MUTUAL CONSENT AGREEMENT

This consent agreement is entered into between the United States Department of Energy (DOE), Nevada Operations Office, and the Department of Conservation and Natural Resources, Division of Environmental Protection (DEP), State of Nevada. This document represents the understanding and commitments of both parties relative to the storage and management of on-site generated mixed (hazardous and radioactive) wastes.

Whereas the DOE Nevada Operations Office is responsible for initiating characterization work to determine the extent to which historic activities have contaminated various sites on the Nevada Test Site (NTS); and

Whereas the DOE Nevada Operations Office is responsible for the remediation of all sites on the NTS, which have been characterized as having been contaminated; and

Whereas the DOE Nevada Operations Office is legally responsible for the proper management of all wastes generated on the Nevada Test Site from operational, characterization, and remediation activities, including those wastes which are by definition hazardous wastes in accordance with state and federal hazardous waste statutes and regulations; and

Whereas the Federal Facility Compliance Act (FFCA) authorizes DOE, until October 8, 1995, to store existing and operationally identified newly generated mixed wastes, which would otherwise be subject to the storage prohibition under the Land Disposal Restriction (LDR) provisions of the Resource Conservation and Recovery Act (RCRA), for which there is no designated treatment capacity; and

Whereas the DOE Nevada Operations Office will almost certainly generate LDR prohibited low level mixed wastes as a result of their Environmental Restoration (ER) characterization and remediation activities; and

Whereas the DOE Nevada Operations Office is in the process of reevaluating all of its operational activities and it is highly probable that discrete sources of operationally generated LDR mixed wastes will be identified; and

Whereas the DOE Nevada Operations Office does not presently have an authorized (ie. permitted, interim status, or operated under a consent agreement) storage facility for the management of newly generated low level mixed wastes from any source; and

Whereas the DOE Nevada Operations Office has submitted an application for a RCRA treatment, storage and disposal (TSD) permit, but this application does not include a request to permit storage facilities for newly generated low level mixed wastes; and

Whereas the NDEP, under NRS 459.565, has the authority to order the owner or operator of a facility to conduct site assessment and remediation activities to reduce or eliminate a hazard; and

Whereas the DOE Nevada Operations Office and the NDEP are currently in the process of negotiating a bilateral Federal Facility Agreement (FFA) for the characterization and environmental restoration activities at the NTS; and

Whereas the NDEP and the DOE concur that it is not in the best interests of either party to delay site characterization and remediation actions, based on the possibility that such actions may generate a LDR low level mixed waste for which there are presently no legally authorized storage facilities on site; and

Whereas the DOE Nevada Operations Office does presently operate the Transuranic (TRU) mixed waste storage pad under a Settlement Agreement with the Division; and

Whereas the TRU mixed waste storage pad is adequately designed and has sufficient capacity to appropriately manage additional volumes of any LDR mixed wastes generated on-site in the near term without impacting the TRU mixed wastes currently in storage.

Now, therefore, after having given due consideration to the previous facts both parties agree to the following:

A) DOE will continue its evaluation of existing operations and the site characterization activities in accordance with approved site characterization plans. Future schedules for remediation actions will be determined based on the results of the characterization activities and the FFA being negotiated; and

B) DOE will, within one year of the date of this agreement, prepare and submit an addendum to modify its existing Part B application to include a low level mixed waste storage facility. The initial modification request will limit the design capacity of the facility to that volume of mixed waste anticipated to be generated from on-site activities. Should DOE Nevada Operations Office propose to store low level mixed wastes in the future from other sources, DOE will comply with the appropriate State permitting process.

C) DOE will operate and manage this existing facility in conformance with applicable RCRA requirements and acknowledges that failure to do so makes them subject to appropriate penalties resulting from violations for noncompliance with RCRA requirements, as provided for in the FFCA.

D) DOE will maintain the records related to these wastes at the AREA 5 Radioactive Waste Management Site (RWMS) facility. These records must contain the following characterization information for all wastes 1) RCRA hazardous constituent concentrations and 2) the radionuclide data that justifies the waste being classified as a mixed waste, instead of just a hazardous waste. The radiological data will be provided as a matter of comity.

E) The NDEP authorizes DOE to utilize the unused portion of the existing TRU mixed waste storage pad as the designated facility to store and manage all mixed wastes generated from on site activities until either 1) a permitted storage facility is available or 2) a designated facility is authorized under the FFA, whichever occurs first; and

F) The NDEP will not take any enforcement action for matters covered by this Agreement, provided DOE is in compliance with the terms and conditions of the Agreement.

G) The terms and conditions of this Agreement will expire upon this facility, or a new facility to which these wastes are transferred to, becoming regulated under 1) a RCRA permit or 2) the terms of the Federal Facility Agreement presently being negotiated, which ever occurs first.

Now, therefore, the parties hereto have signed this agreement in recognition of their commitment to fulfilling the obligations committed to herein through good faith negotiations.

L.H. Dodgion, Administrator
Division of Environmental Protection

1-5-95
Date

Nick C. Aquilina, Manager
U.S. Department of Energy

1-14-95
Date

L. H. DODGION
Administrator

STATE OF NEVADA
BOB MILLER
Governor

PETER C. MORROS
Director

Administration	(702) 687-4670
Air Quality	687-5065
Mining Regulation and Reclamation	687-4675
Water Quality Planning	687-5883
Water Pollution Control	687-5670
Fax	687-5856

Waste Management	687-5872
Chemical Hazards Management	687-5872
Federal Facilities	687-5872
Fax	885-0868

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

DIVISION OF ENVIRONMENTAL PROTECTION

Capitol Complex
333 W. Nye Lane
Carson City, Nevada 89710

January 6, 1994

Nick Aquilina, Manager
Department of Energy
Nevada Operations Office
P.O. Box 98518
Las Vegas, NV 89193-8518

RE: MUTUAL CONSENT AGREEMENT for the Storage of Low Level LDR Mixed Wastes

Dear Mr. Aquilina:

This agreement will enable DOE/NV's EM program to continue with the characterization and remedial actions being initiated on the NTS without being placed in a possible position of being in violation of RCRA LDR provisions. The development of, and entering into this agreement demonstrates that cooperation between our programs is working.

