasionally, the support agency may need to issue a press release. The above procedure will be followed when this is necessary.

d. EPA remains ultimately responsible for community relations activities for all NPL sites, and cannot, in deference to any State-lead role, waive its rights to conduct whatever community relations activities it deems necessary.

e. The lead agency normally will chair all public meetings. The support agency is expected to attend or to participate in all public meetings, where practicable. The lead agency will prepare a summary of all public meetings within three weeks of the date of a meeting and provide the support agency with a copy.

f. With the exception of State enforcement-lead sites, EPA will assume both lead and support agency responsibilities for community relations activities relating to the completion of the FS and the selection of a remedy. EPA will prepare and issue press releases and fact sheets on the FS, coordinate and chair the FS public meeting, and issue a press release and fact sheet on the approval of the ROD. In addition, EPA will issue a fact sheet upon approval of the RD and the deletion of the site from the NPL.

g. NMEID is responsible for environmental activities within New Mexico and cannot in deference to any EPA-lead role for any NPL site, waive its right to conduct whatever community relations activities it deems necessary.

H. Administration of Remedial Response Agreements

1. Cooperative Agreements (CAs) - Based on discussions and decisions made at the monthly EPA/NMEID Key Contact meetings, NMEID will submit CA applications to the EPA Key Contact at least three months (one full quarter) prior to the SCAP target quarter for funding. It must be emphasized that negotiations for CAs must be completed prior to formal submission of the CA application, in order to reach a consensus on the terms of the agreement, outputs, schedules, and available funding.

a. Upon receipt, the EPA Key Contact will review the application for completeness and notify the NMEID Key Contact of its acceptance. If the application is not complete, or consensus cannot be reached on the terms of the agreement, EPA must disapprove the application.

b. EPA will make a decision on the CA application within 90 days of receipt.

c. All CAs include specific reporting requirements (i.e., Quarterly Reports and corresponding Financial Status Reports) which must be submitted to EPA one month after the end of each quarter of the Federal fiscal year. NMEID, therefore, agrees to meet the following schedule for the submittal of Quarterly Reports and Financial Status Reports (FSRs):

<u>FY QUARTER</u>	<u>MONTHS</u>	<u>REPORT DUE TO EPA</u>
First	Oct, Nov, Dec	January 31
Second	Jan, Feb, Mar	April 30
Third	Apr, May, Jun	July 31
Fourth	Jul, Aug, Sep	October 31

d. EPA/NMEID negotiations regarding Federal funding for new projects, or additional funding for existing CAs, are predicated on existing NMEID CA commitments, deliverables, and required reports. New funding for a particular program or site will not be considered until CA commitments, deliverables and required reports have been received by EPA.

2. Superfund State Contracts (SSCs) - Generally, the site-specific SSC is the mechanism whereby the State assures EPA of the availability of its 10-percent match funding requirement for those Federal-lead sites nearing the remedial action phase for which potentially responsible parties (PRPs) have elected not to fund remedial action. The SSC must be signed by both EPA and NMEID prior to commencement of remedial action.

a. EPA Key Contact will forward a draft SSC to the NMEID Key Contact for review and comment three months (one full quarter) - at a minimum - prior to completion of the Remedial Design.

b. NMEID will provide EPA with written comments on the draft SSC within 30 days of receipt.

c. EPA will provide the NMEID with two original copies of the final SSC, signed by EPA, within 30 days of receipt of NMEID's comments on the draft SSC.

d. NMEID will return one original SSC, signed by NMEID, to EPA within 15 days, and retain one original signed copy.

e. The SSC may be amended at any time, in writing, subject to both EPA and NMEID concurrence.

3. CORE Program Cooperative Agreement (CPCA) - The CPCA is designed to supplement existing CA funding by assisting the State in general program management and supervision in support of Superfund non-site-specific activities. CPCA funds may be utilized for such activities as:

- Program planning and direction
- State/EPA interagency coordination
- Training
- Purchase/lease of equipment
- Development and implementation of initiatives to secure State match for remedial actions
- Fiscal and contract management to support the CERCLA program
- CERCLA-related clerical and administrative support not directly, or indirectly, charged to any site-specific CA or MSCA
- Non-site-specific travel for interaction with EPA

a. CPCAs are awarded in accordance with the Federal Grant and Cooperative Agreement Act of 1977, and are subject to the same provisions and requirements of EPA's General Regulations for Assistance Programs (40 CFR 30), Federal Procurement Standards (40 CFR 33), the Prompt Payment Act (PL 97-177), and all CERCLA program requirements.

b. CPCAs will be subject to the same administrative tasks and time constraints as referenced in Section II (H)(1)(a)(b)(c)(d) Cooperative Agreements - of this SMOA.

