



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

RECEIVED
 EPA REGION VI
 93 FEB 17 1993
 JUDITH M. ESPINOSA
 SECRETARY
 HAZARDOUS WASTE
 RON CURRY
 DEPUTY SECRETARY

BRUCE KING
 GOVERNOR

January 28, 1993

VIA CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Seigfried S. Hecker, Director
 Los Alamos National Laboratory
 PO Box 1663
 MSK 490
 Los Alamos, NM 87544

Re: Compliance Orders NMHWA 93-03 and 93-04
 Los Alamos National Laboratory
 ID. No. NM0890010515

RECEIVED
 FEB 4 1993
 HAZARDOUS WASTE
 ENFORCEMENT SECTION

Dear Mr. Hecker:

Enclosed herein are two Compliance Orders issued to the Regents of the University of California (the University) pursuant to the New Mexico Hazardous Waste Act, § 74-4-10 NMSA 1978. The Compliance Orders state that the University has failed to comply with the New Mexico Hazardous Waste Management Regulations (HWMR-6). The violations are specifically set out in each Compliance Order.

Each Compliance Order sets forth a schedule of compliance required of the University, and an assessment of penalties. The University may be subject to additional civil penalties of up to \$25,000 per day for failure to take corrective actions within the time specified in the Compliance Orders, as set forth in § 74-4-10.C NMSA 1978.

Any inquiries concerning these Compliance Orders should be directed to the attorney assigned to these cases, Ripley B. Harwood, Office of General Counsel, NM Environment Department, at (505) 827-2854.

Sincerely,

Kathleen M. Sisneros

Kathleen M. Sisneros
 Director
 Water and Waste Management Division

cc: Benito Garcia, Chief, HRMB
 Edward Horst, RCRA Program Manager, HRMB
 Coby Muckelroy, HRMB
 Ripley B. Harwood, OGC
 NMED District II Office
 Lynn Prince, USEPA Reg. VI (6H-HS)



16542

0205
 TA-5H

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

IN THE MATTER OF
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
LOS ALAMOS NATIONAL LABORATORY
LOS ALAMOS, NEW MEXICO
ID. NO. NM0890010515

COMPLIANCE ORDER
NMHWA 93-03

RESPONDENT.

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

This Administrative Order (Order) is issued to the Regents of the University of California (Respondent) pursuant to the New Mexico Hazardous Waste Act (HWA), § 74-4-10 NMSA 1978. 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. Respondent is the Regents of the University of California.
2. Respondent is the management and operating contractor for the Los Alamos National Laboratory (LANL) pursuant to a contract with the U.S. Department of Energy (DOE), and is a co-operator of LANL. The United States, acting through DOE, is the owner and co-operator of LANL.
3. 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.

4. 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.

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

6. Upon information and belief, TA-54 Area G Pads ## 1, 2, and 4 are earthen-covered storage pads containing approximately seventeen thousand (17,000) drums of hazardous waste and mixed TRU waste, which, in some places, are set on asphalt, with drums piled four drums high. Respondent used these pads between 1979 and 1991.

7. DOE's TRU Waste Projects Task Force draft Report dated January 20, 1992 states, concerning "the integrity of the existing stored waste and potential environmental, health, and safety implications of the delay in WIPP," states that:

[d]eteriorating packaging is a concern for [waste stored in metal drums, stacked on asphalt pads, covered with plywood, plastic and/or dirt]. Container failure rates in this "bermed" waste are a complicated function of drum contents and the external environment. Drums in direct contact with the soil have an estimated life of 10 years, at which point pinhole openings in the drum walls could start to appear. After that point, loss of drum integrity may be rapid. Failure rates approaching 100% have been estimated for buried drums or drums under failed plastic covers with 15 to 30 years of exposure. Corrosion and failure rates are lower for drums under intact plastic covers. Sites have found extreme situations in which older drums have completely disintegrated with drum contents dispersed in the surrounding soil.

. . . An estimated 72% of retrievably stored TRU waste in drums [stored at 3 sites around the country, but not including LANL] has been in storage for 10 years or more. The Task Force estimates that in 1990, 20% to 30% of these drums contained corrosion [sic] pinholes or were badly deteriorated. In 1995, the fraction is projected to rise to 30% to 40%, an increase which might be avoided by moving on the retrieval projects now rather than five years from now.

8. Respondent on or about March 16, 1992 exhumed fourteen (14) drums of hazardous waste from TA-54 Area G Pad #2 to determine their integrity. Respondent and/or its co-operator of LANL stated that the drums which were exhumed had been in place for about six (6) years, and, further, that Respondent and/or its co-operator observed surface corrosion on several of these drums and a pinhole failure on one drum.

9. Upon information and belief, Respondent subsequently failed to transfer the contents of the drums with surface corrosion and a pinhole failure to drums in good condition, and left them in place on the pad covered with a tarp.

10. On May 4-8, 1992, NMED employees Coby Muckelroy, Ernest Preciado, John Tymkowych, and Michael LeScouarnec (NMED inspectors) conducted a hazardous waste inspection at LANL (inspection).

