

**The Oak Ridge Reservation Environmental Surveillance Oversight Agreement among the
Department of Energy Office of Science, the Department of Energy National Nuclear Security
Administration, and the State of Tennessee**

1.0 AGREEMENT

This agreement shall be known as the Oak Ridge Reservation (ORR) Environmental Surveillance Oversight Agreement (Agreement) among the United States Department of Energy (DOE) Office of Science (SC), the Department of Energy's National Nuclear Security Administration (NNSA), and the State of Tennessee (the State).

1.1 PREAMBLE

1.1.1 Agreement Name

The ORR Agreement is voluntarily entered into among DOE SC and the DOE NNSA, under the authority of 42 U.S.C. § 7101 *et seq.*, and the State (collectively referred to as the Parties, with each individually being a Party). For purposes of this Agreement, the term DOE shall include both SC and NNSA.

This Agreement is designed to assure the citizens of Tennessee that DOE's activities in Oak Ridge, Tennessee, are being performed in a manner that is protective of their health, safety, and environment. Through a program of independent environmental surveillance oversight and monitoring, this Agreement should support the State to provide assurance that DOE's activities do not adversely impact public health, safety, or the environment.

1.1.2 Intent of Agreement

The Parties to this Agreement understand that DOE performs routine environmental surveillance in and around the ORR as described annually in *The Environmental Monitoring Plan for the Oak Ridge Reservation* (EMP). DOE provides data that is collected by this program to the public via issuance of the *Annual Site Environmental Report for the Oak Ridge Reservation* (ASER). This Agreement is intended to support the ORR Environmental Surveillance Program by enabling the State to perform independent oversight and monitoring of activities, including independent evaluation of results related to the EMP that are not covered by regulatory, fee supported programs or funding provided through a separate grant that supports the Tennessee Department of Environment and Conservation (TDEC) Federal Facility Agreement (FFA) activities. Additional activities not related to the EMP may otherwise be provided for in the ESO Grant referenced in section 6.0 herein.

This Agreement is also intended to describe what activities will be funded and how engagement with the local community regarding the State's activities associated with this Agreement will be facilitated.

This Agreement is not intended to replace, overlap, duplicate, nor interfere with the State's legally required regulatory, permitting, or associated compliance monitoring activities required by environmental laws or regulations, such as issuance of regulatory permits, the review of DOE regulatory submissions required under regulatory programs, required regulatory inspections, required effluent monitoring, issuance of regulatory notices of violations, etc.

1.1.3 Status of Agreement

This Agreement is strictly for internal management purposes for each of the Parties. It is not legally enforceable and shall not be construed to create any legal obligation on the part of either Party. This Agreement shall not be construed to provide a private right or cause of action for or by any person or entity. This Agreement is neither a fiscal nor a funds obligation document. Nothing in this Agreement authorizes, or is intended to obligate, the parties to expend, exchange, or reimburse funds, services, or supplies, or transfer or receive anything of value. This Agreement does, however, provide the basis for the ESO Grant through which DOE provides funding, as described below in Section 6.0 Funding of State Participation, to support the State's independent environmental oversight of the EMP, including the collection of independent and/or split sampling, as necessary to verify the effectiveness of DOE activities and programs.

2.0 DESIGNATED LEAD AGENCIES SUPPORTING THIS AGREEMENT

2.1 DOE/TDEC Leads

The DOE's Oak Ridge National Laboratory (ORNL) Site Office will administer this Agreement on behalf of DOE and the ESO Grant which supports this Agreement.

TDEC will administer this Agreement on behalf of the State and the ESO Grant which supports this Agreement.

2.2 Primary Contacts

The DOE and State signatories to this Agreement shall each designate, in writing, a technical coordinator and grant coordinator within 30 days of signature of this Agreement. Both the DOE and State technical coordinators shall assure implementation and coordination of the provisions of this Agreement. Both the DOE and State grant coordinators shall assure implementation and coordination of the provisions of the ESO Grant which support this Agreement. Unless otherwise provided herein, all reports, documents, or notifications required by this Agreement or the ESO Grant will be submitted to the appropriate coordinator.

3.0 FINANCIAL SUPPORT

The details of the level of support to be furnished from one Party to the other with respect to funding will be developed in the ESO Grant, subject to the 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. The Parties will take all the necessary steps and use their best efforts to obtain timely funding to meet their commitments under this Agreement. In cases where payment or obligation of funds would constitute a violation of the *Anti-Deficiency Act* or in any case where obligated funds are not made available for the ESO Grant, the Parties shall seek to adjust the ESO Grant through mutual agreement. Should the Parties not reach mutual agreements on adjustments of the ESO Grant, then the Parties shall use Section 13 of this Agreement to resolve the ESO Grant funding gap.

4.0 DOE COMMITMENTS

DOE is committed to support the State's independent ORR environmental surveillance oversight of activities related to the EMP. DOE will continue to support open communications with the State on appropriate environmental issues. DOE will provide resources to the State to support the State's evaluation of DOE's environmental monitoring programs as defined in the associated ESO Grant.

