

~~General~~ General

*Claudia  
my routing file  
Beato*



State of New Mexico  
**ENVIRONMENT DEPARTMENT**  
Harold Runnels Building  
1190 St. Francis Drive, P.O. Box 26110  
Santa Fe, New Mexico 87502  
(505) 827-2850

**BRUCE KING**  
GOVERNOR

**JUDITH M. ESPINOSA**  
SECRETARY

**RON CURRY**  
DEPUTY SECRETARY

**CERTIFIED MAIL -- RETURN RECEIPT REQUESTED**

September 2, 1994

Earl Bean, Acting Area Manager  
U.S. Department of Energy  
Los Alamos Area Office  
Los Alamos, New Mexico 87544

Seigfried S. Hecker, Director  
Los Alamos National Laboratory  
P.O. Box 1663  
MSK 490  
Los Alamos, New Mexico 87545

Dear Mr. Bean and Mr. Hecker:

**RE: Compliance Order  
NM0890010515**

The Hazardous and Radioactive Materials Bureau of the New Mexico Environment Department ("NMED") issues the enclosed Compliance Order to the U.S. Department of Energy ("DOE") and the Regents of the University of California ("Regents") pursuant to the New Mexico Hazardous Waste Act, NMSA 1978 §74-4-10 (Repl. Pamp. 1993). The Compliance Order states that Los Alamos National Laboratory ("LANL") has failed to comply with the New Mexico Hazardous Waste Management Regulations (HWMR-7). The violations are specifically set forth in the Compliance Order.

The Compliance Order sets forth a schedule of compliance required of LANL as well as an assessment of penalties. DOE and the Regents may be subject to additional civil penalties of up to \$25,000 for each day of noncompliance with the Compliance Order, as set forth in §74-4-10 NMSA 1978.

The NMED conducted the inspection to which the Compliance Order pertains jointly with the U.S. Environmental Protection Agency ("EPA"). The NMED is in receipt of EPA's final report including EPA's findings. Enforcement action which the NMED has determined to be appropriate as a result of any findings by the EPA in addition those found by the NMED are addressed in the Compliance Order.

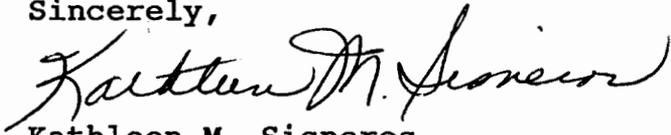


12536

Mr. Bean and Mr. Hecker  
Page 2  
September 2, 1994

Any inquiries concerning the Compliance Order should be directed to Coby Muckelroy, RCRA Inspection/Enforcement Program Manager, Hazardous and Radioactive Materials Bureau, at (505) 827-4308.

Sincerely,



Kathleen M. Sisneros  
Director  
Water and Waste Management Division

xc: Kathyryn M. Griffith, U.S. EPA Region VI (6H-HS)  
Benito Garcia, Chief, HRMB  
Coby Muckelroy RCRA Insp/Enf Program Manager, HRMB  
Susan McMichael, Office of General Counsel  
Tito Madrid, NMED District II Office

STATE OF NEW MEXICO  
ENVIRONMENT DEPARTMENT

IN THE MATTER OF  
U.S. DEPARTMENT OF ENERGY  
AND REGENTS OF THE UNIVERSITY OF CALIFORNIA  
LOS ALAMOS, NEW MEXICO,

COMPLIANCE ORDER  
NMHWA 94-09

RESPONDENTS.

**ADMINISTRATIVE ORDER REQUIRING COMPLIANCE  
AND PROPOSING TO ASSESS A CIVIL PENALTY**

This Administrative Order ("Order") is issued to the United States Department of Energy and the Regents of the University of California ("Respondents") pursuant to the New Mexico Hazardous Waste Act ("HWA"), NMSA 1978 §74-4-10 (Repl. Pamp. 1993). The authority to issue this Order has been delegated by the Secretary of the New Mexico Environment Department ("NMED") to the Director of the Water and Waste Management Division ("Complainant").

**FINDINGS**

1. Complainant is the agency within the executive branch of the New Mexico state government charged with administration and enforcement of the New Mexico Hazardous Waste Act §§74-4-1 et seq.
2. Respondents are the U.S. Department of Energy ("DOE") and the Regents of the University of California ("UC").
3. DOE is an agency of the federal government and the owner and a co-operator of Los Alamos National Laboratory ("LANL").
4. UC is a public educational institution of the State of California and the management and operating contractor for LANL pursuant to a contract with DOE, and is a co-operator of LANL.
5. LANL is located principally in Los Alamos County, New Mexico, approximately sixty (60) miles northeast of Albuquerque and twenty-five (25) miles northwest of Santa Fe. The LANL site encompasses approximately forty-three (43) square miles.

