

Contract No. DE-AC05-96OR22464

APPENDIX D

AGREEMENT REGARDING RCRA PERMITS

AGREEMENT REGARDING RCRA PERMITS

Whereas, on May 8, 1990, the Secretary of Energy issued SEN 22-90 which set forth DOE's policy regarding signatures on permits under the Resource Conservation and Recovery Act (RCRA).

Whereas, Lockheed Martin Energy Research Corporation (LMER) may, from time to time, become the co-operator for one or more RCRA permits issued to the Oak Ridge National Laboratory.

Whereas, LMER is willing to accept, subject to the terms and conditions of this Agreement regarding RCRA Permits, the designation of "co-operator" for execution of such RCRA permits, reports and other documentation; and

Whereas, the purpose of this Agreement is to document understandings reached by the parties on their respective roles and responsibilities for compliance with RCRA at the Government-provided facilities ("Facilities") managed by LMER for DOE and not to amend the substantive terms and provisions of the Contract.

NOW THEREFORE, the United States Department of Energy and LMER agree as follows:

This Agreement is based on the fact that there are some aspects of facility operation (such as capital expenditure and other funding, policy and scheduling decisions, and general oversight) for which DOE is responsible, and other aspects of facility operation (such as the daily hands-on conduct of waste management activities and implementation of approved plans, schedules, and budgets) for which LMER or both DOE and LMER are responsible.

1. RCRA Permits

- a. Where, under RCRA, execution of a permit, permit application, report or other documentation is required by the "owner" DOE will sign as owner; where the same is required by the "operator" DOE will sign as operator, and LMER will sign as co-operator. The following explanatory statement will accompany the dual signatures of DOE and LMER (either in the permit application or the transmittal letter to the regulatory agency):

"The Department of Energy has signed as "owner and operator" and Lockheed Martin Energy Research Corporation (LMER) has signed as cooperator, this document for the permitted facility. The Department has determined that dual signatures best reflect the actual apportionment of responsibility under which the Department's RCRA responsibilities are for policy, programmatic, funding and scheduling decisions, as well as general oversight; and, the contractor's RCRA responsibilities

for day-to-day operations, (in accordance with general directions given by DOE as part of its general oversight responsibility), including but not limited to, the following responsibilities: waste analyses and handling, monitoring, record keeping, reporting, and contingency planning. For purposes of the certification required by 40 C.F.R. Section 270.11(d), the Department's and LMER's representatives certify, to the best of their knowledge and belief, the truth, accuracy and completeness of the application for their respective areas of responsibility."

- b. DOE and LMER will use their best efforts to secure written permit terms and formal enforcement understanding with each state and federal agency involving a RCRA permit application or compliance agreement that recognizes the principles set forth in 1.a and 3.a. in general and in particular that LMER's permit obligations as "co-operator" are not co-extensive with those of DOE as owner and operator. Further, any compliance or enforcement action against LMER (whether DOE is also a named party or not) requiring specific performance of an act or undertaking beyond LMER funding authorization or responsibilities as set forth in La shall be deemed a compliance action against the DOE as the real party in interest and the DOE shall in good faith recognize the same and take appropriate legal action to protect LMER. This Agreement does not alter the existing contractual legal status of the Parties under the Contract. LMER specifically reserves the right to refuse to sign as co-operator any permit not acceptable to it and which is inconsistent with the Contract, the commitments set forth in this Agreement, or evaluations of funding needs.

2. Interactions with the Regulatory Agencies

- a. The parties agree that the specific responsibilities of DOE and LMER regarding compliance-deliverable documents are as stated in a document entitled "Responsibilities for RCRA Compliance-Deliverable Documents," which is attached hereto and incorporated herein as Attachment 1. Attachment I may be amended at any time by mutual agreement of the parties. In the event that DOE fails in a timely manner (including all time periods referred to in Attachment 1) to take action necessary for compliance in a matter for which LMER has joint responsibility, LMER may take such action as it deems appropriate and as authorized under the Contract.
- b. LMER shall assume the lead responsibility for routine interaction with the regulatory agencies involving the ongoing operations of the Facilities. These interactions shall include meetings and other consultations to resolve interpretation of regulatory requirements (which do not have policy implications for other DOE facilities; those interpretations which have policy implications will be handled, in a 2-timely manner,

in accordance with paragraph c. below) and, subject to the availability of funds, to obtain agreement with the regulators on plans and implementation schedules for meeting regulatory requirements. LMER shall also be responsible for arrangements for inspections by the regulators of the ongoing operations at the Facilities. DOE will have the opportunity to be present and participate in all meetings or other interactions with the regulators where plans, schedules, projects, or activities which require additional funding will be discussed. Any agreement containing commitments which necessitate additional funding must be approved by DOE before its execution.

