STATEMENT OF CONSIDERATIONS

REQUEST BY AIR LIQUIDE AMERICA, L.P. FOR AN ADVANCED WAIVER OF PATENT RIGHTS UNDER DOE COOPERATIVE AGREEMENT NO. DE-FC36-00CH11030; ENTITLED "TUNABLE DIODE LASER SENSORS FOR HARSH COMBUSTION ENVIRONMENTS"; W(A)-04-025; CH-1194

As set out in the attached waiver petition, Air Liquide America, L.P. (ALA) has requested an advanced waiver of domestic and foreign patent rights for all subject inventions made under the above-identified cooperative agreement by its employees.

Referring to item 2 of ALA's waiver petition, the purpose of this agreement encompasses the design and evaluation of a multiple gas species diode laser sensor for high temperature harsh industrial process monitoring applications. The work under the agreement is expected to take place over a period of about four years at a total cost of $1,169,529. ALA is obligated to cost share $800,000, or about 68 percent of the total cost of the project.

The ALA has agreed that this waiver will be subject to the march-in and preference for U.S. industry provisions, as well as the U.S. Government license, comparable to those set out in 35 U.S.C. 202-204. Further, ALA has agreed to the U.S. Competitiveness provisions as attached to this Statement. In brief, Petitioner has agreed that products embodying any waived invention or produced through the use of waived invention will be manufactured substantially in the United States unless Petitioner can show to the satisfaction of the DOE that it is not commercially feasible to do so. Further, Petitioner has agreed that it will not license, assign or otherwise transfer any waived invention to any entity unless that entity agrees to these same requirements.

Referring to items 5-9 of ALA's waiver petition, ALA is a leading industrial gas supplier which provides process monitoring and control services to its industrial customers. This, coupled with ALA's cost sharing, clearly demonstrates the likelihood that ALA will continue development and commercialization of the results of the agreement.

Referring to item 10 of the waiver petition, granting this waiver is not anticipated to have any adverse impact on competition. The success of this subcontract can be expected to

stimulate investment, not only in this technology, but also in other competing technologies as well.

Considering the foregoing, it is believed that granting this waiver will provide Petitioner with the necessary incentive to invest its resources in the commercialization of the results of the agreement in a fashion which will make the technology available to the public in the shortest practicable time. Therefore, upon evaluation of the waiver petition and in view of the objectives and considerations set forth in 10 CFR Part 784, all of which have been considered, its is recommended that the requested waiver be granted.

Thomas G. Anderson
Assistant Chief Counsel
Intellectual Property Law Division

Date: 5-6-04

Based upon the foregoing Statement of Considerations and representations in the attached waiver petition, it is determined that the interests of the United States and the general public will best be served by a waiver of patent rights of the scope described above, and therefore the waiver is granted. This waiver will not apply to any modification or extension of the contract, where through such modification or extension, the purpose, scope or cost of the contract has been substantially altered.

CONCURRENCE:

Robert W. Garland, Director
Office of the Industrial Technology Program, EE-2F

Date: 5/26/04

APPROVAL:

Paul A. Gottlieb
Assistant General Counsel
Technology Transfer and Intellectual Property, GC-62

Date: 5-28-04