11. At the time of the inspection, the NMED inspectors could not visually determine the number of drums under the soil at TA-54 Area G Pad # 1, their condition, or their placement.

12. Upon information and belief, with regard to the individual drums stored at TA-54 Area G Pad # 1: (a) the drums do not have adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment in an emergency; (b) Respondent has no

written inspection schedule procedures for their inspection; (c) Respondent has no inspection logs recording the condition of the drums; and (d) the drums are not inspected weekly.

13. Upon information and belief, an unknown amount of the hazardous wastes stored at TA-54 Area G Pad # 1 is hazardous waste restricted from land disposal (LDR waste) that is being stored in containers that are not clearly marked to identify their contents and the date each period of accumulation began.

14. At the time of the inspection, the NMED inspectors could not visually determine the number of drums under the soil at TA-54 Area G Pad # 2, their condition, or their placement.

15. Upon information and belief, with regard to the individual drums stored at TA-54 Area G Pad # 2: (a) the drums do not have adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment in an emergency; (b) Respondent has no written inspection schedule procedures for their inspection; (c) Respondent has no inspection logs recording the condition of the drums; and (d) the drums are not inspected weekly.

16. Upon information and belief, an unknown amount of the hazardous wastes stored at TA-54 Area G Pad # 2 is hazardous waste restricted from land disposal (LDR waste) that is being stored in containers that are not clearly marked to identify their contents and the date each period of accumulation began.

17. At the time of the inspection, the NMED inspectors could not visually determine the number of drums under the soil at TA-54 Area G Pad # 4, their condition, or their placement.

18. Upon information and belief, with regard to the individual drums stored at TA-54 Area G Pad # 4: (a) the drums do not have adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment in an emergency; (b) Respondent has no written inspection schedule procedures for their inspection; (c) Respondent has no inspection logs recording the condition of the drums; and (d) the drums are not inspected weekly.

19. Upon information and belief, an unknown amount of the hazardous wastes stored at TA-54 Area G Pad # 4 is hazardous waste restricted from land disposal (LDR waste) that is being stored in containers that are not clearly marked to identify their contents and the date each period of accumulation began.

CONCLUSIONS

20. Respondent is a "person" as defined at § 74-4-3.K. of HWA, and HWMR-6, § 101, incorporated federal regulations 40 CFR § 260.10.

21. Respondent has "hazardous waste" at its facility as that term is defined at § 74-4-3.I. of HWA, and HWMR-6, § 101, incorporated federal regulations 40 CFR § 260.10.

22. Respondent has waste at its facility 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).

23. Respondent engages in the "treatment", "storage" or "disposal" of hazardous waste as those terms are defined at § 74-4-3.Q., N., and C. of HWA, and HWMR-6, § 101, incorporated federal regulations 40 CFR § 260.10. Storage occurs in "containers" and "tanks" as those terms are defined at HWMR-6, § 101, incorporated federal regulations 40 CFR § 260.10.

24. Respondent is an "operator" of an "existing hazardous waste management facility" as those terms are defined in HWMR-6, § 101, incorporated federal regulations 40 CFR § 260.10.

25. Certain of Respondent's mixed waste management units may not have "interim status" as legally determined under HWMR-6, § 901, incorporated federal regulations 40 CFR Part 270, and are not operating under a permit. HWMR-6, § 601, incorporated federal regulations 40 CFR Part 265, governs waste management units that have interim status; HWMR-6, § 501, incorporated federal regulations 40 CFR Part 264, governs waste management units which are permitted or which do not have interim status. Complainant does not at this time and for purposes of this Order need to make a final determination of which Part these waste management units are regulated under.

26. HWMR-6, § 301, incorporated federal regulations 40 CFR § 262.10(a) makes the regulations in Part 262 (Standards Applicable to Generators of Hazardous Waste), applicable to Respondent. HWMR-6, § 601, incorporated federal regulations 40 CFR § 265.1(b) makes the regulations in Part 265 (Interim Status Standards For Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities), applicable to Respondent. Alternatively, HWMR-6, § 501, incorporated federal regulations 40 CFR § 264.1(b) makes the regulations in Part 264 (Standards For Owners and Operators of Hazardous Waste Treatment), applicable to Respondent. HWMR-6, § 801, incorporated federal regulations 40 CFR § 268.1(b) makes the regulations in Part 268 (Land Disposal Restrictions), applicable to Respondent.

27. HWMR-6, § 601, incorporated federal regulations 40 CFR § 265.35 requires Respondent to maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes. Alternatively, HWMR-6, § 501, incorporated federal regulations 40 CFR § 264.35 requires Respondent to maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless Respondent can demonstrate to NMED that aisle space is not needed for any of these purposes.

28. Aisle space is necessary at TA-54 Area G Pads ## 1, 2, and 4 to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to the areas in an emergency.

29. HWMR-6, § 601, incorporated federal regulations 40 CFR § 265.15 requires Respondent to, among other things, inspect its facility, have a written schedule for inspection that includes the terms and frequencies called for in § 265.174, and record the inspections. Alternatively, HWMR-6, § 501, incorporated federal regulations 40 CFR § 264.15 requires Respondent to, among other things, inspect its facility, have a written schedule for inspection that includes the terms and frequencies called for in § 264.174, and record the inspections.

