

0236 General FFCO

December 23, 1992

Joyce Hester Laeser
Counsel
DOE, Los Alamos Area Office
Los Alamos, New Mexico 87545



Re: Comments of the FFCA for RCRA

Dear Joyce:

Please find attached what the Region hopes is the final set of comments on the FFCA and the Compliance Plan which have been negotiated to resolve DOE's noncompliance as outlined in EPA's September 30, 1992 Notice of Noncompliance.

As you know several changes have been made based on discussions between our respective managements. These comments reflect EPA's understanding of those discussions. There are also several minor changes in order to better clarify some of the language most of which we discussed on the telephone.

EPA believes that the Federal Facility Compliance Act provides EPA with additional authority to enforce this Agreement and that DOE's failure to comply with the terms of this Agreement, once executed, will subject it to penalties. Thus, EPA has included a Stipulated Penalty Section in its comments. Further, EPA views this Agreement as being unaffected by any potential case by case extension, but as complimentary to such an action in that this Agreement and others like it are an attempt to demonstrate DOE's good faith efforts to locate and contract for treatment and/or disposal and the beginning of the process of entering into binding contractual agreements to provide alternative treatment or disposal capacity. Please see, 40 C.F.R. § 268.5.

If you have any concerns about any of the above please feel free to call me at 214 655-2156.

Sincerely,

D. Bruce Jones
Assistant Regional Counsel
Multi-Media Section

FD #
EPA Code



1647

Attachment

bcc: Nick Stone (6H-C)

Concurrences: Brown

for 12/23

Potts

Stone

COMMENTS

1. Page 5, Section III, Paragraphs 2 and 3:
Change "milestones" to "the appendices to this Agreement."
2. Page 8, Section V, Paragraphs 1:
Place a period after the second "Agreement" in that sentence and Delete ...during the time... until the end of the sentence.
3. Page 13, Section VII:
The last sentence of this section should remain. It should read, "Whenever reasonably possible, DOE will expedite the schedule in the Compliance Plan."
3. As Preamble language to Section VI, Pg 9 state: "On September 30, 1992 EPA Region 6 issued a Notice of Noncompliance against DOE at its Los Alamos National Laboratory concerning its violation of the Land Disposal Restrictions storage prohibition. The following Statements of Fact and Conclusions of Law are based upon and incorporates that Notice of Noncompliance.
4. Add the following conclusions of law to Section VI, Pg. 12 starting with Paragraph 18 and renumbering as necessary: " 18. In a letter dated May 13, 1992, DOE/LANL notified EPA that it was storing hazardous waste not for the purpose of accumulating quantities necessary to facilitate proper recovery, treatment, or disposal of hazardous waste and therefore in violation of 40 C.F.R. § 268.50. 19. Respondent is in violation of 40 C.F.R. § 268,50(a) and (b) for the storage of mixed waste restricted form land disposal for other than the purpose of accumulation to facilitate proper recovery, treatment, or disposal.
5. Page 15, Section IX, Paragraph 4, Add the following:
"Though the EPA has no stated deadline or timeframes for its review of the deliverables, DOE will notify EPA..."
6. Page 21, Section XII, Paragraphs 8 and 9:
Delete these paragraphs.
7. Page 22, Section XII, Paragraph 10:
Change "EPA Administrator" to "Regional Administrator" and "Secretary of Energy" to "Manager of the DOE Albuquerque Office."
8. Page 25, Section XIII, Paragraph 4, Part c:
The word "grant" should read "granting." Also, the next paragraph should be numbered 5, not 4.
9. Page 35, Section XIX, Add the following:

"6. This Agreement is fully enforceable under the terms of the Federal Facilities Compliance Act of 1992."

10. Page 36, Section XX, Paragraph 2, delete the following:
"Subject to the terms of this Agreement,".
11. Page 38, Section XXII, change to the following section and adjust the remaining Sections accordingly:

XXII. STIPULATED PENALTIES

1. The Respondent shall be subject to the following stipulated penalties for each failure to comply with the terms or provisions of this Agreement and its Appendices:

2. For failure to adequately and timely submit any deliverable or revised deliverable required pursuant to the Agreement and its Appendices, the Respondent shall pay stipulated penalties in the following amounts for each day during which each violation continues:

<u>Period of Failure To Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 10,000.00
16th through 30th day	\$ 15,000.00
31st day and beyond	\$ 25,000.00

If the period for failure to comply extends from the 16th through 30th day, the penalty per violation per day shall be \$15,000 for each day of violation from day 1. If the period for failure to comply extends from the 31st day, the penalty per violation per day shall be \$25,000 for each day of violation from day 1.

3. For failure to adequately and timely submit any report or comply with any other term or requirement of this Agreement

and its Appendices, the Respondent shall pay stipulated penalties in the following amounts for each day during which each violation continues:

<u>Period of Failure To Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 500.00
16th through 30th day	\$ 1,000.00
31st day and beyond	\$ 5,000.00

If the period for failure to comply extends from the 16th through 30th day, the penalty per violation per day shall be \$15,000 for each day of violation from day 1. If the period for failure to comply extends from the 31st day, the penalty per violation per day shall be \$25,000 for each day of violation from day 1.