I. Selection of Remedy - Following are the procedures to be followed for State concurrence on a remedy for all sites on the NPL.

1. State/EPA/PRP Lead Sites: Upon completion of the development of alternatives section of the Feasibility Study (FS), the EPA Remedial Project Manager (RPM) will meet with State staff to discuss the most likely remedy for the site. Any tentative decisions made during this meeting will be outlined in a letter to the State RPM within two weeks. The State RPM will provide a written response, within two weeks, of concurrence with the meeting summary.

2. EPA/PRP Lead Sites: EPA Key Contact will send a copy of the draft FS to the NMEID Key Contact for review and comment. The State will have 30 days to provide comments to EPA. If a proposed remedy had not been previously discussed with the State upon completion of the development of alternatives, a meeting with the State and EPA RPM shall be held at this time. Any tentative decisions made during this meeting shall be outlined in a letter to the State as referenced above.

3. EPA/PRP Lead Sites: The "public-ready" Remedial Investigation/Feasibility Study (RI/FS) will be sent to the NMEID Key Contact with a request for comment during the 30-day public comment period.

4. State/EPA/PRP Lead Sites: After completion of the public comment period, the draft Record of Decision (ROD) and responsiveness summary will be forwarded to the Director, NMEID, requesting State concurrence on the preferred remedy. The State will be given no less than 5 days, and no more than 15 days, to provide a written response.

5. If the State does not respond to EPA's request for concurrence on the preferred remedy within the above-referenced timeframe, EPA will assume that the State concurs with the remedy as proposed, or has waived its right of concurrence.

6. If the State cannot concur on EPA's recommended remedy, it must propose an alternative remedy to EPA within 15 days. The State must also explain how its proposed remedy meets the provisions of both CERCLA and the NCP. EPA will respond to the State's alternative proposal within 15 days.

7. State Enforcement-lead: RESERVED

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J. Removal Actions

1. Notification - EPA and the State will notify each other, in writing, concerning their intent to conduct removal actions at sites where either NMEID or EPA determines such action is necessary. Coordination of information on removal actions will be the responsibility of Gerald Fontenot, EPA Environmental Services Division (6E-EF), (214) 655-2270; and Susan Hill, NMEID, Hazardous Waste Bureau, (505) 827-2567.

2. Classic Emergency Removals - Pursuant to the State of New Mexico Preparedness Plan; and the EPA, Region VI, Oil and Hazardous Substances Pollution Contingency Plan, emergency incidents will result in immediate mutual notification.

NMEID 24-hour Emergency Telephone: (505) 827-9329

EPA, Region 6, 24-hour Emergency Telephone: (214) 655-2222

EPA, National, 24-hour Emergency Telephone: (800) 424-8802

3. Time Critical Removals - These removals require immediate notification by the lead agency to all other interested parties. A Time Critical removal is one where the action must be completed in an expedited manner.

4. Non-Time-Critical Removals - For non-time-critical removals, where a removal can be thoroughly planned, the lead agency will notify all others of upcoming actions and will provide the other agency the opportunity to comment on the proposed action.

5. NMEID will be requested to identify ARARs for non-time-critical removals. For further discussion of ARARs, see section "M" of this SMOA.

6. Time-critical and non-time-critical removals will be discussed during SCAP negotiation activities (see Section L).

7. An official Administrative Record must be maintained for all removal actions (see Section N).

K. Federal Facilities

1. Communication - The main route of communication and resolution of site-specific Federal Facility issues will be through NMEID and EPA Federal Facility liaisons.

2. The NMEID Federal Facility Liaison is:

Amy Childers
Superfund Section
(505) 827-2901

3. The EPA Federal Facility Liaison for New Mexico is:

Suzette Turner
Superfund Compliance Section (6H-EC)
(214) 655-6730

4. EPA will provide an opportunity for the NMEID to participate in the planning and selection of response actions at Federal Facilities. Participation will include the development of studies, reports, planning, and interaction on the selection of a final remedy. EPA makes the final decision on remedial actions for Federal Facilities on the NPL.

5. EPA will provide written notice to the NMEID of its intention to enter into an Inter-Agency Agreement (IAG) with another Federal agency for response action at a site on the NPL, and the State will be offered the opportunity to participate in negotiations and be a signatory to the IAG.