4.1 Monitoring and Surveillance Data

Upon request, DOE will provide the State with data and analytical results associated with DOE's ORR Environmental Surveillance Program.

4.2 Financial and Technical Assistance

Subject to the terms and conditions highlighted in Sections 3.0 and 6.0 of this Agreement, DOE will provide funding through the ESO Grant for the State to perform independent monitoring and oversight of the DOE ORR Environmental Surveillance Program, including independent evaluation of associated data. All funds provided to the State under the ESO Grant are Federal funds to be administered by the State consistent with the terms and conditions of the ESO Grant and the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, found at 2 C.F.R. § 200 *et seq.* DOE will provide technical support and training, if requested by the State, to support the intent of this Agreement and associated ESO Grant, as appropriate.

5.0 STATE COMMITMENTS

The State is committed to meeting all requirements of the ESO Grant including, but not limited to: (1) providing non-regulatory oversight of the DOE ORR EMP; (2) providing non-regulatory independent environmental surveillance or monitoring for activities related to DOE ORR EMP; and (3) providing results of the State's oversight activities under this Agreement to DOE, local governments, and the public.

5.1 Multimedia Personnel

The State understands that the use of funds authorized by the ESO Grant, and as outlined in this Agreement, are for services, personnel, and equipment that are directly related to oversight of the DOE ORR EMP. The State shall not use ESO Grant funds to support activities not related to the Agreement. To the extent that personnel, equipment, or services are used for both ESO and non-ESO activities, the State shall allocate its costs and charge to the ESO Grant only that portion of the cost of the personnel, equipment, or services that is used to support this Agreement.

TDEC's Division of Remediation-Oak Ridge Office's role in emergency preparedness will focus on the recovery phase of emergency operations and will include training for post emergency environmental monitoring.

5.2 Independent Verification

The State shall perform independent monitoring and oversight related to the EMP, including independent evaluation of associated data through the ESO Grant. The State's evaluation of the EMP may include, as appropriate, review of the following activities or systems relating to environmental monitoring: monitoring protocol, system design, construction, operation and maintenance; sampling methodology, locations, frequency, procedures and parameters; quality assurance and quality control methodology, plans, and implementation; data collection, verification and management systems; chain-of-custody procedures and implementation; and reporting methods. The State may perform periodic split sampling with DOE and/or perform its own independent environmental surveillance as necessary to verify the effectiveness of the EMP.

5.3 Compliance with Applicable Laws, Regulations, Orders, and DOE Requirements

The State will comply with all federal, state, and local regulations and applicable DOE and contractor site-specific requirements when performing activities associated with this Agreement.

The State shall continue to prepare an annual summary report for public distribution on the results of its monitoring and analysis activities and its evaluation of the quality and effectiveness of the DOE environmental monitoring and surveillance programs related to the EMP.

6.0 **ESO GRANT**

DOE and the State shall execute a Federal Financial Assistance Agreement pursuant to the authority found in this Agreement, as well as the *Federal Grant and Cooperative Agreement Act* of 1977, at 31 U.S.C. §6301 *et seq.* The associated Federal Financial Assistance Agreement, also referred to as the ESO Grant, is incorporated in this Agreement by this reference. The State shall comply with the terms and conditions of that Federal Financial Assistance Agreement.

7.0 ORR AND INFORMATION ACCESS

All State personnel must be badged to obtain access to DOE sites. When a determination has been made that a State employee's duties or position require access to classified DOE information or special nuclear material, a request for access authorization or security clearance will be submitted to DOE. Prior to being provided a clearance, the requesting employee must go through a background investigation and submit all required information DOE. DOE will process security clearances for the State, subject to needs and availability of funding. DOE will use its best efforts to expedite the review and approval of access authorization applications for the State and its contractors' employees, in numbers appropriate and necessary to carry out the terms and conditions of this Agreement and associated ESO Grant. Per DOE's authority under Executive Order 12968, State employees with the necessary security clearance will be granted access to ORR restricted areas to perform functions set forth in this Agreement, provided all applicable safety and security requirements are met. DOE will issue appropriate picture badges to State employees with the necessary security clearance. State employees will contact DOE or appropriate contractor personnel before entering a restricted area.

Consistent with applicable classification requirements, DOE will make available, or provide access, to the State upon request of DOE documents or reviews that are within the scope of this Agreement. Routine "need to know" restrictions and requirements for periodic security briefings will apply to State representatives. While it is not expected that any classified information will be generated by activities under this grant, it is expected that from time to time the State may have access to classified information at certain DOE sites. In the event that there is access to classified information, the State agrees to properly safeguard all information and agrees not to improperly disclose or handle any information DOE determines to be classified. In addition, the State agrees to comply with all applicable DOE information access, handling, and protection requirements related to Unclassified Controlled Nuclear Information (UCNI), Controlled Unclassified Information (CUI) and/or Personally Identifiable Information (PII) provided under this Agreement. As requested by the State, the DOE will clarify and provide written explanation to the State of the "need-to-know" security information requirements specified in DOE and other Federal security requirements governing classified and sensitive unclassified information (e.g., 10 C.F.R. Parts 1016 and 1017, Executive Order 12356, and DOE Order 471.6, *Information Security*) that apply to access to certain types of information or areas at the ORR.

