



**Department of Energy**  
Albuquerque Operations Office  
P.O. Box 5400  
Albuquerque, New Mexico 87115

MAR. 14 1990



Ms. Gini Nelson  
Assistant General Counsel  
Health and Environment Department  
1190 St. Francis Drive  
Santa Fe, NM 87503

Dear Ms. Nelson:

RE: In the Matter of Compliance Orders Docket Nos. 880801 and 880801-A, Hearing No. 89-01

Enclosed are three copies of the consent agreement which resolves the captioned matter as well as an outstanding 1985 compliance order. All three copies have been executed by the Department of Energy and the University of California. Upon execution by the Deputy Director of the Environmental Improvement Division, the consent agreement will be ready for submission to the Hearing Officer for recommendation to the Director for final approval. The three copies assure that each party will have an original executed copy.

On the basis of our telephone conversation on March 14, 1990, I understand that you will prepare the joint motion necessary for submitting the executed consent agreement to the Hearing Officer.

If any procedures remain to be discussed, I assume we will clear those up in our teleconference with the Hearing Officer on March 15, 1990. If not, please give me a call.

Sincerely,

Joyee Hester Laeser  
Counsel

Enclosures

cc w/encl.

Michael Yesley, LANL, MS A187

9088-52507



12278

**BEFORE THE DIRECTOR OF THE  
ENVIRONMENTAL IMPROVEMENT DIVISION  
OF THE NEW MEXICO HEALTH AND ENVIRONMENT DEPARTMENT**

In the Matter of  
Compliance Orders  
Docket Nos. 880801 and 880801-A

Docket No. 89-01

**CONSENT AGREEMENT**

This Consent Agreement ("Agreement") is entered into by the Environmental Improvement Division of the New Mexico Health and Environment Department ("EID"), the United States Department of Energy ("DOE"), and The Regents of the University of California ("University") this \_\_\_\_ day of March 1990. This Agreement resolves all issues presented by, and all disputes arising out of, the Compliance Orders/Schedules described herein, and is made upon the following terms and conditions:

**I. Parties.**

**A. United States Department of Energy.** DOE, an agency of the federal government, owns the Los Alamos National Laboratory ("LANL"), located in Los Alamos, New Mexico. As such, DOE is an owner of a hazardous waste facility within the meaning of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq. ("RCRA"), the New Mexico Hazardous Waste Act, Section 74-4-1 et seq., N.M.S.A. (1978) ("HWA"), and the New Mexico Hazardous Waste Management Regulations ("HWMR"). DOE has the authority to sue, to be sued to the extent the United States has waived its sovereign immunity to suit, and to enter into this Agreement.

**B. The Regents of the University of California.** The University is a branch of the State of California equal and coordinate with the legislature, the judiciary and the executive. The University operates LANL for DOE under Contract No. W-7405-ENG-36. As such, the University is an operator of a hazardous waste facility within the meaning of RCRA, HWA and HWMR. The University has the authority to sue and be sued, and to enter into this Agreement.

**C. Los Alamos National Laboratory.** LANL is a federal facility within the meaning of RCRA and, as such, is subject to regulation by EID under the provisions of HWA and HWMR, as authorized by Congress in 42 U.S.C. Section 6961.

**D. Environmental Improvement Division.** EID is an agency of the State of New Mexico and has the lawful authority and duty to enforce the provisions of HWA and HWMR, as provided in Section 74-4-10, N.M.S.A. (1978). EID has general statutory authority to sue and be sued, and to enter into this Agreement, pursuant to Section 74-1-6, N.M.S.A. (1978).

**II. Scope of Agreement.** This Agreement applies to the alleged violations of the then-current HWMR and all other matters contained in:

**A. Compliance Order/Schedule Docket No. NMHWA 001007 ("CO/S 001007"),** dated May 7, 1985.

**B. Compliance Orders/Schedules Docket Nos. 880801 ("CO/S 880801") and 880801-A ("CO/S 880801-A"),** dated August 30, 1988.

**III. Statement of Facts.**

**A. CO/S 001007.** On May 7, 1985, EID issued CO/S 001007 against DOE and the University. All violations cited in CO/S 001007 were corrected by August 9, 1985.

**B. CO/S's 880801 and 880801-A.** On July 14-16, 1987, EID and the United States Environmental Protection Agency ("EPA") conducted a hazardous waste compliance inspection at LANL. On January 8, 1988, EID issued a Notice of Violation ("NOV") to DOE and to the University regarding violations of the HWMR based on the July 1987 inspection. The NOV constituted reissuance of EID's November 10, 1987 NOV, which was rescinded on November 24, 1987. On August 30, 1988, EID issued CO/S 880801 against DOE and CO/S 880801-A against the University. These orders constituted reissuance of EID's August 1, 1988 order issued to the same parties, in order to clarify some confusion as to whom the orders were issued. Under protest, DOE and the University submitted to EID a request for public hearing on October 6, 1988. EID filed the request with the hearing clerk on July 27, 1989. The Hearing Officer approved Rules Governing Appeals from Compliance Orders Docket Nos. 880801 and 880801-A on August 11, 1989 ("Hearing Rules"), and the parties commenced their pleadings in this matter.

