



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

SEP 06 1992

OFFICE OF REGIONAL COUNSEL

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CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Mr. Jerry L. Bellows  
Area Manager  
Los Alamos Area Office  
U.S. Department of Energy  
Los Alamos, New Mexico 87544

Re: Notice of Noncompliance and Necessity for Conference in regard to the Land Disposal Restrictions (LDR), for the United States Department of Energy, Los Alamos National Laboratory  
Docket No. RCRA VI-216-H  
EPA I.D. NO. NMC890010515

Dear Mr. Bellows:

This letter is to formally notify you that pursuant to Section 3008 of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. §6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1084 (HSWA), Public Law No. 98-616, 98 Stat.(1984), the United States Department of Energy (DOE) has been found to be in noncompliance with the regulations at 40 CFR Part 268 also known as the Land Disposal Restrictions.

The accompanying Notice of Noncompliance and Necessity for Conference (Notice) alleges violations of the regulations at 40 CFR Part 268 with regard to hazardous wastes and mixed wastes. Several meetings have taken place between the LANL staff and the EPA Region 6 staff since May 1992. These meetings are designed to draft a Federal Facilities Compliance Agreement (FFCA) for mixed waste.

This Notice serves to document the state of noncompliance at the Los Alamos National Laboratory and to facilitate the progress of the FFCA negotiations. Any formal response to this Notice should be filed with the Regional Hearing Clerk at the following address:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
First Interstate Bank Tower  
1445 Ross Avenue  
Dallas, Texas 75202-2733

Copies should be sent to my office and to D. Bruce Jones in the Office of Regional Counsel at the same address above. If you have any questions regarding this matter, you should contact either the attorney assigned to this case, D. Bruce Jones, at (214) 655-2156, or Mark Potts, Chief, ALONM Section, RCRA Enforcement Branch, U. S. Environmental Protection Agency, Region 6, 1445 Ross Avenue,



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Dallas, Texas 75202-2733 or telephone (214) 655-2192.

We look forward to meeting with the DOE to discuss these matters, and to successfully complete the FFCA to ensure full compliance with the Land Disposal Restrictions.

Sincerely yours,

*Jack Divita*

*for* Allyn M. Davis, Director  
Hazardous Waste Management Division (6H)

Enclosures

cc: Judith Espinosa, Secretary  
New Mexico Environment Department

Leo P. Duffy  
Office of Environment Restoration  
and Waste Management  
U.S. Department of Energy  
Washington, DC 20585

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

IN THE MATTER OF:

Los Alamos National Laboratory  
Los Alamos, New Mexico

RESPONDENT:  
United States Department of  
Energy  
EPA I.D. NO. NM0890010515

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RCRA DOCKET NUMBER  
VI-216-H

NOTICE OF NONCOMPLIANCE  
AND  
NECESSITY FOR CONFERENCE

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STATEMENT OF AUTHORITY

This NOTICE OF NONCOMPLIANCE AND NOTICE OF NECESSITY FOR CONFERENCE (Notice), is issued under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as further amended by the Hazardous and Solid Waste Amendments (HSWA) (hereinafter, jointly referred to as RCRA). This Notice is issued consistent with Executive Order 12088, Federal Compliance With Pollution Control Standards. The authority to issue this Notice in the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas has been delegated by the Administrator of the U.S. Environmental Protection Agency (EPA) to the Regional Administrator of EPA Region 6 and further delegated to the Director, Hazardous Waste Management Division, EPA Region 6 (Complainant).

Complainant is authorized to issue Notices whenever Complainant has information that a Federal facility has violated or is in violation of any requirements of Subtitle C of RCRA, 42 U.S.C. §§ 6921 to 6939b. The requirements of Subtitle C of RCRA

also include the requirements of the authorized program in a State which has been authorized to carry out a hazardous waste management program under Section 3006 of RCRA, 42 U.S.C. § 6926. On January 25, 1985, (50 FR 1515) the EPA granted New Mexico the authority to administer a hazardous waste management program. New Mexico was further granted authority over radioactive mixed wastes on July 25, 1990 (55 FR 28397). The New Mexico Environment Department (NMED) is the State Agency designated to carry out these programs. The State of New Mexico has not been authorized to enforce the provisions of HSWA. Therefore, EPA enforces all provisions of HSWA and its implementing regulations. Violations cited herein relate to provisions of HSWA for which the State of New Mexico is not authorized to enforce.

