



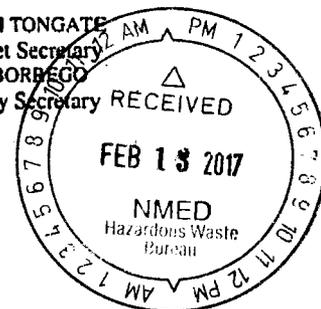
SUSANA MARTINEZ
Governor
JOHN A. SANCHEZ
Lieutenant Governor

**NEW MEXICO
ENVIRONMENT DEPARTMENT**

2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6313
Phone (505) 476-6000 Fax (505) 476-6030
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BUTCH TONGATE
Cabinet Secretary
J.C. BORRERO
Deputy Secretary



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

CONFIDENTIAL SETTLEMENT COMMUNICATION

January 12, 2017

Shawn Moudy
General Manager
Advanced Chemical Treatment, Inc.
6137 Edith Blvd. NE
Albuquerque, NM 87107

**RE: SETTLEMENT LETTER AND STIPULATED FINAL ORDER
ADVANCED CHEMICAL TREATMENT, INC
EPA ID# NMD002208627**

Dear Mr. Moudy:

On April 12, 2016, the New Mexico Environment Department (NMED) received a letter, dated April 8, 2016, from the Advanced Chemical Treatment, Inc. (ACT) describing a fire that happened at the Facility on March 29, 2016. Based on information concerning this incident, NMED issued an Administrative Compliance Order (ACO) No. HWB 16-17 to ACT, located at 6137 Edith Blvd, NE, Albuquerque, NM, under the New Mexico Hazardous Waste Act, NMSA 1978, §§ 74-4-1 to -14, and the New Mexico Hazardous Waste Management Regulations, 20.4.1 NMAC.

Based on the response by ACT to the ACO, dated November 21, 2016, and subsequent meeting on January 11, 2017, NMED has the following comments:

1. Failure to ensure the facility is designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil or surface water, which could threaten human health or the environment. This is a violation of 20.4.1.500 NMAC, incorporating 40 CFR §264.31 and Permit Condition II.A

NMED maintains that ACT violated this rule by allowing incompatible chemicals to be placed in the dumpster causing the fire. The penalty remains as documented in the ACO at \$10,000.

2. Failure to ensure that all equipment be tested and maintained as necessary to assure its proper operation in time of emergency. This is a violation of 20.4.1.500 NMAC, incorporating 40 CFR § 264.33 and Permit Condition II.I.2.

For settlement purposes, NMED agrees to rescind the penalty associated with this violation.

3. Failure to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve the compliance with the conditions of this Permit. This is a violation of Permit Condition I.E.6, as required by 20.4.1.900 NMAC, incorporating 40 CFR §270.30(e).

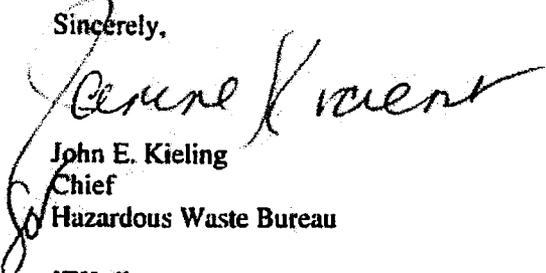
For settlement purposes, NMED agrees to rescind the penalty associated with this violation.

4. Failure to submit a written report within five (5) calendar days from the time the Permittee becomes aware of the noncompliance (fire event). This is a violation of Condition I.E.13.b., as required by 20.4.1.900 NMAC, incorporating 40 CFR §270.30(l)(6)(iii).

NMED maintains that ACT violated this rule; therefore, the penalty remains as documented in the ACO at \$39,000.

The revised penalty is \$49,000. If you have any questions regarding this Settlement Offer, please contact Janine Kraemer at (505) 476-4372 or by email at janine.kraemer@state.nm.us. A Stipulated Final Order is included for your review and signature for return within 10 days.

Sincerely,



John E. Kieling
Chief
Hazardous Waste Bureau

JEK: jk

Attachments: Stipulated Final Order

cc: Janine Kraemer, NMED HWB
Robert Italiano, NMED District II Manager
Krista Harsono, ACT, kharsono@actenviro.com
James O'Hara, ACT, jo'hara@actenviro.com
Pasquale Paduano, ACT, ppaduano@actenviro.com

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**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

**NEW MEXICO ENVIRONMENT
DEPARTMENT,
Complainant,**)
)
)
)
)
v.)
)
**ADVANCED CHEMICAL TREATMENT,
INC.,
EPA ID #: NMD002208627
Respondent.**)
)

NO. HWB-16-_____

STIPULATED FINAL ORDER

The New Mexico Environment Department ("Department") and Advanced Chemical Treatment, Inc. ("ACT" or "Respondent"), pursuant to 20.1.5.600.B(2) NMAC, stipulate to resolve the alleged violations specified in the Administrative Compliance Order ("ACO") issued by the Department to the Respondent on September 19, 2016. The parties have agreed on the terms and conditions specified in this Stipulated Final Order ("Order").

BACKGROUND

1. The Department is an agency of the executive branch of the State of New Mexico pursuant to NMSA 1978, § 9-7A-4. The Department is authorized to administer and enforce the New Mexico Hazardous Waste Act ("HWA"), NMSA 1978, §§ 74-1-1 to -14, and the Hazardous Waste Management Regulations ("HWMR"), 20.4.1 NMAC, including assessing civil penalties for violations thereof.
2. Respondent ACT operates a for-profit corporation under a Treatment, Storage, and Disposal Facility ("TSDF") Permit, EPA I.D. Number NMD002208627, located at 6133 Edith Blvd, NE, Albuquerque, New Mexico ("Facility").