6. Any IAG on which the State is a signatory will become a part of the SMOA.

7. EPA will provide notice to the NMEID at least 10 days prior to commencement of IAG negotiations. NMEID will respond to this notice within 10 days, indicating whether the State desires to participate in negotiations and/or be a signatory to the IAG.

8. EPA and NMEID will exchange comments on documents reviewed within 40 days of receipt.

L. SCAP - EPA funding and schedules for Superfund planning and response action activities is governed primarily by EPA's Superfund Comprehensive Accomplishments Plan (SCAP). SCAP projections and negotiations are, therefore, critical, and require close coordination between EPA and NMEID.

1. SCAP negotiation activities will address:

- a. Management Assistance;
- b. CPCA funding;
- c. Preliminary assessments, site investigations, and site inspection followups to be conducted;
- d. Remedial Investigation/Feasibility Studies to be initiated;
- e. Remedial Design/Remedial Action activities;
- f. Enforcement actions (includes PRP searches, notice letters, information requests, negotiation, litigation, etc.);
- g. Time-Critical Removals; and
- h. Non-Time-Critical Removals.

2. EPA and NMEID Key Contacts will discuss SCAP funding needs at the regular monthly Key Contact meetings in Santa Fe (at a minimum). However, EPA and NMEID Key Contacts will meet specifically for the purpose of negotiating State SCAP funding levels for the next fiscal year during the first quarter (Oct, Nov, Dec) of each fiscal year.

3. EPA and NMEID agree that the deadline for completing SCAP negotiations is critical. Failure to reach a consensus for program activities and funding requirements within time constraints could result in no funding being made available, or substantively less funding than requested.

M. ARARs - The identification of Applicable, or Relevant and Appropriate Requirements (ARARs) for response actions at NPL sites is a critical component of the Superfund response process. The primary purpose of the identification of ARARs is to insure that the chosen remedy or non-time critical Removal Action for any specific site meets applicable, or relevant and appropriate standards, limitations, criteria and requirements of promulgated State and Federal environmental laws, provided they have been consistently applied across the State and do not result in a statewide prohibition of land disposal or on-site remedial action.

1. Applicable requirements are defined as those Federal and more stringent promulgated State requirements that legally regulate or address the activities, substances, or circumstances at the CERCLA site.

2. Relevant and Appropriate requirements are those Federal and more stringent, promulgated State requirements that, while not "applicable," regulate or address problems or situations sufficiently similar to those encountered at the CERCLA site that their use is well suited to the particular site.

3. There are three types of ARARs which the lead and support agency must identify: Contaminant-specific; action-specific; and location-specific.

4. The lead and support agency will discuss potential ARARs during the scoping of the RI/FS. The lead agency will request contaminant-and location-specific ARARs from the support agency no later than the time site characterization data is available. The support agency will provide ARARs in writing to the lead agency within 30 days of receipt of the lead agency request.

5. After the initial screening of remedial alternatives, and prior to initiation of the comparative analysis phase of the FS, the lead agency will request the support agency to provide action-specific ARARs. The support agency will respond in writing within 30 days of receipt of the lead agency request.

N. Administrative Record - CERCLA, as amended, requires the development of an Administrative Record to support all decisions on response actions. The Record will contain all information used by EPA or the State during the decision-making process.

1. NMEID agrees to compile the Administrative Record for each State-lead response action and submit that record to EPA with the public-ready Remedial Investigation/Feasibility Study. The Administrative Record will consist of those documents identified in OSWER Directive 9833.3, dated May 29, 1987, titled "Administrative Records for Decisions on Selection". EPA will be responsible for maintaining each Administrative Record, and assuring that a complete copy of that record is available at a repository near the site.

2. NMEID agrees that all documents compiled as part of the Administrative Record will be clearly marked as such prior to submittal to EPA.

3. Administrative Record documentation compiled by NMEID will be forwarded to:

Ms. Ursula Lennox
EPA Superfund Enforcement (6H-EE)
1445 Ross Avenue
Dallas, Texas 75202

4. EPA will be responsible for compiling the official Administrative Record for all other New Mexico NPL sites, and will provide the NMEID with a copy of each Administrative Record as it is completed.

5. Enforcement-sensitive information - Documents that might hinder the lead agency's ability to conduct an investigation, or interfere with an existing enforcement proceeding, are not part of the administrative record. Also, documents addressed to or written by an EPA attorney, Department of Justice, NMEID attorney, or New Mexico Attorney General should not be included in the record, even if not prepared by an attorney, but at an attorney's request.