Complainant is issuing this Notice to the Department of Energy/Los Alamos National Laboratory (DOE/LANL or Respondent) as a result of information received by Region 6 from the Respondent in a letter from Jerry Bellows (DOE/LANL) to Allyn Davis (EPA) dated May 13, 1992, as well as the review of relevant documents and other information available to EPA, which provide evidence that Respondent has violated or is in violation of one or more requirements of Subtitle C of RCRA (42 U.S.C. § 6921 et seq.) and the regulations promulgated thereunder.

Pursuant to Section 6001 of RCRA, 42 U.S.C. § 6961, the Respondent as a department of the executive branch of the Federal government, generator of hazardous waste, and an owner or operator of a hazardous waste management facility, is subject to

and must comply with both Federal and the State requirements, including regulations and permit conditions pertaining to the management of hazardous waste in the same manner and to the same extent as any person (as defined in Section 1004(15) of RCRA 42 U.S.C. § 6903(15)).

Any person, as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), including any individual that may be responsible for the hazardous waste management activities at the facility, who has violated or is violating any requirement of Subtitle C of RCRA or who knowingly violates any material condition or requirement of a RCRA permit or interim status regulations or standards may be subject to administrative, civil and/or criminal sanctions under Section 3008 of RCRA, 42 U.S.C. § 6928. In addition, Section 7002 of RCRA, 42 U.S.C. § 6972, provides for citizens suits against any person, including the United States, who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition or final order of RCRA.

Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), requirements or prohibitions applicable to the generation, transportation, treatment, storage or disposal of hazardous waste which are imposed under HSWA take effect immediately in authorized States and are enforceable by EPA. The requirements set out in 40 CFR Part 268 were imposed pursuant to the HSWA amendment of Sections 3004(d) through (k) and (m) of RCRA, 42

U.S.C. § 6924(d)-(k) and (m), and are, therefore, enforceable by EPA in the State of New Mexico.

Complainant will show that Respondent owns a facility, which is located near the city of Los Alamos, New Mexico, and it is acting in violation of RCRA and the regulations promulgated thereunder at 40 CFR Part 268.

#### NOTICE TO THE STATE

Notice of this action has been given to the State of New Mexico prior to issuance of this Notice of Noncompliance pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2)

#### PRELIMINARY STATEMENT

1. Respondent is a federal facility operating in Los Alamos County in the State of New Mexico.
2. The Los Alamos National Laboratory (LANL) is owned by the United States Department of Energy (DOE).
3. DOE administers LANL through the University of California (UC) which is responsible for the day to day operation of LANL.
4. LANL is situated in north-central New Mexico in Los Alamos County approximately 60 miles northeast of the City of Albuquerque, New Mexico, and consists of approximately 43 square miles.
5. Since 1943, the primary mission of this DOE facility has been nuclear weapons research and development. In addition,

this facility does work in magnetic and inertial fusion, nuclear fission, nuclear safeguards and security, laser isotope separation, and medical isotope development.

6. In association with the activities identified above, LANL generates, stores, and disposes of hazardous wastes and mixed wastes.

7. Respondent is a "person" as defined at Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 CFR § 260.11, and New Mexico Hazardous Waste Management Regulations (hereinafter HWMR), HWMR-6, § 102.

8. Respondent is a "Federal agency" as that term is defined in Section 1004(4) of RCRA, 42 U.S.C. § 6903(15), 40 CFR § 260.10, and HWMR-6 § 102.

9. Pursuant to Sections 6001 and 6004 of RCRA, 42 U.S.C. §§ 6961 and 6964, each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal in the same manner, and

to the same extent, as any person is subject to such requirements.

10. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent notified NMED and the EPA of hazardous waste activity at its facility located at Los Alamos, New Mexico. In its notification dated August 13, 1980, Respondent identified itself as a generator and as a hazardous waste treatment, storage, and disposal facility.

11. The Respondent filed an amended Part A RCRA permit application on January 25, 1991, identifying the areas where mixed waste operations take place.

12. Respondent has "hazardous waste" at its facility as that term is defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), 40 CFR § 260.10, and HWMR-6 § 102.

13. Respondent has waste which is referred to as mixed waste (MW) which is defined as waste which contains a hazardous waste component regulated under Subtitle C of RCRA and a radioactive component consisting of source, special nuclear, or byproduct material regulated under the Atomic Energy Act (AEA).

