

MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN
THE U.S. DEPARTMENT OF ENERGY (DOE) AND THE
MINE SAFETY AND HEALTH ADMINISTRATION,
U.S. DEPARTMENT OF LABOR

I. INTRODUCTION

A. Background

In 1979, Congress authorized the U.S. Department of Energy's (DOE) Waste Isolation Pilot Plant (WIPP). The WIPP facility, located 26 miles southeast of Carlsbad, N.M., was constructed during the 1980s. WIPP is a research and development facility tasked with the safe disposal and storage of radioactive transuranic (TRU) waste resulting from U.S. defense activities and programs involving nuclear weapons research and testing. Project facilities include disposal rooms mined 2,150 feet underground in a 2,000 foot thick salt formation. The safety and health of all workers at the site, including personnel underground, is of paramount importance in carrying out activities at the WIPP site.

Under the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 801, et seq. (Mine Act), the Mine Safety and Health Administration (MSHA) of the U.S. Department of Labor (DOL) is responsible for conducting inspections and investigations and developing and enforcing regulations and standards to protect the safety and health of miners for all underground mines in the United States. In carrying out this responsibility, MSHA has developed technical expertise in mine safety and health issues.

In 1987, DOE and MSHA entered into a Memorandum of Understanding under which, MSHA was to conduct "periodic" inspections of WIPP mining operations and provide the results to the WIPP project office.

Construction of WIPP was completed in 1991, and in 1992, Congress passed the Waste Isolation Pilot Plant Land Withdrawal Act Public Law No. 102-579, 106 Stat. 4777 (October 30, 1992) (WIPP Land Withdrawal Act) to transfer ownership of the land surrounding WIPP to the DOE, and to authorize the Department to begin underground experiments using TRU waste. Recognizing MSHA's expertise and experience with underground mine facilities, the WIPP Land Withdrawal Act included a provision requiring MSHA to inspect WIPP not less than four (4) times each year and in the same manner as it evaluates mines under the Mine Act.

B. Purpose

DOE and MSHA enter into this Memorandum of Understanding (MOU) for the purpose of delineating certain areas of authority and responsibility, to clarify guidelines, and to enhance communication and coordination between DOE and MSHA for the purpose of improving safety and health. Both agencies enter into this agreement to facilitate the effective implementation of the WIPP Land Withdrawal Act by formalizing a working relationship between DOE and MSHA.

With regard to MSHA, Section 11(a) of the WIPP Land Withdrawal Act states that:

Mine Safety and Health Administration - The Mine Safety and Health Administration of the Department of Labor shall inspect WIPP not less than 4 times each year and in the same manner as it evaluates mine sites under the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), and shall provide the results of its inspection to the Secretary [of DOE].

With regard to DOE, Section 11(a) of the WIPP Land Withdrawal Act states that:

The Secretary [of DOE] shall make the results of such inspections publicly available and shall take necessary actions to ensure the prompt and effective correction of any deficiency, including suspending specific activities as necessary to address identified health and safety deficiencies.

C. Authorities

This MOU is consistent with and is entered into under the following statutory authorities: The WIPP Land Withdrawal Act, as amended by Public Law 104-201, H.R. 3230, 104th Congress, September 23, 1996; and the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 801 et seq.

II. MSHA RESPONSIBILITIES

To carry out the functions of MSHA at the WIPP facility in the same manner that MSHA inspects mines under the Mine Act, the following MSHA standards at Title 30 of the Code of Federal Regulations will apply:¹

Part 57, Safety and Health Standards - Underground Metal and Nonmetal Mines

¹ To the extent that WIPP mine rescue teams serve as backup rescue teams at other underground metal and nonmetal mines, MSHA shall enforce mine rescue team standards (Part 49) for the rescue teams at those underground metal and nonmetal mines.

Part 62, Occupational Noise Exposure

In addition, DOE could agree voluntarily to incorporate MSHA standards, such as part 49, Mine Rescue Teams.

A. Inspections

MSHA will conduct health and safety inspections at the WIPP facility at least four (4) times a year and no less than one (1) full inspection per quarter each Fiscal Year.

1. For administrative purposes, MSHA will assign the WIPP facility the legal identity number 29-01857 for purposes of tracking inspection activity and sampling results related to MSHA health and safety standards.
2. The inspection will include a review of any relevant plans in use at the facility.
3. A representative of DOE/ WIPP and a representative authorized by WIPP employees will be given an opportunity to accompany the MSHA inspector during the physical inspection of WIPP and to participate in any pre-inspection or post-inspection conference. If there is not an employee representative, the MSHA inspector will consult with a reasonable number of WIPP employees concerning matters of health and safety at the WIPP facility.
4. MSHA will not provide advance notice to WIPP of any inspection.
5. If MSHA identifies a safety or health deficiency, a citation for each deficiency will be issued to the highest ranking DOE/WIPP official onsite, or other DOE Designee. The citation will include an explanation of the specific deficiency noted, the applicable MSHA standard, and a period of time in which DOE should correct the deficiency.² MSHA can provide DOE with an associated penalty value - the penalty MSHA would assess an operator for a similar deficiency at a mine – solely for purposes of Agency reporting and monitoring.
6. The results of all MSHA inspections conducted at WIPP will be published on MSHA's agency website at <http://www.msha.gov/drs/drshome.htm> and citations will be posted at WIPP.