- c. DOE will assume lead responsibility for interaction with the regulatory agencies for non-routine activities at the Facilities such as corrective actions under RCRA, NEPA decisions relative to RCRA permits, and issues related to policy, overall scheduling, or commitment of funds. LMER will have the opportunity to be present and participate in all such interactions.
- d. Each party will document its communications, whether formal or informal, with regulatory agencies and furnish a copy thereof to the other party and each party will provide the other with sufficient advance notice and information about any meetings to enable the other party to participate at its option.

It is recognized that successful implementation of the foregoing is contingent upon close coordination and consultation between DOE and LMER since it is impossible to precisely specify their respective roles and responsibilities in this Agreement. Each party commits to work with the other to achieve this goal.

3. Environmental Costs and Liabilities

- a. DOE hereby agrees the allowability of environmental costs and liabilities shall not be diminished by reason of LMER's execution of environmental permits or other documents as the co-operator of the Facilities. In particular DOE agrees that this Agreement does not represent the assumption of liability to third parties as set forth in the Contract.. Costs associated with liability to third parties are allowable unless they result from willful misconduct, lack of good faith, or failure to exercise prudent business judgement on the part of any of the Contractor's managerial personnel in accordance with the Clause of the Contract entitled INSURANCE LITIGATION AND CLAIMS. This Agreement and the designation of LMER as "co-operator" shall not impute to LMER DOE's liability for violations of or failures, if any, to comply with federal or state laws and regulations that are the direct or indirect result of DOE's past, present, or future acts or omissions.
- b. Fines and penalties and the costs associated with them are generally unallowable costs subject to the terms and conditions of the Contract.

- c. Any requirements for DOE approval of settlement of claims against LMER will be acted upon in a timely manner.

4. Bonds or Insurance Requirements

DOE agrees that if bonds or insurance are required as a condition for permits, the cost of such bonds or insurance are allowable costs in accordance with Contract Clause entitled ALLOWABLE COSTS AND FEE. In the event that such insurance or bonding is not available or if DOE determines such insurance or bonding to be excessive, unreasonable or not authorized by law or regulation, DOE will provide the regulatory agencies an acceptable form of assurance of financial responsibility. In no event will LMER or Lockheed Martin Corporation be required to use corporate resources or a corporate guarantee to satisfy any such regulatory requirements.

5. Assignment of Permits

DOE agrees that in the event of termination or expiration of the Contract, DOE will: (1) require the replacement contractor in the solicitation to accept assignment and transfer of all RCRA permits and Consent Decrees, or consent agreements associated therewith; (2) make other arrangements for assignment and transfer to the replacement contractor; or (3) DOE will accept such responsibility. LMER shall have no further responsibility or liability for future compliance or implementation with respect to any permit, permit application, consent decree, compliance order, consent order, or other document which it may have executed as co-operator prior to expiration or termination, in whole or in part, of the Contract. In no event shall LMER be the co-operator with respect to any permit, consent decree, compliance order, or consent order after the effective date of contract termination or expiration and DOE will submit a revised permit which omits LMER as a named co-operator. Any claim or liability, relating to LMER's status as co-operator, including but not limited to fines, penalties, judgments, clean-up costs, which may result after termination or expiration of the Contract and not resulting from the acts or omissions of the contractor will be governed by the provisions of the Contract.

6. Execution of Requirements

Consistent with the Contract, LMER in performance of its duties as a co-operator under this Agreement will take such actions as it reasonably deems necessary, applying the same judgment, skill, and care it would in the conduct of its own business, including cessation or discontinuation of operation in the management of the Facilities, and defense of administrative, civil or criminal actions by state or federal agencies.