30. HWMR-6, § 601, incorporated federal regulations 40 CFR § 265.174 requires Respondent to inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors. Alternatively, HWMR-6, § 501, incorporated federal regulations 40 CFR § 264.174 requires Respondent to inspect areas where containers are stored, at least weekly, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

31. Assuming Respondent is otherwise allowed to store LDR (land disposal restriction) waste, HWMR-6, § 801, incorporated federal regulations 40 CFR § 268.50(a)(2)(i) requires Respondent to

do so only so long as the container is clearly marked to identify its contents and the date each period of accumulation begins.

32. HWMR-6, § 601, incorporated federal regulations 40 CFR § 265.173(b) requires that containers holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak. Alternatively, HWMR-6, § 501, incorporated federal regulations 40 CFR § 264.173(b) requires that containers holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

33. Containers holding hazardous waste at LANL's TA-54 Area G Pads ## 1, 2, and 4 are stored in a manner which may rupture the containers or cause them to leak.

34. HWMR-6, § 601, incorporated federal regulations 40 CFR § 265.171 requires Respondent to transfer the hazardous waste found in a container that is not in good condition, or that is beginning to leak, to a container that is in good condition or manage the waste in some other way that complies with the requirements of Part 265. Alternatively, HWMR-6, § 501, incorporated federal regulations 40 CFR § 264.171 requires Respondent to transfer the hazardous waste found in containers that are not in good condition, or that are beginning to leak, to containers that are in good condition or manage the waste in some other way that complies with the requirements of Part 264.

COUNT 1: IMPROPER STORAGE/TA-54 AREA G PAD #1

35. Paragraphs 1-13, and 20-34 are hereby incorporated by reference.

36. Respondent is in violation of HWMR-6, § 601, incorporated federal regulations 40 CFR § 265.173(b) for management of hazardous waste in a manner in which the hazardous waste containers may rupture or leak, at TA-54 Area G Pad #1. Respondent is also in violation of HWMR-6, §§ 601 and 801, incorporated federal regulations 40 CFR §§ 265.15, 265.35, 265.174 and 268.50(a)(2)(i) for storage without written inspection schedules, recorded inspections, without adequate aisle space, without weekly inspections, and without properly marking containers of LDR waste, at this site. Alternatively, Respondent is in violation of HWMR-6, § 501, incorporated federal regulations 40 CFR § 264.173(b) for management of hazardous waste in a manner in which the hazardous waste containers may rupture or leak, at TA-54 Area G Pad #1. Respondent is also in violation of HWMR-6, §§ 501 and 801, incorporated federal regulations 40 CFR §§ 264.15, 264.35, 264.174 and 268.50(a)(2)(i) for storage without written inspection schedules, recorded inspections, without adequate aisle space, without weekly inspections, and without properly marking containers of LDR waste, at this site.

COUNT 2: IMPROPER STORAGE/TA-54 AREA G PAD #2

37. Paragraphs 1-10, 14-16, and 20-34 are hereby incorporated by reference.

38. Respondent is in violation of HWMR-6, § 601, incorporated federal regulations 40 CFR § 265.173(b) for management of hazardous

waste in a manner in which the hazardous waste containers may rupture or leak at TA-54 Area G Pad #2. Respondent is also in violation of HWMR-6, §§ 601 and 801, incorporated federal regulations 40 CFR §§ 265.15, 265.35, 265.174 and 268.50(a)(2)(i) for storage without written inspection schedules, recorded inspections, without adequate aisle space, without weekly inspections, and without properly marking containers of LDR waste at this site. Alternatively, Respondent is in violation of HWMR-6, § 501, incorporated federal regulations 40 CFR § 264.173(b) for management of hazardous waste in a manner in which the hazardous waste containers may rupture or leak, at TA-54 Area G Pad #2. Respondent is also in violation of HWMR-6, §§ 501 and 801, incorporated federal regulations 40 CFR §§ 264.15, 264.35, 264.174 and 268.50(a)(2)(i) for storage without written inspection schedules, recorded inspections, without adequate aisle space, without weekly inspections, and without properly marking containers of LDR waste, at this site.

COUNT 3: IMPROPER STORAGE/TA-54 AREA G PAD #4

39. Paragraphs 1-10, and 17-34 are hereby incorporated by reference.

40. Respondent is in violation of HWMR-6, § 601, incorporated federal regulations 40 CFR § 265.173(b) for management of hazardous waste in a manner in which the hazardous waste containers may rupture or leak at TA-54 Area G Pad #4. Respondent is also in violation of HWMR-6, §§ 601 and 801, incorporated federal regulations 40 CFR §§ 265.15, 265.35, 265.174 and 268.50(a)(2)(i)

for storage without written inspection schedules, recorded inspections, without adequate aisle space, without weekly inspections, and without properly marking containers of LDR waste at this site. Alternatively, Respondent is in violation of HWMR-6, § 501, incorporated federal regulations 40 CFR § 264.173(b) for management of hazardous waste in a manner in which the hazardous waste containers may rupture or leak, at TA-54 Area G Pad #4. Respondent is also in violation of HWMR-6, §§ 501 and 801, incorporated federal regulations 40 CFR §§ 264.15, 264.35, 264.174 and 268.50(a)(2)(i) for storage without written inspection schedules, recorded inspections, without adequate aisle space, without weekly inspections, and without properly marking containers of LDR waste, at this site.