6. LANL was chosen in 1942 as the site for the wartime development of the atomic bomb. The area was established as a military reservation, and operations began in 1943. Since 1943, the primary mission of LANL has been nuclear weapons research and development. In addition, the facility does work in magnetic and inertial fusion, nuclear fission, nuclear safeguards and security, laser isotope separation, and medical isotope development.

7. In association with the activities identified above, LANL generates, treats, and stores hazardous wastes and mixed hazardous and radioactive wastes.

8. On August 2-12, 1993, NMED employees Coby Muckelroy, John Tymkowych, James Seubert, and Edward Horst conducted a hazardous waste inspection ("inspection") at LANL. The inspection was conducted jointly with U.S. Environmental Protection Agency ("EPA") National Enforcement Investigations Center ("NEIC") inspectors.

9. At the time of the inspection, at a TA 35-46-102 satellite accumulation point, waste tin/lead solder, a hazardous waste, was being stored. Upon information and belief, on several occasions waste tin/lead solder previously generated has been disposed into a general trash container and ultimately shipped to a non-hazardous waste facility that does not have an EPA identification number.

10. A generator must not offer hazardous waste to a treatment, storage, or disposal facility that has not received an EPA identification number.

11. At the time of the inspection, at the same TA 35-46-102 satellite accumulation point, a container of waste tin/lead solder was not marked with the words "hazardous waste" or with other words that identify its contents.

12. Upon information and belief, at the TA-0-030(g) former Catholic Church, which is a remediation site, metal-containing wastes were removed from a septic tank located at this site and disposed of at a low-level radioactive landfill, which is not authorized to receive hazardous waste. This was done prior to performing an adequate hazardous waste determination on the waste generated as a result of remediation activities.

13. Upon information and belief, LANL had not performed an adequate hazardous waste determination as to the metal content of treatment sludges from etching Tank Nos. 1 and 2 at the circuit board production area at TA 22-91.

14. Upon information and belief, LANL had not performed an adequate hazardous waste determination as to the metal content of wastewater treatment sludge generated at the main TA 50 wastewater treatment facility.

15. Upon information and belief, LANL had not performed an adequate hazardous waste determination on the contents of a container (marked "radioactive hot dirt from WM66 flume industrial waste line") being stored at the TA 50 modular building 114.

16. Upon information and belief, LANL had not performed an adequate hazardous waste determination on the contents of 148 gas cylinders being stored at the TA 54 gas cylinder storage area.

17. At the time of the inspection, two instances of hazardous waste about to be transported on public roadway without the required manifest were observed. Upon information and belief, hazardous wastes are routinely transported on public roads without the use of a uniform hazardous waste manifest (EPA form 8700-22, OMB Control Number 2050-0039).

18. At the time of the inspection, at the TA 3-132-C1 less than ninety day hazardous waste accumulation area, adequate decontamination equipment, in the form of a shower/eye wash or equivalent device, was not available within reasonable proximity. Upon information and belief, the nearest decontamination equipment available was located at a downstairs floor of the building.

19. At the time of the inspection, at the TA 3-2056 less than ninety day hazardous waste accumulation area, adequate decontamination equipment, in the form of a shower/eye wash or equivalent device, was not available within reasonable proximity. Upon information and belief, the nearest decontamination equipment available was at least one hundred (100) feet away requiring a walk upstairs and through a set of doors.

20. At the time of the inspection, at the TA 41-1 less than ninety day hazardous waste accumulation area, adequate decontamination equipment, in the form of a shower/eye wash or equivalent, was not available within reasonable proximity. Upon information and belief, the nearest decontamination equipment available was at least one hundred fifty (150) feet away outside a doorway.

21. At the time of the inspection, at the TA 21-427 (shed south of bldg. 14) less than ninety day hazardous waste accumulation area, adequate decontamination equipment, in the form of a shower/eye wash or equivalent, was not available within reasonable proximity. Upon information and belief, the nearest decontamination equipment available was at least one hundred (100) feet away outside the shed and across an open area in bldg. 14 inside a restroom.

22. At the time of the inspection, at the area described in ¶21, ignitable hazardous waste was being stored. However, no grounding wires or bonding wires were available during mixing or pouring into the containers. Therefore, the area was not being maintained and operated to minimize the possibility of a fire or explosion which could threaten human health or the environment.

23. At the time of the inspection, at the area described in ¶21, an internal communications or alarm system capable of providing immediate emergency instruction to facility personnel was not available within reasonable proximity. Upon information and belief, the nearest such device was at least one hundred (100) feet away outside the shed and across an open area in bldg. 14.

24. At the time of the inspection, at the area described in ¶21, a device, such as a telephone or a hand-held two-way radio, capable of summoning emergency assistance was not available within reasonable proximity. Upon information and belief, the nearest such device was at least one hundred (100) feet away outside the shed and across an open area in bldg. 14.

25. At the time of the inspection, at the area described in ¶21, fire control and spill control equipment was not available within reasonable proximity. Upon information and belief, the nearest such equipment was at least one hundred (100) feet away.