4. As soon as they have knowledge, Respondent shall verbally notify the EPA in writing, in accordance with Section XII, of any failure to meet Agreement requirements. The Respondent shall immediately take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this Agreement. EPA reserves the right to demand payment or performance of stipulated penalties upon an independent determination that a violation of this Agreement has occurred. If Respondent fails to pay or perform the required stipulated penalties, Plaintiffs may institute proceedings to collect the penalties or require performance.

5. All monetary stipulated penalties begin to accrue on the day following the day that performance is due or a violation occurs, and continue to accrue through the final day of all

correction of the noncompliance. Nothing herein shall preclude the simultaneous accrual of separate stipulated penalties for separate violations of this Agreement.

6. The stipulated penalties set forth in this Agreement above shall be in addition to the rights reserved to EPA in Section XIX. In addition to the stipulated penalties set forth in this Section, the EPA and the United States specifically reserve the right to seek other remedies or sanctions available to the EPA or the United States by reason of Respondent's failure to comply with the terms and conditions of this Agreement and the Appendices, including but not limited to sanctions that the EPA or the United States may seek under Section 3008 of RCRA or under the Federal Facilities Compliance Act of 1992.

7. The payment of stipulated penalties shall be made by mailing a money order, cashier's check, or certified check payable to Treasurer of the United States, within thirty (30) days of receipt of a demand letter for payment to the following address:

Regional Hearing Clerk (6C)
U.S. EPA, Region 6
P.O. Box 360582M
Pittsburgh, PA 15251

Docket No. RCRA VI-216-H should be clearly typed on the check to ensure credit. Respondent shall send simultaneous notices of such payments, including copies of the money order, cashier's check or certified check to the following:

(1) Wm. Nicholas Stone (6H-CS)
RCRA Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

(2) Bruce Jones (6C-M)
Assistant Regional Counsel
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

8. If Respondent disputes the basis for imposition of stipulated penalties, the issue shall be resolved under the Dispute Resolution procedures of this Final Order. Invoking Dispute Resolution shall not stay the accrual of stipulated penalties; however, the obligation to pay shall be stayed pending resolution of the dispute.
12. Page 5 of Appendix B, Section 1, add the following:
Deliverable IFLL 200 due 6/30/94. This will be a deliverable and the date, a milestone. This deliverable will be a report on the completion of RCRA compliant storage for the LLMW interim storage facility. The EPA plans to support the State's initiative toward rapid construction of RCRA compliant interim storage for mixed wastes.
13. Page 6 of Appendix B, Section 2, add the following:
Deliverable STRU 200 due 1/30/95. This report will be a deliverable and the date, a milestone. This deliverable will be a report on the completion of RCRA compliant interim storage for the TRU mixed wastes. DOE may consider adding language that references the modification procedures in regard to reconciling the FFCA with the anticipated State Administrative Order. The EPA expects the facility to achieve RCRA compliant interim storage for all wastes by 1/30/95.
14. As a general matter, EPA would like to add some additional language discussing the State of New Mexico's enforcement actions and relationship, but EPA would prefer to wait until the State actually issues its Orders before doing so. This would basically concern the handling of TRU wastes and the

possibility of the State overseeing or assuming the responsibility enforcement and oversight of this Order through and EPA-State Memorandum of Understanding.

844

CONTROLLED CORRESPONDENCE

HAZARDOUS WASTE MANAGEMENT DIVISION (6H)

FROM: DIRECTOR, 6H DUE DATE: 12/23

TO: LEAD: target 12/17

- () J. DIVITA Deputy Director
- () J. YOUNGER Div Secretary
- () S. RANKIN Dep Div Secretary/
Corres Control
- () J. GIBBS Program Analyst
- () D. SMITH Staff Assistant
- () C. FANNING Staff Assistant
- () D. DENMON Staff Assistant
- () T. HULLUM Staff Assistant
- () M. Witosky Pres. Mgmt Intern

- () B. HONKER, HW Permits Br
- (/) R. BROWN, HW Enforcement Br
- () G. REITER, HW Program Br
- () S. BECKER, SF Enforcement Br
- () C. EDLUND, SF Program Br
- () B. WILLIAMSON, SF Management Br
- () S. COLEMAN, UST

NOTE: LAUL FFCA to DOE

6H-844-92
(Control number)

ALLYN M. DAVIS
(From)

DIRECTOR, HWMD
(Company)

Subject: LANL FFCA TO DOE
Due on:
12/23/92

Division TARGET - 12/17/92
Comments:

Assigned to Branch: 12/15/92
RCRA ENFORCEMENT 6H-C
Staff assigned: /

Extension:
Denial:

Letter sent:
Letter sent:

Branch completed on:
Division completed on:
Cost:

DEC 23 1992

Branch &
Section
Comments:

*Potts
to Nick*

DEC 15 1992
HWMD
RCRA COMPLIANCE
TECHNICAL SECTION