COUNT 4: FAILURE TO TRANSFER CONTENTS/TA-54 AREA G PAD #2

41. Paragraphs 1-10, 20-26, and 34 are hereby incorporated by reference.

42. Respondent is in violation of HWMR-6, § 601, incorporated federal regulations 40 CFR § 265.171 for failure to transfer hazardous waste found in containers that are not in good condition, or that are beginning to leak, to containers that are in good condition, or manage the waste in some other compliant manner, at TA-54 Area G Pad #2. Alternatively, Respondent is in violation of HWMR-6, § 501, incorporated federal regulations 40 CFR § 264.171 for failure to transfer hazardous waste found in containers that are not in good condition, or that are beginning to leak, to

containers that are in good condition, or manage the waste in some other compliant manner, at TA-54 Area G Pad #2.

CIVIL PENALTY

Section 74-4-10 of HWA authorizes the assessment of a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each violation of HWA and the regulations promulgated thereunder. Complainant hereby proposes to assess a civil penalty of one million two hundred eight-three thousand five hundred dollars (\$1,283,500.00) against Respondent. The penalty is based on the seriousness of the violations and any good faith efforts on the part of Respondent to comply with the applicable requirements, and any economic benefit accruing to the Respondent, as well as such other matters as justice may require, and is calculated pursuant to the NMED's Civil Penalty Policy. The individual penalties for each violation are:

<u>VIOLATION</u>	<u>AMOUNT</u>
COUNT 1: IMPROPER STORAGE/TA-54 AREA G PAD #1	\$381,250.00
COUNT 2: IMPROPER STORAGE/TA-54 AREA G PAD #2	\$381,250.00
COUNT 3: IMPROPER STORAGE/TA-54 AREA G PAD #4	\$381,250.00
COUNT 4: FAILURE TRANSFER CONTENTS/TA-54 AREA G PAD #2	\$139,750.00
<u>TOTAL:</u>	<u>\$1,283,500.00</u>

If you wish to contest the imposition of the penalty, see the soon following section entitled "Notice of Opportunity to Request a Hearing."

COMPLIANCE ORDER

NMED acknowledges receipt of the documentation contained in Jerry L. Bellows' (DOE) September 3, 1992 letter to Kathleen Sisneros concerning the correction of certain of the violations cited in this Order. Based on the foregoing Findings and Conclusions, and the September 3rd documentation, Respondent is hereby ordered to immediately comply with the following schedule of compliance:

1. Within thirty (30) days of receipt of this Order, have an NMED-approved plan and schedule for placing the wastes currently stored at TA-54 Area G Pads ## 1, 2, and 4 into storage that complies with the requirements of the HWA, and for closing the pads pursuant to the HWA.

2. Within thirty (30) days of receipt of this Order, provide documentation to NMED that Respondent has transferred the wastes in those containers of the fourteen (14) exhumed at TA-54 Area G Pad #2 that are not in good condition or which are beginning to leak, to containers that are in good condition or managed the waste in some other way that complies with the requirements of the HWA.

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 (\$25,000.00) for each day of continued noncompliance with the Order, pursuant to the HWA, § 74-4-10.C.

NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

Where Respondent (a) contests any material fact or legal matter upon which the Order is based; (b) contends that the amount of the penalty proposed in the Order is inappropriate; or (c) contends that Respondent is entitled to prevail as a matter of law, Respondent shall file a written Request for Hearing together with an Answer to the Order with the Hearing Clerk within thirty (30) days after service of the Order. The Answer must clearly and directly identify what specifically Respondent is appealing.

The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Order with regard to which Respondent has any knowledge. Where the Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. Failure of Respondent to admit, deny, or explain any material factual allegation contained in the Order constitutes an admission of the allegation.

The Answer shall also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent intends to place at issue; and (3) whether a hearing is requested.

A hearing upon the issues raised by the Order and Answer shall be held upon the request of the Respondent. The Respondent shall attach to the Answer a copy of the Compliance Order to which the Request for Hearing pertains.

The Hearing Clerk's address is:

Barbara Rivera, Acting Hearing Clerk
New Mexico Environment Department
Post Office Box 26110
1190 St. Francis Drive

Harold Runnels Building, S-4100
Santa Fe, NM 87502
(505) 827-2842

FINALITY OF ORDER

The Order shall become final unless Respondent files a written Request for Hearing with an Answer within thirty (30) days of service of this Order. For purposes of this action, failure by Respondent to file an Answer constitutes an admission of all facts alleged in the Order and a waiver of Respondent's right to a hearing under § 74-4-10 of HWA concerning such factual allegations. The proposed penalty shall become due and payable by Respondent without further proceedings sixty (60) days after Respondent's failure to file an Answer. Respondent must immediately comply with the Order provisions in this Order.

SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, Respondent may confer with Complainant concerning settlement. NMED encourages settlement consistent with the provisions and 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 a Request for Hearing must be submitted. The settlement conference may be pursued as an alternative to and simultaneously with the hearing proceedings. Respondent may appear at the settlement conference itself and/or be represented by counsel.

Any settlement reached by the parties shall be finalized by written Order by the NMED Secretary. The issuance of such an Order

shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

To explore the possibility of settlement in this matter, contact the attorney assigned to this case, Ripley B. Harwood, Assistant General Counsel, Office of General Counsel, Environment Department, PO Box 26110, 1190 St. Francis Drive, Santa Fe, NM 87502, telephone number (505) 827-2854.

Compliance with the requirements of this Order does not relieve Respondent of its obligations to comply with all applicable laws and regulations.

This Order shall terminate when Respondent certifies that all requirements of this Order have been completed, and NMED has approved such certification.

JUDITH M. ESPINOSA, SECRETARY

1/28/93
DATE

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

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Administrative Order Requiring Compliance and Proposing To Assess A Civil Penalty was mailed postage prepaid, via certified mail, return receipt requested, on this 28 day of January, 1993, to the following:

Mr. Seigfried S. Hecker, Director
Los Alamos National Laboratory
P.O. Box 1663
MSK 490
Los Alamos, NM 87544

Rip B. Harwood
RIPLEY B. HARWOOD

A:LANL-A03.UC

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

IN THE MATTER OF
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
LOS ALAMOS NATIONAL LABORATORY
LOS ALAMOS, NEW MEXICO
ID. NO. NM0890010515

COMPLIANCE ORDER
NMHWA 93-04

RESPONDENT.

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

This Administrative Order (Order) is issued to the Regents of the University of California (Respondent) pursuant to the New Mexico Hazardous Waste Act (HWA), § 74-4-10 NMSA 1978. 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. Respondent is the Regents of the University of California.
2. Respondent is the management and operating contractor for the Los Alamos National Laboratory (LANL) pursuant to a contract with the U.S. Department of Energy (DOE), and is a co-operator of LANL. The United States, acting through DOE, is the owner and co-operator of LANL.
3. 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.

4. 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.

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

6. On May 4-8, 1992, NMED employees Coby Muckelroy, Ernest Preciado, John Tymkowych, and Michael LeScouarnec (NMED inspectors) conducted a hazardous waste inspection at LANL (inspection).

7. TA-54 Area G Dome #48, at LANL, is a hazardous waste storage area.

8. Respondent's inspection logs for TA-54 Area G Dome #48 document that, from January 21, 1991 to July 8, 1991, varying numbers of hazardous waste drums, up to twenty-six (26) at one time, were leaking.

9. During this period, hazardous waste in these drums was not transferred to containers that are in good condition.

10. TA-3-39, TA-55-191 (outside storage shed), TA-3-40, TA-3-29-5012, and TA-35-85, at LANL, are "less than ninety (90) day" hazardous waste storage areas.

11. At the time of the NMED inspection, storage at the following areas exceeded ninety (90) days:

- a. TA-3-39 -- two (2) drums of hazardous waste, dated September 19, 1991 and November 20, 1991, respectively
- b. TA-55-191 (outside storage shed) -- two (2) drums of hazardous waste, dated September 2, 1991, and October 18, 1991, respectively
- c. TA-3-40 -- hazardous waste storage tank, stored since August 1991

12. Additionally, at the time of the NMED inspection, a container of hazardous waste at the TA-35-85 area was found to be open.

13. Additionally, at the time of the NMED inspection, the following hazardous waste storage units were not labeled or marked clearly with the words "Hazardous Waste":

- a. TA-3-40 -- storage tank
- b. TA-3-29-5012 -- two (2) drums of lead-contaminated hazardous waste

14. TA-35-213-A107A, TA-21-150-607, TA-21-4-4J, TA-3-38 (west side), TA-53-1-D115, TA-59-1-113, and TA-59-1-116, at LANL, are hazardous waste "satellite accumulation points".

15. At the time of the NMED inspection, at least one container of hazardous waste at the TA-21-4-4J area was found to be open.

16. Additionally, at the time of the NMED inspection, at least one container of hazardous waste at each the following areas was not labeled or marked clearly with the words "Hazardous Waste":

- a. TA-35-213-A107A
- b. TA-21-150-607
- c. TA-21-4-4J
- d. TA-3-38 (west side)
- e. TA-53-1-D115
- f. TA-59-1-113

17. Additionally, at the time of the inspection, hazardous waste from a different site of origination was found at the TA-59-1-116 area.

18. TA-54 Area L, at LANL, is a hazardous waste storage area.

19. At the time of the inspection, shower and eye wash devices were not located within one hundred (100) feet of the mixed waste and waste gas cylinder storage areas at TA-54 Area L.

20. At the time of the inspection, Respondent failed to provide documentation that three (3) of Respondent's employees had completed required training.