0. Site-Specific Oversight

NMEID and EPA will decide on lead agency responsibilities on a site-by-site basis. The lead agency will be responsible for developing the following site-specific response documents:

- Community Relations Plan (which is updated at RD)
- Site Safety Plan
- Quality Assurance Project Plan for RI
- Quality Assurance Project Plan for RD/RA
- RI/FS Work Plan
- Draft and Final RI report
- Progress reports for 30/60/90 percent FS completion
- Draft, and public-ready FS report
- Endangerment Assessment
- *Draft and Final ROD
- RD Work Plan
- Progress reports for 30/60/90 percent RD completion
- RA Work Plan (includes RA Contingency Plan)
- RA Bidding Documents
- Plans and specifications for RA
- Detailed Cost Estimate for RA
- Operation and Maintenance Plan
- Pre-final and final RA Inspection reports
- Final Construction Report
- NPL Deletion Package

* EPA will be responsible for preparing the ROD for all New Mexico NPL sites. See Section II (I)(1-6) for State ROD concurrence procedures.

P. Enforcement - RESERVED

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Q. Intergovernmental Review

All funded remedial response actions initiated under the authority of CERCLA are subject to an intergovernmental review process pursuant to 40 CFR, Part 29. The intergovernmental review process is utilized to ensure full consideration of State and local concerns in decision-making on proposed financial assistance and direct Federal development projects.

1. The State of New Mexico has designated a single point of contact (SPOC) to receive, coordinate, and respond to requests for intergovernmental review, as follows:

Mr. Dean Olson, Director
Management and Program Analysis Division
Department of Finance and Administration
424 State Capitol Building
Santa Fe, New Mexico 87502
(505) 827-3885

2. PRPs are not subject to the intergovernmental review process. Therefore, PRP RI/FS and RD/RA activities are not subject to intergovernmental review notification procedures. Further, enforcement activities such as Administrative Orders, PRP negotiations, litigation, etc., also are not subject to intergovernmental review.

3. State/Federal-lead RI/FS - A 60-day comment period on the proposed funding for a RI/FS will begin 5 days after the date that NMEID or EPA sends a letter to the State SPOC explaining the proposed action. The letter will give the name and location of the site, the site's rank on the NPL, the nature of the problem at the site, a description of the activities to be undertaken under the RI/FS, the estimated cost, the date on which the proposed RI/FS would begin, an estimate of when the RI/FS is expected to be completed, and the LDEQ and/or EPA Project Officer to be contacted for additional information. The timing of Intergovernmental Review letters must take into consideration the SCAP schedule for award of funds.

4. State/Federal-lead RD/RA - A 60-day comment period on the proposed funding for RD/RA will begin 5 days after the date NMEID or EPA sends the FS containing the proposed remedy to the State SPOC. This 60-day comment period will run concurrently with the public comment period on the FS and the proposed remedy. The letter will give the name and location of the site, the site's rank on the NPL, a description of the proposed remedy, the estimated cost, the estimated timeframe of RA activities, and the NMEID and/or EPA Project officer to be contacted for additional information.

5. Preliminary Assessments and Site Inspections (PA/SI) - At the inception of a CA for PA/SIs, the State will send a letter to the State SPOC for intergovernmental review. This letter will describe the purpose and tasks involved in conducting PA/SI activities, the number of PAs and SIs to be undertaken, and the estimated cost for these activities. A 60-day comment period will begin 5 days after the date the State sends the letter to the SPOC. It should be noted that intergovernmental review has already been performed for New Mexico's Multi-Site Cooperative Agreement and its predecessor (Resource Conservation and Recovery Act §3012 grant) for PA/SI activities funded by EPA. The timing of Intergovernmental Review letters must take into consideration the SCAP schedule for award of funds.

6. Depending on the lead designation, site-specific comments received from the State SPOC must be addressed, in writing, within 15 days of receipt by either EPA or NMEID.

7. SPOC comments will be made a part of the official administrative record, and will be taken into consideration in the decision-making process for both EPA and NMEID.