26. At the time of the inspection, the area described in ¶21 was not included in the facility contingency plan, which must include an evacuation plan and a list of all emergency equipment and decontamination equipment, and must include the location and a physical description of each item on the list.

27. At the time of the inspection, at a TA 55-3-170 satellite accumulation point, a one quart bottle of an unknown liquid waste, marked as unknown, was being stored under a vent hood on the east wall. Upon information and belief, the container, apparently an orphaned waste, was found in room 187 on or about August 19, 1992, and then brought to room 170 for storage. The waste was finally sampled on July 30, 1993. At the time of the inspection the results were not yet available. Therefore, for an extended period of time, approximately ten months, the waste was being stored without an effort to make a proper hazardous waste determination.

28. At the time of the inspection, at a TA 35-213-B24 satellite accumulation point, a five gallon bottle of hazardous waste labeled as containing acetone, toluene, styrene, acetonitrile, among other chemicals, was being stored with the lid off under a vent hood. A container of hazardous waste must be kept closed at all times, except during the instance waste is physically being added or removed from the container.

29. At the time of the inspection, at a TA 9-21-135 satellite accumulation point, a one liter beaker of hazardous waste containing acetone and HE contaminated waste was being stored open. A container of hazardous waste must be kept closed at all times, except during the instance waste is physically being added or removed from the container.

30. At the time of the inspection, at TA 16-261, waste high explosives accumulating in a rest house were stored in six containers that were not either marked to identify their contents or labeled or marked clearly with the words "Hazardous Waste."

31. At the time of the inspection, at the TA 3-66-P1A satellite accumulation point, hazardous waste was not clearly marked with the contents or the words "Hazardous Waste."

32. At the time of the inspection, at the TA 35-85-106B satellite accumulation point, greater than 55 gallons of hazardous waste were being stored. The containers holding the excess waste were not marked with the date the excess amount began accumulating.

33. At the time of the inspection, at the TA 0-1237-203 satellite accumulation point, hazardous waste was not being accumulated under the control of the operator of the process generating the waste.

34. At the time of the inspection, at the TA 3-40 (entrance to corridor) satellite accumulation point, hazardous waste was not being accumulated under the control of the operator of the process generating the waste.

35. At the time of the inspection, at the TA 3-40-W112 satellite accumulation point, hazardous waste was not being accumulated under the control of the operator of the process generating the waste.

36. At the time of the inspection, at the TA 3-66-P1A satellite accumulation point, hazardous waste was not being accumulated under the control of the operator of the process generating the waste.

37. At the time of the inspection, at the TA 11-24 satellite accumulation point, hazardous waste was not being accumulated under the control of the operator of the process generating the waste.

38. At the time of the inspection, at the TA 35-46-102 satellite accumulation point, hazardous waste was not being accumulated under the control of the operator of the process generating the waste.

39. At the time of the inspection, at the TA 35-85-106B satellite accumulation point, hazardous waste was not being accumulated under the control of the operator of the process generating the waste.

40. At the time of the inspection, at the TA 35-125-F108 satellite accumulation point, hazardous waste was not being accumulated under the control of the operator of the process generating the waste.

41. At the time of the inspection, at the TA 35-255-101 satellite accumulation point, hazardous waste was not being accumulated under the control of the operator of the process generating the waste.

42. At the time of the inspection, training documentation available for Mr. Jerome Houlton, a LANL employee who works at the TA 18-110 less than ninety day hazardous waste accumulation area, indicates that the last hazardous waste training provided to him occurred on July 15, 1992. Upon information and belief, Mr. Houlton did not receive the required hazardous waste training within a twelve month period.

43. At the time of the inspection, training documentation available for Mr. Larson, a LANL employee who works at the TA 41-1 less than ninety day hazardous waste accumulation area, indicates that the last hazardous waste training provided to him occurred on September 10, 1991. Upon information and belief, Mr. Larson did not receive the required hazardous waste training annually.

44. At the time of the inspection, no record of a hazardous waste determination for sludges generated from explosives processing at the TA 9-21-AE191 satellite accumulation point was available. A generator must keep records of any hazardous waste determinations made for each solid waste generated for at least three years from the date that the waste was last sent to an on-site or off-site treatment, storage, or disposal facility.

45. At the time of the inspection, at the TA 55 low-level mixed waste storage area, in the basement, nine (9) lead-acid batteries being stored as mixed waste in a cabinet were not marked with accumulation start dates. Additionally, the cabinet itself was not marked with the batteries' accumulation start dates.

46. At the time of the inspection, at the TA 54 Area L permitted container storage area, gas cylinders of hazardous waste (container ## C92026976, C907423N, C92027888, GCP1636A, C9202592, C92029792, and CLS0181) were either not marked with an accumulation start date or the markings were not legible.