Enclosed are two signed originals of the agreement. Please sign and return one copy to our office. The Agreement will be considered effective on the date of your signature.

Sincerely,

L.H. Dodgion, P.E.
Administrator

LHD/PJL/db

Enclosures

cc: P. Liebendorfer
D. Elle, DOE/EPD

ACTION	EPD
INFO	MGR
MGR	✓
AMA	
AMESSH	✓
AMO	
AMEM	
OCFO	

Department of Energy
Nevada Operations Office
P.O. Box 98518
Las Vegas, NV 89193-8518

JAN 2 6 1994

L. H. Dodgion, Administrator
Nevada State Division of
Environmental Protection
333 West Nye Lane
Carson City, NV 89710

MUTUAL CONSENT AGREEMENT FOR THE STORAGE OF LOW LEVEL LAND DISPOSAL RESTRICTED (LDR) MIXED WASTE

The DOE Nevada Operations Office is pleased to transmit the enclosed subject agreement. I understand that the fully executed agreement allows us to continue with the characterization and subsequent remedial actions at the Nevada Test Site without potentially violating the Resource Conservation and Recovery Act LDR provisions. I appreciate the time and attention that the Nevada Division of Environmental Protection is willing to give these matters and especially your cooperative approach in negotiating this agreement.

Nick C. Aquilina
Manager

EPD:MEG-487

Enclosure:
As stated

cc w/o encl:
P. J. Liebendorfer, NDEP,
Carson City, NV

AMEM (R)
AMEM (RF)
MGR (RF)

EM.940127.0001

JAN 26 1994

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A/DAMEM
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O'Neill
1/24/94
A/AMEM
Fiore
1/26/94
AMEM
Diane
1/26/94
(5-7063)

Jill E. Lytle, Deputy Assistant Secretary for Waste Management, DOE/HQ (EM-30) FORS

MUTUAL CONSENT AGREEMENT FOR STORAGE OF LOW-LEVEL MIXED WASTE BETWEEN DOE/NV AND THE STATE OF NEVADA

Enclosed is a copy of the executed agreement and transmittal letters between DOE/NV and the state of Nevada that allows DOE/NV to store low-level mixed waste generated at the Nevada Test Site (NTS) on the existing transuranic waste storage pad in Area 5 while we plan, design, permit and, if necessary, construct a mixed waste storage unit.

This agreement allows us to continue with characterization and remedial actions at NTS without potentially violating the Resource and Conservation Recovery Act land disposal restriction provisions. Furthermore, should DOE desire to store low-level mixed waste generated by other facilities at the NTS, the agreement provides that we may do so through the appropriate state permitting process.

We recognize that the agreement was signed approximately seven weeks after your office provided verbal approval to us. The final review process within the state was revised at that time; consequently, state signature on the agreement was delayed. Please be assured that the review process did not result in any substantive changes to the agreement.

We are pleased that the state indicated that it believes this agreement demonstrates that cooperation between our programs is working. We have worked hard to develop this relationship, and we will continue to place priority on maintaining the highest degree of cooperation, credibility, and trust with our regulators.

If you have any questions regarding the enclosed agreement, please contact G. Leah Dever, Acting Deputy Assistant Manager for Environmental Restoration and Waste Management, at (702) 295-3367.

Joseph N. Fiore, Acting Assistant Manager
for Environmental Restoration &
Waste Management

AMEM:GLD

Enclosure:
As stated

cc w/encl:
R. P. Whitfield, DOE/HQ (EM-40) FORS
S. P. Cowan, DOE/HQ (EM-30) TREV
L. H. Harmon, DOE/HQ (EM-32) TREV
W. D. Black, DOE/HQ (EM-322) TREV
J. O. Boda, DOE/HQ (EM-322) TREV
R. G. Lightner, DOE/HQ (EM-45) TREV
W. J. Dennison, DOE/HQ (GC-11) FORS
D. T. Ruge, DOE/HQ (GC-11) FORS
W. R. Roy-Harrison, DOE/HQ (DP-624) GTN
R. P. Berube, DOE/HQ (EH-20) FORS
A. C. Lawrence, DOE/HQ (EH-221) FORS
H. W. Dickson, REECo, Las Vegas, NV
E. W. Kendall, REECo, Las Vegas, NV
R. L. Dodge, REECo, Las Vegas, NV
R. M. Madison, RSN, Las Vegas, NV
J. G. Yeasted, IT, Las Vegas, NV

bcc w/encl:
S. A. Mellington, ERD, DOE/NV, Las Vegas, NV
R. C. Wycoff, ERD, DOE/NV, Las Vegas, NV
L. J. O'Neill, WMD, DOE/NV, Las Vegas, NV
all WMD staff, DOE/NV, Las Vegas, NV
WMD File Book

bcc w/o encl:
S. A. Hejazi, OCC, DOE/NV, Las Vegas, NV
D. R. Elle, EPD, DOE/NV, Las Vegas, NV
M. A. Marelli, HPD, DOE/NV, Las Vegas, NV
J. D. Stewart, NTSO, DOE/NV, Mercury, NV