7. Funding

LMER will provide to DOE its evaluation of funding needs for RCRA activities required by laws and regulations, including any agreements or commitments under RCRA and by the Contract. If DOE does not allocate funding to meet all identified budget requirements, LMER may take such actions as necessary, including discontinuance of operations and work effort and/or attempt to reallocate funds from DOE authorized Contract funds to perform work necessary to comply with environmental requirements. Nothing contained herein shall be construed to imply that Lockheed Martin Corporation or LMER is obligated in any way to provide funds to perform this Agreement.

8. Legal Counsel

DOE shall review and approve requests submitted by LMER for retention of legal counsel to provide advice and consultation, or representation reasonably necessary for issues arising during performance of the work under and within the scope of the Contract. Unless retention of counsel is disapproved costs of such legal counsel shall be allowable in accordance with the current provisions of the Contract. Approval of such outside legal counsel shall not be in derogation of the provisions of the Clause entitled INSURANCE - LITIGATION AND CLAIMS of the Contract requiring notice to DOE of specific actions.

9. Notices

- a. All requirements for notices, documents, reports, including those under Attachment 1, to be sent to DOE under this agreement will be satisfied by sending such notices to the following:

ORNL Site Manager
Department of Energy Oak Ridge National Laboratory
Post Office Box 2008
Oak Ridge, Tennessee 37831-6269
(423) 576-4523

- b. All requirements for notices to be sent to LMER under this agreement will be satisfied by sending such notices to the following:

Associate Director, Operations, Environment, Safety, and Health
Oak Ridge National Laboratory
Post Office Box 2008
Oak Ridge, Tennessee 37831-6260
(423) 574-8447

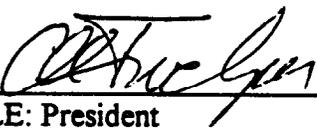
IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on the

6th day of December, 1995.

UNITED STATES OF AMERICA
SECRETARY OF ENERGY

By: 
TITLE: Manager

LOCKHEED MARTIN ENERGY
RESEARCH CORPORATION

By: 
TITLE: President

Attachment I

APPENDIX D

RESPONSIBILITIES FOR RCRA COMPLIANCE-DELIVERABLE DOCUMENTS

	<u>Preparation</u>	<u>Signature</u>	<u>Submission</u>
RCRA Part A Permit Application	LMER	LMER & DOE	DOE
RCRA Part B Permit Application (including all correspondence related to application and draft permit)	LMER	LMER & DOE	DOE
RCRA Permit-by-Rule notification	LMER	LMER & DOE	DOE
RCRA Permit Modification Requests (including notifications of planned changes, and approval requests for construction as-built drawings)	LMER	LMER & DOE	DOE
Permitting NOD Response			
- NODs issued to LMER	LMER	LMER	LMER
- NODs issued to DOE	LMER	DOE	DOE
- NODs issued to LMER & DOE	LMER	LMER & DOE	DOE
Permitting NOV Response			
- NOVs issued to LMER	LMER	LMER	LMER
- NOVs issued to DOE	LMER	DOE	DOE
- NOVs issued to LMER & DOE	LMER	LMER & DOE	DOE
RCRA Inspection NOD Response			
- NODs issued to LMER	LMER	LMER	LMER
- NODs issued to DOE	LMER	DOE	DOE
- NODs issued to LMER & DOE	LMER	LMER & DOE	DOE
RCRA Inspection NOV Response			
- NOVs issued to LMER	LMER	LMER	LMER
- NOVs issued to DOE	LMER	DOE	DOE
- NOVs issued to LMER & DOE	LMER	LMER & DOE	DOE
RCRA not otherwise listed NOD/NOV Responses			
- NOD/NOV issued to LMER	LMER	LMER	LMER
- NOD/NOV issued to DOE LMER	LMER	DOE	DOE
- NOD/NOV issued to LMER and DOE	LMER	LMER & DOE	DOE

Attachment I
(continued)