47. At the time of the inspection, at TA 54 Area G shed 144, pit 33, the accumulation start date was not marked on three containers (## C92031912, C92031913, and C92031914) of mixed hazardous waste.

48. At the time of the inspection, at the mixed waste storage area at TA 54 Area L, container # C93037017 was not marked with an accumulation start date.

49. Upon information and belief, at TA 54 Area L building 5469, containers of hazardous waste (container ## C92028745, C9203417, C92031097, C92030498, and C92030519) have exceeded the allowable one year storage limit for land disposal restricted waste.

50. At the time of the inspection, at the TA 54 Area L permitted container storage area, container # C92030377, located in the acid bay, dated 7/29/92, had exceeded the allowable one year storage limit for land disposal restricted waste.

51. Upon information and belief, at the TA 54 Area L gas cylinder storage area, approximately 644 containers of hazardous waste had exceeded the allowable one year storage limit for land disposal restricted waste.

52. At the time of the inspection, the waste analysis plan for treatment of restricted hazardous waste in containers at the lead decontamination trailer at TA 50 had not been filed with the appropriate regulatory authority.

53. At the time of the inspection, land disposal restriction notices did not indicate the corresponding manifest document numbers for the following hazardous waste manifest documents:

LAA6026598	00103304
LAA6026559	00130049-00130054
00552694-00552702	00130056-00130063
00552075-00552076	

54. Upon information and belief, LANL treated hazardous waste at the TA 16 bldg. 387 flash pad using processes not specified in the facility's Part A permit application.

55. Upon information and belief, LANL treated hazardous waste at the TA 14 burn cage treatment unit, which is not identified in LANL's Part A permit application.

56. Upon information and belief, the waste analysis plan in LANL's permit had not been modified to specify procedures used to sample and analyze wastes using the Toxicity Characteristic Leachate Procedure (TCLP) for the purpose of making hazardous waste determinations.

57. On May 4-8, 1992, April 29 - May 3, 1991, March 5-9, 1990, and August 7-11, 1989, Complainant conducted hazardous waste inspections of Respondents' facility. During these inspections, violations concerning disposal of hazardous waste at an unauthorized facility, failure to keep containers of hazardous waste closed, failure to mark containers of hazardous waste as to their contents, exceeding quantity limits at satellite accumulation points, failure to keep hazardous waste under the control of the operator generating the waste, failure to provide adequate decontamination equipment, failure to conduct adequate hazardous waste determinations, failure to provide required hazardous waste training, and/or failure to mark containers with accumulation start dates were noted.

### CONCLUSIONS

58. Respondents are a "person" as defined at §74-4-3.K of HWA, and §101 of Hazardous Waste Management Regulations, effective November 20, 1992 ("HWMR-7"), which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

59. Respondents are a "generator" as defined at §74-4-3.F of HWA, and §101 of HWMR-7, which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

60. Respondents generate "hazardous waste" as defined at §74-4-3.I of HWA, and §101 of HWMR-7, which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

61. Respondents generate waste which is referred to as "mixed waste," which is defined as waste which contains a hazardous waste component regulated under Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6921 to 6939b, and the HWA; and a radioactive component consisting of source, special nuclear, or byproduct material regulated under the federal Atomic Energy Act (AEA).

62. Respondents operate a "facility" as defined at §101 of HWMR-7, which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

63. Respondents engage in the "treatment," "storage," and/or "disposal" of hazardous waste as those terms are defined at §74-4-3.C., N., and Q. of HWA, and §101 of HWMR-7, which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

64. Respondents store hazardous waste in "containers" as defined at §101 of HWMR-7, which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

65. §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.10(a), makes the regulations in Part 262 (Standards Applicable to Generators of Hazardous Waste) applicable to Respondents, and Respondents have violated regulations in Part 262 as specified below. §801 of HWMR-7, which incorporates federal regulation 40 CFR §268.1(a), makes the regulations in Part 268 (Land Disposal Restrictions) applicable to Respondents, and Respondents have violated regulations in Part 268 as specified below. §901 of HWMR-7, which incorporates federal regulation 40 CFR §270.1, makes the regulations in Part 270 (EPA Administered Permit Programs: The Hazardous Waste Permit Program) applicable to Respondents, and Respondents have violated regulations in Part 270 as specified below.

66. Respondents have disposed of tin/lead solder into a general trash container at a TA 35-46-102 satellite accumulation point. This waste was ultimately shipped to a non-hazardous waste facility that does not have an EPA identification number, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.12(c).

67. Respondents have failed to mark a container of waste tin/lead solder with the words "hazardous waste" or with other words that identify its contents at a TA 35-46-102 satellite accumulation point, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(c)(1)(ii).

68. Respondents have failed to conduct an adequate hazardous waste determination on metal-containing wastes removed from a septic tank at the TA-0-030(g) former Catholic Church site, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.11.

69. Respondents have failed to conduct an adequate hazardous waste determination on metal-containing treatment sludges from the circuit board production at TA 22-91, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.11.