21. At the time of the inspection, Respondent failed to provide the original manifest copy with the offsite facility's signature for the following shipments of hazardous waste: (a) shipment of September 26, 1991 (manifest document # 91212); and (b) shipment of September 19, 1991 (manifest documents ## 91193 - 91197).

22. Upon information and belief, Respondent had not received copies of the manifests referred to in ¶ 21 above with the handwritten signatures of the owner or operator of the designated facility within forty-five (45) days of the date the waste was accepted by the initial transporter.

23. Respondent did not submit Exception Reports to NMED regarding the manifests referred to in ¶¶ 21 and 22 above within forty-five (45) days of the date the waste was accepted by the initial transporter.

24. At the time of the inspection, at least three (3) drums of mixed waste stored at TA-54 Area L containing hazardous waste restricted from land disposal (LDR waste) were not clearly marked to identify their contents.

CONCLUSIONS

25. Respondent is a "person" as defined at § 74-4-3.K. of HWA, and HWMR-6, § 101, incorporated federal regulations 40 CFR § 260.10.

26. Respondent has "hazardous waste" at its facility as that term is defined at § 74-4-3.I. of HWA, and HWMR-6, § 101, incorporated federal regulations 40 CFR § 260.10.

27. Respondent has waste at its facility 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).

28. Respondent is a "generator" of hazardous waste as defined at § 74-4-3.F. of HWA, and HWMR-6, § 101, incorporated federal regulations 40 CFR § 260.10.

29. Respondent engages in the "treatment", "storage" or "disposal" of hazardous waste as those terms are defined at § 74-4-3.Q., N., and C. of HWA, and HWMR-6, § 101, incorporated federal regulations 40 CFR § 260.10. Storage occurs in "containers" and

"tanks" as those terms are defined at HWMR-6, § 101, incorporated federal regulations 40 CFR § 260.10.

30. Respondent is an "operator" of an "existing hazardous waste management facility" as those terms are defined in HWMR-6, § 101, incorporated federal regulations 40 CFR § 260.10.

31. Certain of Respondent's mixed waste management units may not have "interim status" as legally determined under HWMR-6, § 901, incorporated federal regulations 40 CFR Part 270, and are not operating under a permit. HWMR-6, § 601, incorporated federal regulations 40 CFR Part 265, governs waste management units that have interim status; HWMR-6, § 501, incorporated federal regulations 40 CFR Part 264, governs waste management units which are permitted or which do not have interim status. Complainant does not at this time and for purposes of this Order need to make a final determination of which Part these waste management units are regulated under.

32. HWMR-6, § 301, incorporated federal regulations 40 CFR § 262.10(a) makes the regulations in Part 262 (Standards Applicable to Generators of Hazardous Waste), applicable to Respondent. HWMR-6, § 601, incorporated federal regulations 40 CFR § 265.1(b) makes the regulations in Part 265 (Interim Status Standards For Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities), applicable to Respondent. Alternatively, HWMR-6, § 501, incorporated federal regulations 40 CFR § 264.1(b) makes the regulations in Part 264 (Standards For Owners and Operators of Hazardous Waste Treatment), applicable to Respondent. HWMR-6, §

801, incorporated federal regulations 40 CFR § 268.1(b) makes the regulations in Part 268 (Land Disposal Restrictions), applicable to Respondent.

33. Assuming Respondent is otherwise allowed to store LDR (land disposal restriction) waste, HWMR-6, § 801, incorporated federal regulations 40 CFR § 268.50(a)(2)(i) requires Respondent to do so only so long as the container is clearly marked to identify its contents and the date each period of accumulation begins.

34. HWMR-6, § 601, incorporated federal regulations 40 CFR § 265.171 requires Respondent to transfer the hazardous waste found in a container that is not in good condition, or that is beginning to leak, to a container that is in good condition or manage the waste in some other way that complies with the requirements of Part 265. Alternatively, HWMR-6, § 501, incorporated federal regulations 40 CFR § 264.171 requires Respondent to transfer the hazardous waste found in containers that are not in good condition, or that are beginning to leak, to containers that are in good condition or manage the waste in some other way that complies with the requirements of Part 264.

35. HWMR-6, § 301, incorporated federal regulations 40 CFR § 262.34(a) prohibits Respondent from storing waste at less than ninety (90) day storage areas beyond ninety (90) days.

36. HWMR-6, § 301, incorporated federal regulations 40 CFR § 262.34(a)(1) requires Respondent to keep all containers closed at less than ninety (90) day storage areas.

37. HWMR-6, § 301, incorporated federal regulations 40 CFR § 262.34(a)(3) requires Respondent to label all containers at less than ninety (90) day storage areas.

38. HWMR-6, § 301, incorporated federal regulations 40 CFR § 262.34(a)(1) requires Respondent to keep all containers closed at satellite accumulation points.

39. HWMR-6, § 301, incorporated federal regulations 40 CFR § 262.34(a)(3) requires Respondent to label all containers at satellite accumulation points.

40. HWMR-6, § 301, incorporated federal regulations 40 CFR § 262.34(c)(1) requires Respondent to keep waste under the control of the operator who is generating the waste.

