

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
UNITED STATES DEPARTMENT OF ENERGY
WASTE ISOLATION PILOT PLANT
CARLSBAD FIELD OFFICE
AND
TEXAS ARCHITECTURAL AGGREGATE INC., WHITE MARBLE MINE
CONCERNING MINE RESCUE TEAM ASSISTANCE**

This Memorandum of Understanding (MOU) is between the United States (U.S.) Department of Energy (DOE), Waste Isolation Pilot Plant (WIPP), represented by the Carlsbad Field Office (DOE/CBFO), hereinafter referred to as "DOE/CBFO"; and Texas Architectural Aggregate Inc. (Mine ID 4100995), White Marble Mine, hereinafter referred to as "White Marble Mine", jointly referred to as the "Parties"; and

WHEREAS, the Parties are entering into this MOU to delineate interface and coordination responsibilities related to mutual assistance and support for White Marble Mine, the WIPP and the WIPP Land Withdrawal Area; and

WHEREAS, Mine Operators are required to comply with the Federal Mine Safety and Health Act, and the Mine Safety and Health Administration (MSHA) regulations at 30 CFR 49.2 (a) require an arrangement for mine rescue services which assures that at least two Mine Rescue Teams are available at all times when miners are underground. Additionally, the Parties agree that back up rescue capability is deemed desirable; and

WHEREAS, the DOE/CBFO is authorized to enter into this MOU by the Department of Energy Organization Act (42 U.S.C 7256) *Contracts, leases, etc., with public agencies and private organizations and persons*; and

WHEREAS, this MOU meets the requirements contained in DOE Order 151.1D, *Comprehensive Emergency Management System*.

PURPOSE

The purpose of this MOU is to document the working relationship(s) and framework for the administration and internal management of the Parties' agreement and provides a means for mutual aid in emergency situations and events. The Parties intend that this understanding be reciprocal and that Mine Rescue Team (MRT) assistance may be requested only by White Marble Mine and other resources be requested by DOE/CBFO.

This MOU provides provisions for emergency notifications, incident coordination and resource support, and a means for direct communication between the Parties. The Parties will provide Mine Rescue Team (MRT) assistance, to include, mitigation, preparedness, response and recovery activities, as requested and available, such as:

DOE/CBFO:

- Mine Rescue Team

WHITE MARBLE MINE:

- Other emergency assistance (e.g. Subject Matter experts on mining, geotechnical)

ASSUMPTIONS

The Parties will coordinate to provide requested resources, as available, in accordance with this MOU and act in accordance with respective statutory, regulatory or other legal authorities, duties or obligations.

The nature of the mining industry and its associated hazards is such that there is always a risk of an emergency requiring additional resources or manpower beyond the capacity of an individual mine.

The Parties shall comply with federal, state, and local laws, codes, regulations, and ordinances applicable to the assistance provided under this MOU. The qualification and training of MRT members who provide assistance shall be consistent with 30 CFR, 49 or any future regulations enacted under 30 CFR regarding mine rescue requirements.

RESPONSIBILITIES OF THE PARTIES

BOTH PARTIES SHALL coordinate and communicate emergency resources and capabilities available for support.

OPERATING PROCEDURES AND TRAINING

Specific operating plans, procedures and/or training, which may be required in order to implement this MOU, shall be developed and implemented by the responsible Parties.

Coordination of joint training, drills and exercises and the sharing of training facilities, instructors and courses, are encouraged under this MOU.

Every Operator of an underground mine shall assure the availability of mine rescue capability for purposes of emergency rescue and recovery. Each MRT will be compliant with 30 CFR 49.2 (b) and (c) for operating procedures.

UTILIZATION OF EQUIPMENT

Parties shall have reciprocal accessibility to use equipment (declared excess, spare/reserve or surplus) in good faith in the normal course of business, in support of the emergency service activities, during the term of this MOU.

1. The loaning of equipment shall be effectuated via a Personal Property Loan Agreement and all terms and conditions therein shall apply.
2. In the event of a request for aid by any Party, both DOE/CBFO and White Marble Mine shall make equipment readily available.

LIABILITY


1. DOE/CBFO providing a Mine Rescue Team support does not relieve White Marble Mine from meeting the requirements of 30 CFR 49.2 (a). Both Parties understand the WIPP Mine Rescue Teams are maintained for the primary purpose of meeting the 30 CFR 49.2(a) requirements for the WIPP underground. Support to White Marble Mine is ancillary to the primary purpose of the WIPP team(s) and subject to availability of a WIPP team in the event a WIPP incident requires both teams to support WIPP.
2. This MOU in no way restricts the Parties from participating in any activity with other public or private agencies, organizations, or individuals.
3. This MOU is neither a fiscal nor a funds obligation document.
4. Nothing in this MOU authorizes or is intended to obligate the Parties to expend, exchange, or reimburse funds, services, or supplies, or transfer or receive anything of value, unless otherwise agreed upon by a separate agreement.
5. Both Parties waive any and all claims against each other for any loss, damage, personal injury, or death occurring in consequence of a reasonable performance of this MOU.
6. This MOU is strictly for internal management purposes for each of the Parties; except for the mutual waiver immediately above. It is not legally enforceable and shall not be construed to create any legal obligation on the part of either Party.
7. Subject to the Freedom of Information Act (5 U.S.C. 552), decisions on disclosure of DOE information to the public regarding projects and programs referenced in the MOU, shall be made by DOE, following consultation with the other Party.
8. The details of the level of support to be furnished to one Party by the other with respect to funding will be developed in specific interagency agreements or other agreements, subject to availability of funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. 1341.

DURATION, UPDATES, AND TERMINATION

1. This MOU shall become effective upon the last approval of both Parties as indicated by the dates and signatures of the individuals authorized to execute the MOU.
2. This MOU represents the entire understanding between the Parties and supersedes any prior agreements or understandings with respect to the subject matter of this MOU.
3. This MOU shall be reviewed at least every two years, by both Parties.
4. Any additions, deletions, or modifications made to this MOU, either as a result of the review, or at any time between the reviews, shall require written approval of both Parties and shall become effective upon receipt of such written approval.
5. If no changes are required, the Parties shall exchange written communications, indicating such.
6. Failure of the Parties to perform review every two years as described above, shall not terminate this MOU or any other signed agreement then in effect between the Parties. The MOU review process should commence 90-180 days prior to the two-year review date.
7. This MOU may be terminated by either Party at any time upon 90-day written notice to the other Party.
8. The Parties agree that this MOU is mutually beneficial and that termination of this MOU should be avoided unless it is replaced by a new MOU.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU in two counterparts.

Gregory Sosson, PE
Acting Manager
Carlsbad Field Office
UNITED STATES OF AMERICA
U. S. DEPARTMENT OF ENERGY



Joe R. Williams, Jr.
General Manager
TEXAS ARCHITECTURAL
AGGREGATE INC

Date July 9, 2020

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