

Letter Agreement to Modify the Federal Facility Agreement and Consent Order

In March 1999 and March 2005 the National Nuclear Security Administration Nevada Site Office (NNSA/NSO), the Nevada Division of Environmental Protection (NDEP) and the U. S. Department of Defense (DoD) agreed to changes in the May 10, 1996 version of the *Federal Facility Agreement and Consent Order* (copies of these two letter agreement modifications are included for your reference). The March 1999 modification was signed to change language in paragraph XII.4.b, from "...*setting of deadlines by NDEP by March 15.*" to read "...*that NDEP will establish deadlines within 30 days of receipt of the final proposed DOE and/or DoD milestones...*". The March 2005 modification was intended to change the language throughout the Agreement from "...*Quarterly Meetings*" to "...*Semi-Annual Meetings*". This modification was signed with the editing markups still visible in the modification, and inserted the previous "...*March 15*" date (which had been removed by the March 1999 modification) as well as the revised verbiage stating "...*within 30 days of receipt...*"

The NNSA/NSO has discussed the error with their Office of Chief Counsel and upon their recommendation, we are requesting that the March 1999 and March 2005 Letter Agreements to Modify the *Federal Facility Agreement and Consent Order* be rescinded and the attached Letter Agreement Modification replace the two previous Modifications.

In the interim, until the Agreement is revised, the parties intend to comply with the provisions as described below. These changes affect the timeframe for NDEP to establish deadline dates for final proposed milestones as well as the frequency and required topics of meetings. The parties have agreed to hold meetings Semi-Annually (instead of quarterly) in February and August. Additionally, the meeting requirements have been changed to accommodate the new schedule.

Paragraph VII.1 shall be changed to read as follows:

Following the effective date of this Agreement, DOE and DoD shall, on or before the 30th calendar day following the end of each calendar quarter, submit a written or electronic progress report to NDEP that describes the actions taken during the calendar quarter just ended. This information will serve as a partial basis for the discussions at the semi-annual meetings discussed in paragraph XII.4.

Paragraph VII.6 shall be changed to read as follows:

Semi-annual meetings will be held in February and August of each Fiscal Year in part to discuss any issues raised in or by the quarterly progress reports. These meetings will also serve to initiate the prioritization discussions identified in Part XII, Corrective Action Investigations/Corrective Actions. Parties will attempt to resolve issues during the semi-annual meetings or through other meetings per Paragraph VII.7. Resolution of issues will

be documented, and unresolved issues will be discussed at or before the next semi-annual meeting.

Paragraph VII.7 shall be changed to read as follows:

Parties may meet at times other than the semi-annual meetings as required, for example, if there are events, such as changes in available funding that might affect milestones, especially if those milestones are in the current fiscal year.

Paragraph XII.1 shall be changed to read as follows:

Within sixty (60) calendar days following the signing of this Agreement by the last party to do so, the parties shall meet to review Appendices II-IV and concur on the classification of all presently identified CAUs to insure all known CAUs are placed in the appropriate appendix, and where appropriate, due dates and deadlines established for existing and proposed activities. Following this initial meeting, the semi-annual meeting process outlined in paragraphs XII.3 and XII.4 will begin.

Paragraph XII.3 shall be changed to read as follows:

The parties shall review and update Appendices II through IV as required at semi-annual meetings or through formal correspondence. DOE and DTRA:

XII.3.a. Shall provide NDEP with a list of appendices changes not requiring NDEP approval made since the last semi-annual meeting;

XII.3.b. At any semi-annual meeting or through formal correspondence, may propose changes to the milestones in Appendix III, Corrective Action Investigations/Corrective Actions; move CAUs or CASs from Appendix II, Corrective Action Sites/Units or Appendix III, Corrective Action Investigations/Corrective Actions, to Appendix IV, Closed Corrective Action Units; or request any other changes affecting CAUs or CASs in Appendix III, Corrective Action Investigations/Corrective Actions or Appendix IV, Closed Corrective Action Units.

Paragraph XII.4 shall be changed to read as follows:

Following the transfer of a CAU from Appendix II, Corrective Action Sites/Units, to Appendix III, Corrective Action Investigations/Corrective Actions milestones, associated due dates and deadlines may be proposed by DOE and/or DoD but shall be established by NDEP according to the following semi-annual meeting schedule listed in paragraphs XII.4.a through XII.4.b or through formal correspondence. Except as noted in paragraph XII.5, deadlines may be established for the submittal of work plans, CADDs, CAPs, and completion of corrective actions within the FY+2 planning window. For those work plans, CADDs, CAPs, and corrective actions for which completion may fall outside the planning window (FY+2), interim deadlines may be established within the FY+2

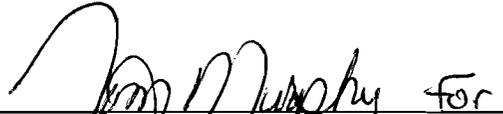
planning window. All deadlines other than those set forth explicitly in this Agreement shall be established pursuant to paragraphs XII.4 and XII.5.

XII.4.a. During the first semi-annual meeting held during the fiscal year, the parties shall review and reconsider established priorities, milestones, and associated due dates and deadlines for the current fiscal year, taking into consideration the Approved Funding Program and the factors listed in section 1.3 of Appendix VI, Corrective Action Strategy. The parties shall also initiate the process to establish priorities, milestones, and associated due dates for CAUs for FY+2. At this meeting, DOE will propose CAU milestones for target and planning funding levels, as appropriate. DOE may choose to develop milestones above the target funding level, but shall identify which proposed milestones are above the target case. NDEP, under its authority, may establish deadlines for any milestones for DOE and DoD activities subsequent to the prioritization process established in Appendix VI, Corrective Action Strategy. DoD asserts it is not able to commit to these FY+2 enforceable dates. Prioritized CAUs with their associated milestones, due dates, and/or deadlines shall be listed in Appendix III, Corrective Action Investigations/Corrective Actions. Parties reserve the right to invoke paragraph IX.1 if an issue is not resolved. Subsequent to this meeting, input on the proposed priorities will be sought from the public and the Community Advisory Board. DOE and DoD, in cooperation with NDEP, will develop a final prioritization of CAUs for CAIs and corrective actions. NDEP will establish deadlines within 30 days of receipt of the final proposed DOE and/or DoD milestones for all prioritized CAU activities it asserts must be incorporated into the FY +2 Budget Request. If the parties cannot agree on deadlines, then Part IX, Informal Dispute Resolution and Appeal Procedure, may be invoked.

XII.4.b. During the second semi-annual meeting held during the fiscal year, the parties shall review and reconsider established priorities, milestones, and associated due dates and deadlines for CAUs considering factors established in Appendix VI, Corrective Action Strategy, and the President's budget for FY+1. Parties reserve the right to invoke paragraph IX.1 if an issue is not resolved.

XII.4.c. This section is no longer applicable and will be deleted. Requirements from this section have been incorporated in Section XII.4.b.

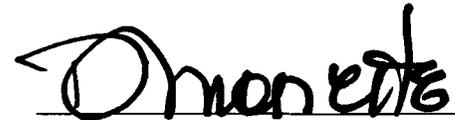
State of Nevada:



Leo M. Drozdoff, Administrator
Department of Conservation and Natural Resources
Division of Environmental Protection

12/6/2006
Date

National Nuclear Security Administration:



Jay H. Norman, Acting Manager
Nevada Site Office

11.22.06
Date

Defense Threat Reduction Agency:



James A. Tegnela
Director

14 Jan 07
Date

Department of Energy:



Michael Owen, LM-1
Office of Legacy Management

01/03/07
Date