70. Respondents have failed to conduct an adequate hazardous waste determination on wastewater treatment sludge generated at TA 50, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.11.

71. Respondents have failed to conduct an adequate hazardous waste determination on the contents of a container being stored at TA 50-114, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.11.

72. Respondents have failed to conduct an adequate hazardous waste determination on the contents of 148 gas cylinders being stored at the TA 54 gas cylinder storage area, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.11.

73. Respondents have failed to conduct a hazardous waste determination for the unknown contents of a container being stored at a TA 55-3-170 satellite accumulation point, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.11.

74. Respondents have failed to use a uniform hazardous waste manifest during shipments of hazardous waste on public roads, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.20(a).

75. Respondents have failed to provide adequate decontamination equipment, in the form of a shower/eye wash or equivalent device, at the TA 3-132-C1 less than ninety day hazardous waste accumulation area, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(a)(4).

76. Respondents have failed to provide adequate decontamination equipment, in the form of a shower/eye wash or equivalent device, at the TA 3-2056 less than ninety day hazardous waste accumulation area, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(a)(4).

77. Respondents have failed to provide adequate decontamination equipment, in the form of a shower/eye wash or equivalent device, at the TA 41-1 less than ninety day hazardous waste accumulation area, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(a)(4).

78. Respondents have failed to provide adequate decontamination equipment, in the form of a shower/eye wash or equivalent device, at the TA 21-427 less than ninety day hazardous waste accumulation area, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(a)(4).

79. Respondents have failed to maintain and operate the TA 21-427 less than ninety day hazardous waste accumulation area so as to minimize the possibility of a fire or explosion which could threaten human health or the environment, and provide fire and spill control equipment within reasonable proximity, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(a)(4).

80. Respondents have failed to equip the TA 21-427 less than ninety day hazardous waste accumulation area with an internal communications or alarm system, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(a)(4).

81. Respondents have failed to equip the TA 21-427 less than ninety day hazardous waste accumulation area with a device, such as a telephone or a hand-held two-way radio, capable of summoning emergency assistance, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(a)(4).

82. Respondents have failed to include the TA 21-427 less than ninety day hazardous waste accumulation area in the facility contingency plan, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(a)(4).

83. Respondents have failed to keep a container of hazardous waste closed at a TA 35-213-B24 satellite accumulation point, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(c)(1)(i).

84. Respondents have failed to keep a container of hazardous waste closed at a TA 9-21-135 satellite accumulation point, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(c)(1)(i).

85. Respondents have failed to identify the contents of or label or mark clearly with the words "Hazardous Waste" containers of hazardous waste at a TA 16-261 rest house, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(c)(1)(ii).

86. Respondents have failed to clearly mark a container of hazardous waste as to its contents or with the words "Hazardous Waste" at the TA 3-66-PIA satellite accumulation point, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(c)(1)(ii).

87. Respondents have failed to mark containers with the date that excess amounts of hazardous waste began accumulating at the TA 35-85-106B satellite accumulation point, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(c)(2).

88. Respondents have failed to ensure that hazardous waste is managed under the control of the operator of the process generating the waste, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(c)(1), at the following satellite accumulation points:

TA 0-1237-203	TA 3-40 (entrance to corridor)
TA 3-40-W112	TA 3-66-PIA
TA 11-24	TA 35-46-102
TA 35-85-106B	TA 35-125-F108
TA 35-255-101	

89. Respondents have failed to provide LANL employees Houlton and Larson with the required hazardous waste annual review training by the required renewal date, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(a)(4).

90. Respondents have failed to maintain a record of a hazardous waste determination for sludges generated from explosives processing at the TA 9-21-AE191 satellite accumulation point, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.40(c).

91. Respondents have failed to mark nine (9) lead-acid batteries at the TA 55 low-level mixed waste storage area with the applicable accumulation start dates, in violation of §801 of HWMR-7, which incorporates federal regulation 40 CFR §268.50(a)(2)(i).

92. Respondents have failed to mark three containers (enumerated in ¶47) of hazardous waste at the TA 54 Area G shed 144 pit 33 storage area with the applicable accumulation start dates, in violation of §801 of HWMR-7, which incorporates federal regulation 40 CFR §268.50(a)(2)(i).

93. Respondents have failed to legibly mark or mark outright at least seven (7) gas cylinders (enumerated in ¶46) of hazardous waste at the TA 54 Area L permitted container storage area with the applicable accumulation start dates, in violation of §801 of HWMR-7, which incorporates federal regulation 40 CFR §268.50(a)(2)(i).

94. Respondents have also failed to mark container #C93037017 at the mixed waste storage area at TA 54 Area L with the accumulation start date, in violation of §801 of HWMR-7, which incorporates federal regulation 40 CFR §268.50(a)(2)(i).