	<u>Preparation</u>	<u>Signature</u>	<u>Submission</u>
RCRA Rulemaking Petitions	LMER	LMER & DOE	DOE
RCRA Variance Requests per Rule	LMER	LMER & DOE	DOE
Administrative Order Response			
- Orders written to LMER	LMER	LMER	LMER
- Orders written to DOE	LMER	DOE	DOE
- Orders written to LMER & DOE	LMER	LMER & DOE	DOE
RCRA Annual Waste Report including:	LMER	LMER	LMER
- Hazardous Waste Notification			
- Hazardous Waste Stream Reports			
- Off-Site Shipping Report			
- Detail Report (receipts from off-site)			
- TSDR Summary Report			
- Precious Metal Recovery Activities Report			
- Recycling Activities Report			
- Treatability Study Shipments and Activities Report			
- Generator Annual Fee and Worksheet			
- TSD Annual Fee and Worksheet			
RCRA Waste Minimization Report (annual)	LMER	LMER	LMER
RCRA Transporter and Registration Fee (annual)	LMER	LMER	LMER
RCRA Groundwater Monitoring Well Report (annual)	LMER	LMER	LMER
RCRA Groundwater Surface Elevations Report (annual)	LMER	LMER	LMER
RCRA Groundwater Quarterly Analysis Report	LMER	LMER	LMER
Groundwater Concentrations Exceeding Appendix III Limits Report (as occurs)	LMER	LMER	LMER
Report of Groundwater Statistical Excursions (as occurs) including: Establishment of Compliance Monitoring Program, Establishment of Corrective Action Management Program	LMER	LMER	LMER

Attachment I
(continued)

	<u>Preparation</u>	<u>Signature</u>	<u>Submission</u>
Inventory of Federal Hazardous Waste Activities per RCRA 3016 (biennial)	LMER	LMER	DOE
Report of Noncompliance that may Endanger Health and Environment (24 hours/5 days)	LMER	LMER	LMER
Report of Other Noncompliances (due w/monitoring reports)	LMER	LMER	LMER
Unmanifested Waste Reports	LMER	LMER	LMER
Closure Plans (including all correspondence related to comments and/or Notices of Deficiency)	LMER	LMER & DOE ¹	DOE
Notification of Closure (60 days prior to closure)	LMER	LMER	LMER
Certification of Closure (within 60 days of closure completion)	LMER	LMER	LMER
Closure Survey Plat Submittal	LMER	LMER & DOE	DOE
RCRA Transportation Manifest	LMER	LMER ² N/A	
Post-Closure Plan	LMER	LMER & DOE	DOE
Post Closure Permit Application (including all correspondence related to the application and draft permit)	LMER	LMER & DOE	LMER
Post-Closure Notices (within 60 days after each certification to Commissioner and local board) and (within 60 days of first and last closure certification for facility)	LMER	LMER	LMER

¹Does not require signature. LMER transmits to DOE with letter. DOE submits to regulator with letter.

²Note: signature is “On behalf of DOE.”

Attachment I
(continued)

	<u>Preparation</u>	<u>Signature</u>	<u>Submission</u>
Certification of Completion of Post-Closure Care (within 60 days after completion of post closure care)	LMER	LMER	LMER
RCRA Subtitle C Tank Release Report (24 hours/30 days)	LMER	LMER	LMER
Certification of Major Tank Repairs (7 days after repair)	LMER	LMER LMER	
Hazardous Waste Transportation Spill Report (as occurs)	LMER	LMER	LMER
Hazardous Waste Fuel Activities Notification (if applicable)	LMER	LMER	LMER
TDEC Recycled Waste Storage Notification	LMER	LMER	LMER
Miscellaneous Reports Required by Special Permits			
- Reports required from LMER	LMER	LMER	LMER
- Reports required from DOE	LMER	DOE	DOE
- Reports required from LMER & DOE	LMER	LMER & DOE	DOE
Responses to Regulators Requests for Information			
- Response required from LMER	LMER	LMER	LMER
- Response required from DOE	LMER	DOE	DOE
- Response required from LMER & DOE	LMER	LMER & DOE	DOE
Miscellaneous Administrative Order Deliverables That May be Established			
- Issued to LMER	LMER	LMER	LMER
- Issued to DOE	LMER	DOE	DOE
- Issued to LMER & DOE	LMER	LMER & DOE	DOE
Permit Condition - Response to Request for Information			
- Required from LMER	LMER	LMER	LMER
- Required from DOE	LMER	DOE	DOE
- Required from LMER & DOE	LMER	LMER & DOE	DOE

Attachment I
(continued)