R. Procurement Administration

1. The NMEID agrees to perform all State procurement activities under Federal Superfund Cooperative Agreements in accordance with the policies and procedures outlined in EPA documents and regulations entitled:

- State Participation in the Superfund Remedial Program, February 1984 (a.k.a. the "Purple Book");
- State Participation in the Superfund Program, Volume II, State Procurement Under Superfund Remedial Cooperative Agreements, March 1986 (a.k.a. the "Pink Book");
- 40 CFR Part 300, the National Oil and Hazardous Substances Pollution Contingency Plan, (the NCP);
- 40 CFR Part 30, EPA's General Regulation for Assistance Programs;
- 40 CFR Part 32, Debarment and Suspension; and
- 40 CFR Part 33, Procurement Under Assistance Agreements.

2. NMEID agrees to allow EPA pre-award review of all proposed procurement actions in excess of \$10,000 that will use EPA funds. EPA will review and comment on NMEID procurement submittals within 15 days of receipt.

3. EPA's oversight of NMEID procurement actions includes:

a. A review of the State's award recommendation for adequate evidence of the selected engineering firm's or construction contractor's capability to perform the work properly;

b. A review of the State's compliance with guidelines for utilizing Minority Business Enterprises and Women's Business Enterprises;

c. Obtaining evidence from the State that the public solicitation process conforms with Federal, State, and local procurement regulations;

d. Obtaining evidence from the State that all solicitation and/or bidding disputes have been resolved, or obtaining details of any unresolved disputes; and

e. In procurement actions awarding subagreements for construction and/or engineering services, EPA will review both the tabulation of bid results and the selection ranking, respectively, developed by the NMEID.

4. NMEID agrees to request prior authorization and approval of non-competitive awards (sole-source contracts) in excess of \$10,000 under 40 CFR 33.605(d).

5. NMEID is encouraged to seek advice from EPA at any stage of any procurement action.

6. All NMEID procurement activities, documentation, program communication, and planning must be coordinated with the EPA and NMEID Key Contacts identified in Section II (B) and (C).

7. EPA will provide NMEID with all guidance, policy, and regulatory manuals; including amendments and appendices.

S. NPL Site Deletion Package

The lead agency will prepare an NPL site deletion package upon satisfactory completion of the RA. The support agency will review and comment to the lead agency on the deletion package within 21 days of receipt. EPA will perform all other activities required for deletion of the site from the NPL.

T. Resolution of Disputes

In the event of disputes between EPA and NMEID concerning site activities, the persons designated by each agency as primary contacts, or in their absence, alternate contact persons, will attempt to promptly resolve such disputes. If disputes cannot be resolved at this level within 30 days, the problem will be referred to the supervisors of these persons for further EPA/State consultation. This supervisory referral and resolution process will continue, if necessary, to the level of Director, NMEID; and Director, Hazardous Waste Management Division, EPA, Region VI.

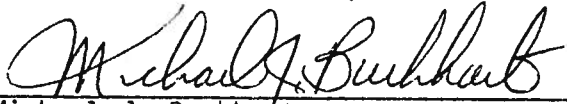
U. Execution and Modification

This SMOA shall take effect upon execution by EPA and NMEID. It shall remain in effect for the duration of the State and EPA CERCLA programs addressed herein, unless terminated by mutual agreement of the agencies.

NMEID and EPA may modify this Agreement from time-to-time, in order to simplify and/or refine procedures. Each agency will keep the other informed of any relevant proposed modifications to its basic statutory or regulatory authority, forms, procedures, or priorities. This SMOA shall be revised as necessary by the adoption of such modifications.

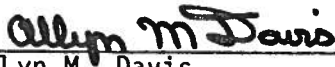
Executed and agreed to in duplicate on the 17 day of December, 1987.

For the State of New Mexico Environmental Improvement Division:



Michael J. Burkhaft
Director

For the Environmental Protection Agency:



Allyn M. Davis
Director
Hazardous Waste Management Division

SUPERFUND MEMORANDUM OF AGREEMENT
BETWEEN THE STATE OF NEW MEXICO and
EPA, REGION VI

ATTACHMENT 1

	<u>SITE NAME</u>	<u>LEAD</u>	<u>MSCA CONTACT</u>	<u>COMM.RELATIONS</u>	<u>TECHNICAL</u>	<u>ENFORCEMENT</u>
1.	ATSF	EPA	M. Satterwhite	E. Greeney		T. Underwood
2.	Homestake Mining	EPA	M. Satterwhite	N. McPherson		U. Lennox
3.	South Valley	EPA	M. Satterwhite	E. Greeney	K. O'Reilly	T. Underwood
4.	United Nuclear	EPA	M. Satterwhite	E. Greeney		M. Ramesh