3. On April 12, 2016, NMED received a letter, dated April 8, 2016, from the Respondent describing a fire that happened at its Facility on March 29, 2016.
4. On March 29, 2016, a fire occurred in a dumpster containing empty containers and latex paint. The estimated start of the fire was at 12:09 a.m. The time was determined due to the emergency coordinator being contacted by the alarm monitoring company at 12:09 a.m. However, no one responded to the Facility at that time.
5. On March 29, 2016, at approximately 5:50 a.m., an ACT driver arrived on-site and observed water flowing from the sprinkler system. Upon further investigation, the Respondent determined a fire had occurred, engaging the sprinklers on the loading dock, which released an estimated 270,000 gallons of water. The water flowed around the Facility into two retention ponds located at the back of the Facility.
6. On May 17, 2016, NMED received an "Event Report and Data" document, dated May 11, 2016, from the Respondent. The document outlined the events relating to the March 29, 2016 incident and included sample results for the retention pond water, soils, and liquid removed from inside the Facility and the dumpster.
7. The "Event Report and Data" document concluded that the fire was started by "slow oxidation of organic chemical residues in the dumpster."
8. The "Event Report and Data" document also concluded that the "notification process for alarm monitoring did not provide sufficient information to indicate the emergency situation."
9. As a result of the documentation and information provided, the Department issued an Administrative Compliance Order to the Respondent on September 19, 2016.

ALLEGED VIOLATIONS

10. The Department alleged the following violations in the ACO, September 19, 2016:

a) Failure to ensure the facility was designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil or surface water, which could threaten human health or the environment. This is a violation of 20.4.1.500 NMAC, incorporating 40 CFR §264.31; Permit Condition II.A.

b) Failure to ensure that all equipment be tested and maintained as necessary to assure its proper operation in time of emergency. This is a violation of 20.4.1.500 NMAC, incorporating 40 CFR § 264.33; Permit Condition II.I.2.

c) Failure at all times to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve the compliance with the conditions of this Permit. This is a violation of 20.4.1.900 NMAC, incorporating 40 CFR §270.30(e); Permit Condition I.E.6.

d) Failure to submit a written submission within five (5) calendar days from the time the Permittee becomes aware of the noncompliance as required by 20.4.1.900 NMAC, incorporating 40 CFR §270.30(l)(6)(iii).

11. The ACO contained a civil penalty of \$69,000.

COMPROMISE AND SETTLEMENT

12. As confirmed in a written submittal to NMED from the Respondent, all actions required to maintain or restore Respondent's compliance have been completed.

13. The Respondent does not admit to any of the allegations in the ACO. To avoid further legal proceedings, the Department and the Respondent agree to the terms and conditions in this Stipulated Final Order to resolve the alleged violations in the ACO.

14. The Respondent admits the jurisdictional allegations of this Stipulated Final Order and consents to the relief specified in the Stipulated Final Order including the civil penalty.

15. Based upon information provided by the Respondent, and in compromise and settlement of the alleged violations in the ACO, the parties agree that the civil penalty shall be reduced to \$49,000.00. Payments shall be made by certified check or other guaranteed negotiable instrument, payable to the "State of New Mexico- Hazardous Waste Emergency Fund," and shall be sent to the Department at the following address:

Bureau Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505

16. Payments of the civil penalty shall be accompanied by a transmittal letter referencing this Stipulated Final Order.

17. If Respondent fails to make timely and complete payments of the civil penalty, Respondent shall pay interest on the outstanding balance at the rate established for judgments and decrees under NMSA 1978, § 56-8-4.

OTHER TERMS AND CONDITIONS

ENFORCEMENT

18. Except as provided in Paragraph 20 (Covenants Not To Sue), the Department reserves all of the powers, authorities, rights, and remedies, whether administrative or judicial, civil or criminal, legal or equitable, to enforce the requirements of the HWA, HWMR, or Permit, for any

and contains the entire agreement between the Department and the Respondent.

BINDING EFFECT

25. This Stipulated Final Order shall be binding upon the Department and its successor agencies and shall be binding upon ACT and on its successors.

AUTHORITY OF SIGNATORIES

26. The persons executing this Stipulated Final Order represent that they have the requisite authority to bind either the Department or the Respondent, as appropriate, to this Stipulated Final Order, and that their representation shall be legally sufficient evidence of actual or apparent authority to bind the Department or the Respondent to this Stipulated Final Order.

For the **NEW MEXICO ENVIRONMENT DEPARTMENT.**

By: _____ Date: _____
KATHRYN ROBERTS
DIRECTOR
RESOURCE PROTECTION DIVISION

For: **ADVANCED CHEMICAL TREATMENT, INC.**

By:  _____ Date: 11/30/17
 SHAWN MOODY
GENERAL MANAGER
ADVANCED CHEMICAL TREATMENT, INC.
PASQUALE PADUANO
VICE PRESIDENT

APPROVAL OF STIPULATED FINAL ORDER

Pursuant to 20.1.5.600.B(2) NMAC, this Stipulated Final Order, agreed to by the Department and Respondent, is hereby APPROVED as a FINAL ORDER.

**BUTCH TONGATE
SECRETARY
NEW MEXICO ENVIRONMENT DEPARTMENT**

Date: _____