14. Respondent engages in the "treatment", "storage", or "disposal" of hazardous waste as those terms are defined under Sections 1004(34), 1004(33), and 1004(3) of RCRA, 42 U.S.C. §§ 6903(34), 6903(33), 6903(3), 40 CFR § 260.10, and HWMR-6 § 102.

15. Respondent is a "generator" of hazardous waste as defined in 40 CFR § 260.10 and HWMR-6 § 102.

16. Respondent is an "owner" of an "existing hazardous waste management facility" as those words are defined in 40 CFR § 260.10 and HWMR-6 § 102.

17. Respondent's facility was in existence on or before November 19, 1980.

18. Pursuant to Section 3005(e)(1) of RCRA, 42 U.S.C. § 6925(e)(1), Respondent qualified for interim status in that it was in existence on November 19, 1980, and it timely filed its notification and its Part A RCRA permit application.

19. Pursuant to 40 CFR § 268.30(a), solvent wastes listed as waste codes F001, F002, F003, F004, and F005, were restricted from land disposal effective November 8, 1986. Further, solvent waste mixtures and residues were restricted from land disposal effective November 8, 1988 as regulated at 40 CFR § 268.30(b).

20. Pursuant to 40 CFR § 268.31(a), dioxin-containing wastes listed under waste codes F020, F021, F022, F023, F026, F027, and F028 were restricted from land disposal effective November 8, 1988.

21. Pursuant to 40 CFR § 268.32(a), California list wastes were restricted from land disposal effective July 8, 1987.

22. On July 25, 1990, the State of New Mexico received authorization for mixed waste for its authorized RCRA program (55 FR 28397).

23. The State of New Mexico received authorization for mixed wastes which contained the hazardous waste components identified in Paragraphs 19, 20, and 21, on July 25, 1990;

thereby making the regulation related to the treatment, storage, and disposal of mixed waste enforceable by EPA on that date.

24. Pursuant to 40 CFR § 268.35(d), listed wastes at 40 CFR § 268.10, § 268.11, and § 268.12 that are contained in radioactive/hazardous waste mixtures or in hazardous waste contaminated soils or debris were restricted from land disposal effective May 8, 1992.

25. Pursuant to 40 CFR § 268.50(c), an owner/operator may store hazardous wastes restricted from land disposal beyond one year with the owner/operator bearing the burden of proof that such storage is solely for the purpose of accumulation of such quantities as necessary to facilitate proper recovery, treatment, or disposal.

#### COUNT I - VIOLATION OF STORAGE REGULATIONS

26. Paragraphs 1 to 25 are hereby incorporated by reference.

27. Pursuant to 40 CFR § 268.50(a) the storage of hazardous waste restricted from land disposal under Subpart C of this part of RCRA, Section 3004, is prohibited unless certain conditions are met.

28. Pursuant to 40 CFR § 268.50(a)(1) and (2), these conditions are that such waste is stored solely for the purpose of accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal.

29. Pursuant to 40 CFR § 268.50(b), the owner/operator of a storage facility may store hazardous wastes restricted from land disposal for up to one year unless the Agency can demonstrate that such storage was not solely for the purpose of accumulation of such quantities as necessary to facilitate proper recovery, treatment, or disposal.

30. Just before the capacity variance for the third-third wastes ended on May 8, 1992, DOE/LANL requested a meeting with EPA, Region 6, to discuss its inability to comply with some of the requirements of RCRA. DOE/LANL also requested that EPA consider negotiating a Federal Facility Compliance Agreement with DOE with the goal of bringing the facility into full compliance with the Land Disposal Restriction (LDR) storage prohibitions.

31. In a letter from Jerry Bellows (DOE/LANL) to Allyn Davis (EPA) dated May 13, 1992, DOE/LANL notified the EPA that mixed wastes were stored at the facility due to lack of treatment capacity.

32. In the same letter identified above, DOE/LANL stated that it was storing waste "...not for the purpose of accumulating quantities necessary to facilitate proper recovery, treatment, on (sic) disposal of such wastes and therefore does not comply with 40 CFR § 268.50."

33. Pursuant to Section 3007 of RCRA, on July 24, 1992 Region 6 issued an Information Request Letter to the University of California/LANL seeking information on the mixed waste operations at LANL. The Request consisted of eight specific

requests relating to its waste management practices and the Respondent filed a timely response to the first five requests on August 24, 1992.