95. Respondents have allowed five (5) containers (enumerated in ¶49) of hazardous waste at TA 54 Area L building 5469 to exceed the allowable one year storage limit for land disposal restricted waste, in violation of §801 of HWMR-7, which incorporates federal regulation 40 CFR §268.50(b).

96. Respondents have allowed container # C92030377 at the TA 54 Area L permitted container storage area to exceed the allowable one year storage limit for land disposal restricted waste, in violation of §801 of HWMR-7, which incorporates federal regulation 40 CFR §268.50(b).

97. Respondents have allowed approximately 644 containers of hazardous waste at the TA 54 Area L gas cylinder storage area to exceed the allowable one year storage limit for land disposal restricted waste, in violation of §801 of HWMR-7, which incorporates federal regulation 40 CFR §268.50(b).

98. Respondents have failed to file with the appropriate regulatory authority a waste analysis plan for treatment of restricted hazardous waste in containers at the lead decontamination trailer at TA 50, in violation of §801 of HWMR-7, which incorporates federal regulation 40 CFR §268.7(a)(4)(ii).

99. Respondents have failed to indicate the corresponding manifest document numbers on the land disposal restriction notices associated with the hazardous waste manifest documents enumerated in ¶53, in violation of §801 of HWMR-7, which incorporates federal regulation 40 CFR §268.7(a)(1)(iii).

100. Respondents have treated hazardous waste at the TA 16 bldg. 387 flash pad using processes not specified in the facility Part A permit application, in violation of §901 of HWMR-7, which incorporates federal regulation 40 CFR §270.71(a)(2).

101. Respondents have treated hazardous waste at the TA 14 burn cage treatment unit prior to identifying this activity in the facility Part A permit application, in violation of §901 of HWMR-7, which incorporates federal regulation 40 CFR §270.71(a).

102. Respondents have failed to update the waste analysis plan in the facility permit to specify procedures used to sample and analyze wastes as per the Toxicity Characteristic Leachate Procedure (TCLP), in violation of Permit Attachment A of LANL's operating permit.

103. ¶¶ 66, 67, 68, 69, 70, 71, 72, 73, 75, 76, 77, 78, 83, 84, 85, 86, 87, 88, 89, 91, 92, 93, 94, and 99 entail violations which were cited as a result one or more of the inspections referred to in ¶57. Therefore, Respondents have demonstrated that they are both recalcitrant and chronic violators of hazardous waste regulations. Additionally, ¶74 and ¶102 as well as other paragraphs mentioned previously in this paragraph entail violations which have caused a substantial likelihood of exposure to hazardous waste and/or demonstrate a substantial deviation from the hazardous waste regulations.

CIVIL PENALTY

Section 74-4-10 of HWA authorizes the assessment of a civil penalty of up to ten thousand dollars (\$10,000) per day for each violation of HWA and the regulations promulgated thereunder. Complainant hereby proposes to assess a civil penalty of Two Hundred Forty Seven Thousand One Hundred Seventy Seven Dollars (\$247,177) against Respondents. The penalty is based on the seriousness of the violations and any good faith efforts on the part of the Respondents to comply with the applicable requirements and any economic benefit accruing to the Respondents, as well as such other matters as justice may require, and is calculated pursuant to the NMED's Civil Penalty Policy. The individual penalty for each violation is:

<u>VIOLATION</u>	<u>AMOUNT</u>
¶66 Disposal at unauthorized facility.	\$4,590
¶67 Failure to mark container as to contents.	\$4,760
¶68 Failure to conduct hw determination.	\$11,340
¶69 Failure to conduct hw determination.	\$12,757.50
¶70 Failure to conduct hw determination.	\$131,490
¶71 Failure to conduct hw determination.	\$12,285
¶72 Failure to conduct hw determination.	\$10,867.50
¶73 Failure to conduct hw determination.	\$4,080
¶74 Failure to use hw manifest.	\$11,340
¶75 Failure to provide decon equipment.	\$1,012.50
¶76 Failure to provide decon equipment.	\$1,012.50
¶77 Failure to provide decon equipment.	\$675
¶78 Failure to provide decon equipment.	\$675
¶83 Failure to keep a container closed.	\$700
¶84 Failure to keep a container closed.	\$750

¶85	Failure to mark containers as haz. waste.	\$8,990
¶86	Failure to mark containers as to contents.	\$1,470
¶87	Exceeded 55-gallon quantity limit at SAP.	\$780
¶88	Failure to keep hw under control of operator generating waste at SAP's.	\$12,757
¶89	Failure to provide required hw training.	\$4,590
¶91	Failure to mark containers with accumulation start dates.	\$1,365
¶92	Failure to mark containers with accumulation start dates.	\$1,365
¶93	Failure to legibly mark or mark outright containers with accumulation start dates.	\$1,365
¶94	Failure to mark a container with accumulation start date.	\$780
¶99	Failure to complete LDR notices.	\$2,080
¶102	Failure to update waste analysis plan.	\$3,300

**COMPLIANCE ORDER**

Based on the foregoing Findings and Conclusions, Respondents are hereby ordered to comply with the following schedule of Compliance:

1. Within one (1) working day from the receipt of this Order, cease disposing of tin/lead solder into the general trash container at TA 35-46-102, and ensure that instead it is properly handled and discarded as a hazardous waste.