**IV. Compromise and Settlement.**

In consideration of the mutual undertakings expressed herein, the parties agree as follows:

**A. Accord and Satisfaction.** This Agreement constitutes full satisfaction of (1) all activities ordered by the EID Director in CO/S's 001007, 880801 and 880801-A, including, but not limited to, any activities specifically addressed herein, and (2) any penalties proposed or assessed in such CO/S's. EID waives any right to pursue further legal action against DOE or the University with respect to the alleged violations to which this Agreement applies, and releases DOE and the University from all obligations under CO/S's 001007, 880801 and 880801-A.

**B. Submittal of Data.** The requirement under CO/S's 880801 and 880801-A for submission of a plan to perform chemical and

physical characterization of all waste streams at LANL has been fulfilled by the inclusion of the Additional Data Submittal Schedule in Permit NM0890010515-1. The performance of the Additional Data Submittal Schedule shall be subject to the terms, conditions and penalties for noncompliance set forth in Permit NM0890010515-1.

**C. Exemption from Regulation.** Nothing in the Hazardous Waste Act shall be construed to apply to any activity or substance that is subject to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. 300f et seq.), or the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.) except to the extent that such application or regulation is not inconsistent with the requirements of such acts. Industrial wastewater discharges that are point source discharges subject to regulation under section 402 of the Clean Water Act, as amended, are not solid wastes for the purpose of Part 261 of HWMR-5.

**D. Administrative Costs.** The University shall pay EID the sum of \$30,000.00 for administrative costs related to the violations to which this Agreement applies. Payment shall be made within 30 days after the effective date of this Agreement by check mailed to the New Mexico Health and Environment Department, Office of General Counsel, 1190 St. Francis Drive, Santa Fe, New Mexico 87503, payable to the State of New Mexico, c/o EID.

**E. EID's Reservation of Rights.** In entering this Agreement, EID does not abandon its general legal position as to the power of EID to enforce all provisions of New Mexico law against federal facilities such as LANL, and EID reserves the right to assess civil penalties or seek any other sanction provided by New Mexico law in the event of any future violations by DOE or the University at LANL of a compliance order or applicable provision of HWMR or New Mexico law.

**F. DOE's and University's Reservation of Rights.** In entering this Agreement, DOE and the University reserve their rights to any and all defenses available under New Mexico and federal law, and disclaim any admission of wrongdoing.

**G. Jurisdiction.** DOE and the University admit the Director has jurisdiction over the matters resolved in this Consent Agreement. In the event DOE and the University fail to comply with their obligations under this Consent Agreement, EID reserves the right to take other enforcement action against DOE and the University. DOE and the University reserve the right to raise any and all available defenses to such enforcement action.

**H. Director's Approval of Agreement.** In accordance with the Hearing Rules, this Agreement shall be submitted to the Hearing Officer for his recommendation to the EID Director. If the Director approves this Agreement, it shall constitute the Director's final order in the matter referenced as Docket No.

89-01, and shall be enforceable to the same extent as any other final order of the Director. If the Director disapproves this Agreement, it shall be null and void, and such matter shall proceed as if this Agreement had not existed.

**V. Good Faith Performance and Applicable Law.** The parties agree they will act reasonably and in good faith to carry out this Agreement. Applicable New Mexico and federal law shall govern all issues arising from or associated with the formation, performance, enforcement and termination of this Agreement.

**VI. Effect upon Successors in Interest.** The provisions of this Agreement shall apply to and be binding upon not only the signatory parties, but also upon their officers, employees, agents, successors and assigns. This Agreement shall not bind any other state or federal regulatory agencies.

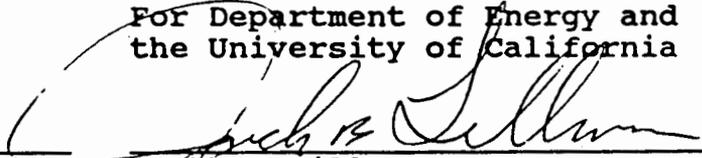
**VII. Reserved Rights.** Except as provided in this Agreement, the parties do not waive or alter, nor shall they be deemed to have waived or altered, any existing or future legal rights, duties, obligations or remedies by entering into this Agreement.

**VIII. Merger.** This Agreement contains all the terms of the settlement agreement between the parties.

**IX. Effective Date.** This Agreement shall be effective upon the approval by the EID Director.

For EID:

For Department of Energy and  
the University of California



Kirkland Jones, Deputy Director  
Environmental Improvement  
Division  
State of New Mexico

Jack B. Tillman  
Area Manager  
Los Alamos Area Office  
United States  
Department of Energy

MAR 14 1990

\_\_\_\_\_  
Date

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Date

Allen J. Tiedman, Associate  
Director for Operations  
Los Alamos National Laboratory  
University of California

\_\_\_\_\_  
Date