34. In its August 24, 1992, response to the July 24, 1992, Request, the Respondent identified eight areas containing mixed wastes and non-mixed wastes in violation of the Land Disposal Restriction (LDR) requirements. These areas are: TA-3-29; TA-55-4; TA-54L; TA-54G-49; TA-54G-48 (aka Pad 3); TA-54G Pad 1; TA-54G Pad 2; and TA-54G Pad 4. All of these areas are identified in the amended Part A RCRA permit application dated January 25, 1991.

35. In the Request Response made by the Respondent to the EPA on August 24, 1992, the Respondent identified the dates mixed wastes were deposited after the regulatory storage prohibition dates described above and up until the most recent deposit. This data is listed in Enclosure C, Tables I, II, and III of the Respondent's August 24, 1992, response. This statement of deposition indicates each of the areas listed in Paragraph 34 above received prohibited wastes after the regulatory storage prohibition dates described below.

36. Based upon the information provided by the Respondent, wastes were deposited for storage as follows:

STORAGE AREA	WASTE CODE	PROHIBITION DATE	STORAGE START	DATES END
Radioactive Mixed Wastes				
TA-54L	F001	7/25/90	8/14/90	1/27/92
TA-54G	F001	7/25/90	7/30/91	4/28/92
TA-54L	F002	7/25/90	8/2/90	3/31/92
TA-54G	F002	7/25/90	2/26/91	4/16/91

STORAGE AREA	WASTE CODE	PROHIBITION DATE	STORAGE START	DATES END
TA-54L	F003	7/25/90	8/7/90	10/23/92
TA-54G	F003	7/25/90	11/6/90	12/6/90
TA-54L	F005	7/25/90	9/12/90	10/18/90
TA-54G	D007, F001, F002	7/25/90	9/26/90	3/5/92
TA-03	D007, F001, F002	7/25/90	5/7/87	4/16/92
TA-55	D007, F001, F002	7/25/90	5/7/87	4/16/92
TA-54G	F001, F002	7/25/90	7/26/90	4/27/92

37. Respondent is not storing the mixed wastes identified above, which are restricted from land disposal, solely for the purpose of accumulation of such quantities as necessary to facilitate proper recovery, treatment, or disposal.

38. Therefore, Respondent is in violation 40 CFR § 268.50(a) and (b) for the storage of mixed waste restricted from land disposal for other than the purpose of accumulation to facilitate proper recovery, treatment, or disposal.

#### NECESSITY FOR CONFERENCE

Pursuant to the EPA's Federal Facilities Compliance Strategy, dated November 1988 (Strategy) and Executive Order 12088, whenever a Federal Facility is found to be out of compliance with substantive pollution control requirements, EPA informs the facility immediately. The Facility is notified in writing of the finding of noncompliance and copies of the notification are forwarded to the regional office of the parent agency and to the appropriate State and local pollution control agencies.

In accordance with the above Strategy, you are hereby notified that any failure to respond to the Notice as required

may result in an escalation of the enforcement action, and that the relevant citizen suit provision for these violations is Section 7002 of RCRA, 42 U.S.C. § 6972.

This Notice defines the noncompliance situation, requests that the facility acknowledge the situation, and requests a meeting within TEN (10) DAYS to discuss the problem. The notification also advises the facility that a plan to achieve compliance will have to be submitted to the EPA regional office for approval within forty-five (45) days after the meeting.

YOU ARE HEREBY REQUESTED TO CONTACT EPA FOR THE PURPOSE OF SETTING A MEETING DATE TO ADDRESS THIS NOTICE OF NONCOMPLIANCE. SAID MEETING IS TO BE REQUESTED WITHIN TEN (10) DAYS FROM RECEIPT OF THIS NOTICE. To arrange for this meeting you may contact either Wm. Nicholas Stone at (214) 655-2192 or the attorney assigned to this case, Bruce Jones, at (214) 655-2156.

*Jack Davis*  
for Allyn M. Davis  
Hazardous Waste Management Div.  
U.S. EPA, Region 6

Dated this 30<sup>th</sup> day of September 1992, at Dallas, Texas.

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Notice of Noncompliance and Necessity for Conference regarding Los Alamos National Laboratory, Los Alamos, New Mexico, RCRA Docket No. VI-216-H was filed with the Regional Hearing Clerk, EPA Region 6, Dallas, Texas, and a true and correct copy of such Notice was placed in the United States mail, postage prepaid, certified mail, return receipt requested, on this 30<sup>th</sup> day of September 1992, addressed to the following:

Jerry L. Bellows  
Area Manager  
Department of Energy  
Los Alamos Area Office  
Los Alamos, New Mexico 87544

  
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Laretta Scott