2. Within one (1) working day from the receipt of this Order, mark all containers of waste tin/lead solder at TA 35-36-102 with the words "hazardous waste" or with other words that identify the contents.

3. Within five (5) working days from the receipt of this Order, initiate measures to conduct an adequate hazardous waste determination on the wastes described in §§ 68-73; and, within fifteen (15) working days report to Complainant in writing as to the status of these measures so that Complainant can assess their adequacy.

4. Immediately begin the use of a uniform hazardous waste manifest when shipping hazardous waste along public roads.

5. Within ten (10) working days from the receipt of this Order, equip the TA 3-132-C1, TA 3-2056, TA 41-1, and TA 21-427 less than ninety day hazardous waste accumulation areas with a shower/eye wash or equivalent device such that the equipment is directly and immediately available to, but no more than one hundred (100) feet from, a contaminated person. Additionally, unobstructed access must be provided.

6. Within one (1) working day from the receipt of this Order, provide grounding wires or bonding wires, or take other measures to minimize the possibility of a fire or explosion during mixing or pouring of waste into containers at the TA 21-427 less than ninety day accumulation area.

7. Within ten (10) working days from the receipt of this Order, equip the TA 21-427 less than ninety day accumulation area with a device capable of providing immediate emergency instruction to facility personnel.

8. Within ten (10) working days from the receipt of this Order, equip the TA 21-427 less than ninety day accumulation area with a device, such as a telephone or a hand-held two-way radio, immediately capable of summoning emergency assistance.

9. Within five (5) working days from the receipt of this Order, include the TA 21-427 less than ninety day accumulation area in the facility contingency plan.

10. Within one (1) working day from the receipt of this Order, close the containers of hazardous waste found open at TA 35-213-B24 and TA 9-21-135.

11. Within one (1) working day from the receipt of this Order, clearly mark containers of hazardous waste as to their contents or with the words "Hazardous Waste" at the TA 16-261 rest house.

12. Within one (1) working day from the receipt of this Order, clearly mark containers of hazardous waste as to their contents or with the words "Hazardous Waste" at the TA 3-66-P1A satellite accumulation point.

13. Within one (1) working day from the receipt of this Order, remove amounts of hazardous waste in excess of 55-gallons at the TA 35-85-106B satellite accumulation point.

14. Within five (5) working days from the receipt of this Order, initiate measures to ensure that hazardous waste is managed under the control of the operator of the processes generating the waste stored at each of the satellite accumulation points referred to in ¶88.

15. Within five (5) working days from the receipt of this Order, provide employees Houlton and Larson with the required hazardous waste annual review training, and institute measures to ensure that all employees are trained by the required renewal dates.

16. Within ten (10) working days from the receipt of this Order, provide Complainant with a record documenting an adequate hazardous waste determination for sludges generated from explosives processing at TA 9-21-AE191.

17. Within one (1) working day from the receipt of this Order, mark the lead-acid batteries at the TA 55 low-level mixed waste storage area with the applicable accumulation start dates.

18. Within one (1) working day from the receipt of this Order, mark all containers of hazardous waste at the TA 54 Area G shed 144, pit 33 storage area with the applicable accumulation start dates.

19. Within one (1) working day from the receipt of this Order, ensure that all gas cylinders containing hazardous waste at the TA 54 Area L permitted container storage area are properly and legibly marked with the applicable accumulation start dates.

20. Within one (1) working day from the receipt of this Order, mark container # C93037017 at the mixed waste storage area at TA 54 Area L with the accumulation start date.

21. Within fifteen (15) working days from the receipt of this Order, ship the containers of restricted waste at TA 54 Area L building 5469 that have exceeded the one year storage limit to an authorized off-site facility, or provide proof that such storage is solely for the purpose of accumulation of such quantities as necessary to facilitate proper recovery, treatment, or disposal.

22. Within fifteen (15) working days from the receipt of this Order, ship the container of restricted waste at the TA 54 Area L permitted container storage area that has exceeded the one year storage limit to an authorized off-site facility, or provide proof that such storage is solely for the purpose of accumulation of such quantities as necessary to facilitate proper recovery, treatment, or disposal.

23. Within ninety (90) calendar days from the receipt of this Order, ship the containers at the TA 54 Area L gas cylinder storage area that have exceeded the one year storage limit to an authorized off-site facility, or provide proof that such storage is solely for the purpose of accumulation of such quantities as necessary to facilitate proper recover, treatment, or disposal.

24. Within ten (10) working days from the receipt of this Order, submit to Complainant a waste analysis plan for treatment of restricted hazardous waste in containers at the lead decontamination trailer at TA 50.