	<u>Preparation</u>	<u>Signature</u>	<u>Submission</u>
Report of SWMU Release Noncompliance with Permit Conditions (24 hours/15 days)	LMER	LMER*	LMER
RCRA Hazardous Waste Spill Report	LMER	LMER*	LMER
RCRA Delisting Petitions	LMER	LMER & DOE	DOE
Land Disposal Restrictions			
- Case by Case Extensions	LMER	LMER & DOE	DOE
- No Migration Petition	LMER	LMER & DOE	DOE
- Treatment Variances	LMER	LMER & DOE	DOE
- LDR/BDAT Certifications	LMER	LMER	LMER
- One-time notifications (including annual updates)	LMER	LMER	LMER
- Waste Analysis Plans for accumulation tanks, containers, and containment buildings	LMER	LMER	LMER
Notification of Intent to Perform Treatability Studies	LMER	LMER & DOE	DOE
Treatability Studies Records and Annual Report	LMER	LMER	LMER
Subpart AA Semiannual "Equipment" Emissions Report (if necessary)	LMER	LMER	LMER
Subpart BB Semiannual "Equipment" Emissions Report (if necessary)	LMER	LMER	LMER
Subpart CC Semiannual "Equipment" Emissions Report (if necessary)	LMER	LMER	LMER
Notification for Alternative Air Emission Monitoring Methods at RCRA Units	LMER	LMER	LMER

*DOE ER Division must be provided copies of these documents.

Attachment I
(continued)

	<u>Preparation</u>	<u>Signature</u>	<u>Submission</u>
Tennessee Solid Waste Regulations			
- Annual Report for Sanitary Landfill	LMER	LMER	LMER
- Monthly Report for Asbestos and Beryllium Disposal	LMER	LMER	LMER
- Annual Groundwater Monitoring Report for Sanitary Landfill Operation	LMER	LMER	LMER
Sanitary Landfill License Renewal Applications	LMER	LMER & DOE	DOE
Sanitary and Inert Landfill Permit Applications	LMER	LMER & DOE	DOE
Landfill Siting Requests for Geological Evaluation	LMER	LMER	LMER
Response to Solid Waste Landfill NOVs, NODs			
- Issued to LMER	LMER	LMER	LMER
- Issued to DOE	LMER	DOE	DOE
- issued to LMER & DOE	LMER	LMER & DOE	DOE
Solid Waste Transporters Fee (annual)	LMER	LMER	LMER
Waste Analysis Plan (30-day notice)	LMER	LMER	LMER

UNDERGROUND STORAGE TANK DOCUMENTS

UST Notification/Certification Forms for New Tanks	LMER	LMER	LMER
UST Amended Notification Form for Change in Status	LMER	LMER	LMER
UST Registration Fee	LMER	LMER	LMER
UST Extension Request for Deliverable Documents	SAME AS FOR DOCUMENT		
UST Initial Abatement Report (20 days after release confirmation)	LMER	LMER	LMER

Attachment I
(continued)

	<u>Preparation</u>	<u>Signature</u>	<u>Submission</u>
UST Initial Site Characterization Report (45 days after release confirmation)	LMER	LMER	LMER
UST Free Product Removal Report (45 days after discovery of free product)	LMER	LMER	LMER
UST Environmental Assessment Report (120 days after receiving release response letter from TN UST Division)	LMER	LMER	LMER
UST Site Ranking Form (120 days after receiving release response letter from TN UST Division)	LMER	LMER	LMER
UST Site-Specific Standard Request	LMER	LMER	LMER
UST Corrective Action Plan (150 days after receiving release response letter from TN UST Division)	LMER	LMER & DOE	DOE
UST Site Monitoring Report (frequency dependent on purpose of monitoring)	LMER	LMER	LMER
UST Application for Permanent Closure (30 days before closure)	LMER	LMER	LMER
UST Permanent Closure Report (Within 45 days of closure sample collection)	LMER	LMER	LMER
UST Application to Treat Petroleum Contaminated Soil	LMER	DOE	DOE
UST Report of Sampling Stockpiled Soils	LMER	LMER	LMER
UST Report to Determine Applicable Soil Cleanup Levels	LMER	LMER	LMER
UST Application for Authorization of Class V Underground Injection Well for UST Sites	LMER	LMER & DOE	DOE