41. HWMR-6, § 601, incorporated federal regulations 40 CFR § 265.32(c) requires Respondent to maintain decontamination equipment at all facilities, unless none of the hazards posed by waste handled at the facility could require this kind of equipment. Alternatively, HWMR-6, § 501, incorporated federal regulations 40 CFR § 264.32(c) requires Respondent to maintain decontamination equipment at all facilities, unless none of the hazards posed by waste handled at the facility could require this kind of equipment.

42. Respondent failed to maintain decontamination equipment at the mixed waste and waste gas cylinder storage areas at TA-54 Area L even though hazards posed by these wastes could require this kind of equipment.

43. HWMR-6, § 601, incorporated federal regulations 40 CFR § 265.16(d)(4) requires Respondent to maintain records at the

facility documenting that all facility personnel have received and completed required training or job experience. Alternatively, HWMR-6, § 501, incorporated federal regulations 40 CFR § 264.16(d)(4) requires Respondent to maintain records at the facility documenting that all facility personnel have received and completed required training or job experience.

44. HWMR-6, § 301, incorporated federal regulations 40 CFR § 262.42 requires Respondent to submit an Exception Report to NMED if Respondent has not received a copy of a shipment manifest with the handwritten signature of the owner or operator of the designated facility within forty-five (45) days of the date the waste was accepted by the initial transporter.

COUNT 1: FAILURE TO TRANSFER CONTENTS/TA-54 AREA G DOME #48

45. Paragraphs 1-9, 25-27, 29-32, and 34 are hereby incorporated by reference.

46. Respondent is in violation of HWMR-6, § 601, incorporated federal regulations 40 CFR § 265.171 for failure to transfer hazardous waste found in containers that are not in good condition, or that are beginning to leak, to containers that are in good condition, or manage the waste in some other compliant manner, at TA-54 Area G Dome #48. Alternatively, Respondent is in violation of HWMR-6, § 501, incorporated federal regulations 40 CFR § 264.171 for failure to transfer the hazardous waste found in containers that are not in good condition, or that are beginning to leak, to containers that are in good condition, or manage the waste in some other compliant manner, at TA-54 Area G Dome #48.

COUNTS 2-4: STORAGE BEYOND 90 DAYS/3 LOCATIONS

47. Paragraphs 1-6, 10-11, 25-28, 32 and 35 are hereby incorporated by reference.

48. Respondent is in violation of HWMR-6, § 301, incorporated federal regulations 40 CFR § 262.34(a) for storing waste beyond ninety (90) days at TA-3-39, TA-55-191 (outside storage shed), and TA-3-40, which are less than ninety (90) day storage areas.

COUNT 5: OPEN CONTAINER/TA-35-85

49. Paragraphs 1-6, 10, 12, 25-28, 32, and 36 are hereby incorporated by reference.

50. Respondent is in violation of HWMR-6, § 301, incorporated federal regulations 40 CFR § 262.34(a)(1) for failure to keep all containers closed at TA-35-85, a less than ninety (90) day storage area.

COUNTS 6-7: IMPROPER LABELING/2 LOCATIONS

51. Paragraphs 1-6, 10, 13, 25-28, 32, and 37 are hereby incorporated by reference.

52. Respondent is in violation of HWMR-6, § 301, incorporated federal regulations 40 CFR § 262.34(a)(3) for failure to properly label all containers at TA-3-40 and TA-3-29-5012, which are less than ninety (90) day storage areas.

COUNT 8: OPEN CONTAINER/TA-21-4-4J

53. Paragraphs 1-6, 14-15, 25-28, 32, and 38 are hereby incorporated by reference.

54. Respondent is in violation of HWMR-6, § 301, incorporated federal regulations 40 CFR § 262.34(a)(1) for failure to keep all containers closed at TA-21-4-4J, a satellite accumulation point.

COUNTS 9-14: IMPROPER LABELING/6 LOCATIONS

55. Paragraphs 1-6, 14, 16, 25-28, 32, and 39 are hereby incorporated by reference.

56. Respondent is in violation of HWMR-6, § 301, incorporated federal regulations 40 CFR § 262.34(a)(3) for failure to properly label all containers at TA-35-213-A107A, TA-21-150-607, TA-21-4-4J, TA-3-38 (west side), TA-53-1-D115, and TA-59-1-113, which are satellite accumulation points.

COUNT 15: WASTE NOT AT SITE OF ORIGINATION

57. Paragraphs 1-6, 14, 17, 25-28, 32, and 40 are hereby incorporated by reference.

58. Respondent is in violation of HWMR-6, § 301, incorporated federal regulations 40 CFR § 262.34(c)(1) for failure to keep waste under the control of the operator who is generating the waste, i.e., waste found at TA-59-1-116, a satellite accumulation point.

COUNT 16: UNAVAILABILITY OF DECONTAMINATION EQUIPMENT

59. Paragraphs 1-6, 18-19, 25-27, 29-32, and 41-42 are hereby incorporated by reference.

60. Respondent is in violation of HWMR-6, § 601, incorporated federal regulations 40 CFR § 265.32(c) for failure to maintain necessary decontamination equipment at TA-54 Area L. Alternatively, Respondent is in violation of HWMR-6, § 501,

incorporated federal regulations 40 CFR § 264.32(c) for failure to maintain necessary decontamination equipment at TA-54 Area L.