25. Within one (1) working day from the receipt of this Order, institute measures to ensure that all land disposal restriction notices indicate the corresponding manifest document numbers with which manifests the notices are associated.

26. Within one (1) working day from the receipt of this Order, cease treating hazardous waste at the TA 16 bldg. 387 flash pad using processes not specified in the facility Part A permit application.

27. Within one (1) working day from the receipt of this Order, cease treating hazardous waste at the TA 14 burn cage treatment unit until identifying this activity in the facility Part A permit application.

28. Within five (5) working days from the receipt of this Order, update the waste analysis plan in Attachment A of the facility permit to specify procedures used to sample and analyze wastes as per the Toxicity Characteristic Leachate Procedure.

## NOTICE

If you fail to take the corrective actions within the times specified in the Order, the Secretary may assess a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of continued noncompliance with the Order, pursuant to §74-4-10.C. of HWA.

### NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

Where Respondents (a) contest any material fact or legal matter upon which the Order is based; (b) contend the amount of the penalty proposed is inappropriate; (c) contend that Respondents are entitled to prevail as a matter of law; or (d) otherwise contest the appropriateness of the Order, Respondents shall file a written Request for Hearing, a copy of the Order, and an answer to the Order with the Hearing Clerk within thirty (30) calendar days after service of the Order. The answer must clearly and directly identify, with specificity, what Respondents are appealing.

The answer shall clearly and directly admit or deny, with explanation, each factual allegation contained in the Order with regard to which Respondents have any knowledge. Where Respondents have no knowledge of a particular factual allegation and so state, the allegation may be denied on that basis. Any allegation of the Order not specifically denied shall be deemed admitted.

The answer shall also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) any affirmative defenses upon which Respondents intend to rely; (3) the facts which Respondents intend to place at issue; and (4) whether a hearing is requested. A hearing upon the issues raised by the Order and answer shall be held upon the request of the Respondents.

The Hearing Clerk's address is:

Kim Martinez, Hearing Clerk  
P.O. Box 26110  
1190 St. Francis Drive  
Harold Runnels Building, S-4100  
Santa Fe, New Mexico 87502  
(505) 827-2850

FINALITY OF ORDER

The Order shall become final unless Respondents file a written request for hearing with an answer within thirty (30) calendar days from the date of service of the Order. For purposes of this action, failure of the Respondents to file an answer constitutes an admission of all facts alleged in the Order and a waiver of Respondents' right to a hearing under §74-4-10 of HWA concerning the factual allegations.

SETTLEMENT CONFERENCE

Whether or not Respondents request a hearing, Respondents may confer with Complainant concerning settlement. NMED encourages settlement consistent with the provisions and the objectives of HWA and applicable regulations. A request for a settlement conference does not extend the thirty (30) day period during which the written answer and request for hearing must be submitted. The settlement conference may be pursued as an alternative to and simultaneously with the hearing proceedings. Respondents may appear at the settlement conference themselves and/or be represented by counsel. Any settlement reached by the parties shall be finalized by written Order by the Secretary of NMED. The issuance of such an Order shall constitute a waiver of Respondents' right to request a hearing on any such matter stipulated therein.

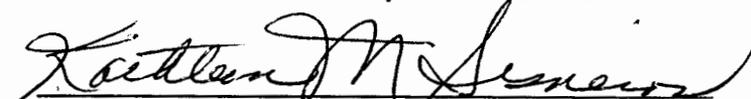
To explore the possibility of settlement in this matter, contact Mr. Coby Muckelroy of the Hazardous and Radioactive Materials Bureau, Environment Department, P.O. Box 26110, 525 Camino de los Marquez, Suite 4, Santa Fe, New Mexico 87502, telephone number (505) 827-4308.

Compliance with the requirements of the Order does not relieve Respondents of their obligation to comply with all applicable laws and regulations.

The Order shall terminate when Respondents certify that all requirements of the Order have been completed, and NMED has approved such certification.

JUDITH M. ESPINOSA, SECRETARY

9/2/94  
DATE

By:   
KATHLEEN M. SISNEROS, Director  
Water and Waste Management Division

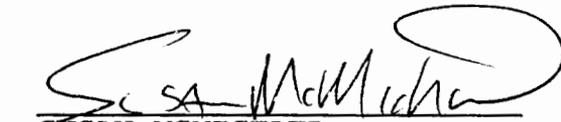
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Order Requiring Compliance was mailed postage prepaid as follows on this 25 day of September, 1994 to the following:

Via Certified Mail, Return Receipt Requested:

Earl Bean, Acting Area Manager  
U.S. Department of Energy  
Los Alamos Area Office  
Los Alamos, New Mexico 87544

Seigfried S. Hecker, Director  
Los Alamos National Laboratory  
P.O. Box 1663  
MSK 490  
Los Alamos, New Mexico 87545

  
SUSAN MCMICHAEL