² MSHA will not assess penalties against DOE for health and safety standard deficiencies and the parties recognize that absent an explicit statement by Congress to the contrary, federal agencies are not subject to the fines and penalties that a statute imposes on private entities found in violation of its requirements. *See e.g. Department of Energy v. Ohio*, 503 U.S. 607 (1992).

7. MSHA will conduct follow-up inspections at the WIPP facility to confirm that DOE posted the citations at WIPP and determine whether the deficiencies identified during the inspection were corrected.
8. If MSHA receives any health or safety complaints regarding WIPP while performing work under this MOU, it will transmit the complaint to DOE. DOE agrees to inform MSHA of the disposition of the complaint. MSHA may conduct an inspection at WIPP at any time.

B. Radiological Safety and Health and Security

MSHA will conform to all radiological safety and health and security regulations and requirements of DOE while performing services in connection with this Agreement.

III. DOE RESPONSIBILITIES

A. Personnel Training

DOE shall provide appropriate radiological safety and health training to MSHA personnel necessary for the performance of their functions under this MOU. Pursuant to 10 CFR Part 835, these MSHA personnel will be maintained as radiological workers in the WIPP Radiological Protection Program, which monitors doses of those who enter the facility. (See attachment).

DOE shall provide required safety and health training for WIPP facility employees.

B. Property

DOE shall furnish the use of working and storage space and equipment, including office equipment, radiological monitoring and specialized personal protective equipment necessary for the performance of this MOU, except equipment normally provided in the course of MSHA's regular mission.

C. Accidents, Emergencies and Technical Assistance

DOE will be responsible for investigating all accidents and fatalities at the WIPP facility and directing rescue and recovery efforts. DOE will inform MSHA, as soon as practicable, of any accident, fatality, and any injury that has a reasonable potential to cause death. Upon request by DOE, MSHA will provide technical assistance in the investigation of accidents, as appropriate.

In the event of an accident or emergency, DOE will be responsible for all decision making and actions, but will rely on MSHA's expertise, as appropriate. MSHA will provide enforcement personnel to respond to the CBFO Emergency Operations Center, as appropriate. MSHA enforcement personnel will consult with appropriate MSHA experts as circumstances may dictate.

IV. ADMINISTRATION

This MOU will be administered on behalf of DOE by the Manager, Carlsbad Field Office and on behalf of MSHA by the District Manager, South Central District.

A. Period of Agreement, Amendment and Termination

The MOU shall continue in effect from the date of the last signature, unless terminated by the mutual, written consent of both agencies or terminated by either agency by serving written notice on the other agency at least thirty (30) days prior to the date of termination.

The MOU may be amended by the mutual, written agreement of both agencies.

This MOU takes effect on the date of the last signature.

B. Notice

Any notification required by this MOU will be deemed sufficient if delivered to:

DOE, Carlsbad Field Office Manager, or other DOE Designee

MSHA, District Manager for the South Central District or Designee

A contact list will be established for MSHA/WIPP personnel.

C. Effect of Agreement

This MOU supersedes the existing MOU between DOE and MSHA signed in 1987. Nothing in this MOU is intended to diminish or otherwise affect the authority of either agency to act in a manner it deems advisable to implement its respective regulatory and statutory functions.

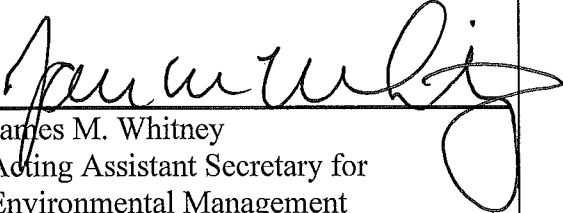
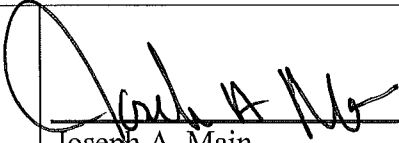
Accordingly, nothing in this MOU shall be interpreted as limiting, superseding, or otherwise affecting either agency's normal operations or decisions in carrying out its statutory or regulatory duties. This MOU does not limit or restrict either agency from participating in similar activities or arrangements with other entities.

This agreement does not itself authorize the expenditure or reimbursement of any funds. Nothing in this agreement obligates the parties to expend appropriations or enter into any contract or other obligations.

This agreement will be executed in full compliance with all applicable laws, including the Privacy Act of 1974, the Freedom of Information Act, and the Federal Records Act.

This MOU constitutes the entire agreement between the parties concerning this subject matter and supersedes any prior understanding, written or oral.

The following signatures constitute acceptance of this agreement by the Department of Energy and the Department of Labor:

 James M. Whitney Acting Assistant Secretary for Environmental Management U.S. Department of Energy	 Joseph A. Main Assistant Secretary of Labor for Mine Safety and Health U.S. Department of Labor
<u>October 7, 2014</u> Date	<u>October 7, 2014</u> Date