DOE will provide access to the State to all ORR Environmental Surveillance Program data, consistent with the terms below. In carrying out the provisions of this Agreement, the Parties will comply with applicable security laws and regulations, Privacy Act and Freedom of Information Act requirements, and trade secret, patent, and related confidentiality requirements. Information designated by the DOE as classified, UCNI, CUI, and/or PII in accordance with applicable laws, regulations, DOE orders, or executive orders or which otherwise is entitled to confidentiality under applicable laws, regulations, or orders shall not be released by the State unless authorized by the DOE. The State is subject to the *Tennessee Open Records Act*, see Tenn. Code Ann. §10-7-501 *et seq.*, as well as all applicable federal and state law. Documents provided by either Party under this Agreement shall be, unless otherwise agreed by the Parties and consistent with applicable laws and regulations, Executive Orders, and DOE orders, agency documents representing the Parties' considered position on the issues addressed therein. Where the DOE has determined, pursuant to applicable laws, regulations, Executive Orders, and DOE orders, that information or documents are entitled to confidentiality, the State will have view only access to such information or documents until it provides the DOE with written assurance that the State will maintain the confidentiality of such information or documents, at which time copies will be provided to the State.

Nothing in this Agreement shall affect the rights either party may have under the Freedom of Information Act or other applicable laws and regulations. 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 this Agreement shall be made by DOE/following consultation with the other Party.

8.0 TENNESSEE/DOE AUTHORITY

This Agreement will in no way diminish or otherwise affect the State's authority to fully carry out its rights and responsibilities under applicable laws and regulations, nor will it affect the DOE's ability or right to raise any defenses available under law in the event the State may initiate an administrative or judicial enforcement action against DOE for matters not arising under this Agreement. Subject to applicable security, classification, and other confidentiality laws and regulations, nothing in this Agreement shall be construed to prohibit the Parties from using information developed under this Agreement in furtherance of their statutory duties, rights, and obligations. Further, this Agreement in no way restricts either of the Parties from participating in any activity with other public or private agencies, organizations, or individuals.

9.0 COORDINATION WITH FEDERAL AGENCIES AND LOCAL GOVERNMENTS

In carrying out this Agreement, the Parties will fully cooperate and coordinate with each other, other federal and State agencies, and local governments affected by this Agreement. The Parties to this Agreement shall commit to maintaining a direct and open relationship with local governments, such as engagement with the ORR Communities Alliance.

10.0 EFFECTIVE DATE AND TERM

This Agreement shall become effective on the date when the last Party to sign executes the Agreement and sends notice to the other Party that it has done so. It shall remain in effect for a term, from the effective date until June 30, 2028, unless terminated earlier as provided herein.

11.0 MODIFICATION OF AGREEMENT

This Agreement may be amended by written agreement of the Parties. The Parties agree that they will review the terms and conditions of the Agreement at least every five years to determine if any modifications are necessary and shall execute a new agreement at least every five years.

12.0 TERMINATION

This Agreement may be terminated by written mutual agreement of Parties. This Agreement may be terminated by mutual written agreement of the Parties, or by either Party upon 90 days written notice to the other Party. Consistent with the laws and regulations applicable to the ESO Grant, DOE's funding obligations under the ESO Grant may be suspended or terminated by the DOE, in whole or in part, if DOE determines that the State is not in compliance with the terms and conditions of the ESO Grant provisions and provides the State 90 days prior written notice specifying such noncompliance and the State's right to appeal.

13.0 CONFLICT RESOLUTION

Resolution of issues related to this Agreement that arise between the Parties shall be presented initially through each Party's technical coordinator by the Party who has identified the unresolved issue. An effort shall be made by all Parties to resolve issues with a spirit of cooperation at the working levels in both organizations. In the event resolution cannot be reached at the working level within a reasonable time frame, not to exceed 60 days, the matter may be elevated to the signatories to the Agreement.

Now, therefore, the undersigned representative of each Party hereby certifies that he/she is fully authorized and hereby enters into the terms and conditions of this Agreement.



David W. Salyers
P.E. Commissioner, TDEC

Oct 24, 2023

Date

CARLOS ALVARADO

Digitally signed by CARLOS
ALVARADO
Date: 2023.09.12 10:23:36 -05'00'

Teresa M. Robbins
Manager, NNSA Production Office, U.S. DOE/NNSA

Date



Date: 2023.10.01
16:07:29 -04'00'

Johnny O. Moore
Manager, ORNL Site Office, U.S. DOE/SC

Date