COUNT 17: TRAINING DOCUMENTATION UNAVAILABLE

61. Paragraphs 1-6, 20, 25-27, 29-32, and 43 are hereby incorporated by reference.

62. Respondent is in violation of HWMR-6, § 601, incorporated federal regulations 40 CFR § 265.16(d)(4), alternatively, HWMR-6, § 501, incorporated federal regulations 40 CFR § 264.16(d)(4), for failure to maintain necessary personnel training documentation at the facility.

COUNTS 18-19: EXCEPTION REPORTS NOT FILED/2 REPORTS

63. Paragraphs 1-6, 21-23, 25-28, 32 and 44 are hereby incorporated by reference.

64. Respondent is in violation of HWMR-6, § 301, incorporated federal regulations 40 CFR § 262.42 for failure to submit Exception Reports to NMED within forty-five (45) days of hazardous waste shipments dated September 26, 1991 and September 19, 1991, because of the unavailability of original manifests signed by the offsite facility.

COUNT 20: IMPROPER LABELING/LAND DISPOSAL RESTRICTION WASTE

65. Paragraphs 1-6, 18, 24-27, and 29-33 are hereby incorporated by reference.

66. Respondent is in violation of HWMR-6, § 801, incorporated federal regulations 40 CFR §268.50(a)(2)(i) for failure to properly mark containers of LDR waste at TA-54 Area L.

CIVIL PENALTY

Section 74-4-10 of HWA authorizes the assessment of a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each violation of HWA and the regulations promulgated thereunder. Complainant hereby proposes to assess a civil penalty of three hundred fifty-two thousand six hundred five dollars (\$352,605.00) against Respondent. The penalty is based on the seriousness of the violations and any good faith efforts on the part of Respondent to comply with the applicable requirements, and any economic benefit accruing to the Respondent, as well as such other matters as justice may require, and is calculated pursuant to the NMED's Civil Penalty Policy. The individual penalties for each violation are:

<u>VIOLATION</u>	<u>AMOUNT</u>
COUNT 1: FAILURE TRANSFER CONTENTS/TA-54 AREA G DOME #48	\$121,750
COUNTS 2-4: STORAGE BEYOND 90 DAYS/3 LOCATIONS (total)	\$134,850
COUNT 5: OPEN CONTAINER/TA-35-85	\$ 550
COUNT 6: IMPROPER LABELING/TA-3-29-5012	\$ 625
COUNT 7: IMPROPER LABELING/TA-3-40	\$ 5,100
COUNT 8: OPEN CONTAINER/TA-21-4-4J	\$ 550
COUNTS 9-14: IMPROPER LABELING/6 LOCATIONS (total)	\$ 4,050
COUNT 15: WASTE NOT AT SITE OF ORIGINATION	\$ 600
COUNT 16: UNAVAILABILITY OF DECONTAMINATION EQUIPMENT	\$ 3,740
COUNT 17: TRAINING DOCUMENTATION UNAVAILABLE	\$ 3,400
COUNTS 18-19: EXCEPTION REPORTS NOT FILED/2 REPORTS (total)	\$ 72,800
COUNT 20: IMPROPER LABELING/LDR WASTE	\$ 4,590
<u>TOTAL:</u>	<u>\$352,605.00</u>

If you wish to contest the imposition of the penalty, see the soon following section entitled "Notice of Opportunity to Request a Hearing."

COMPLIANCE ORDER

NMED acknowledges receipt of the documentation contained in Jerry L. Bellows' (DOE) September 3, 1992 letter to Kathleen

Sisneros concerning the correction of certain of the violations cited in this Order. Based on the foregoing Findings and Conclusions, and the September 3rd documentation, Respondent is hereby ordered to immediately comply with the following schedule of compliance:

1. Within five (5) working days after receipt of this Order, submit documentation to NMED that Respondent has removed all hazardous waste stored at TA-3-40, or, alternatively, documentation that the waste stored there is not hazardous waste subject to the HWA.

2. Within five (5) working days after receipt of this Order, submit documentation to NMED that Respondent has properly labeled the hazardous waste container at TA-3-40, or, alternatively, documentation that the waste stored there is not hazardous waste subject to the HWA.

3. Within five (5) working days after receipt of this Order, submit documentation to NMED that Respondent has provided all necessary personnel training to whoever has not had such training, or, alternatively, if such training has not yet been completed, provide such training and documentation within ten (10) working days after receipt of this Order.

4. Within five (5) working days after receipt of this Order, submit copies of the original manifests signed by the offsite facility for the hazardous waste shipments dated September 26, 1991 and September 19, 1991.

5. Within five (5) working days after receipt of this Order, submit documentation to NMED that Respondent has properly labeled the LDR hazardous waste containers at TA-54 Area L.

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 (\$25,000.00) for each day of continued noncompliance with the Order, pursuant to the HWA, § 74-4-10.C.

NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

Where Respondent (a) contests any material fact or legal matter upon which the Order is based; (b) contends that the amount of the penalty proposed in the Order is inappropriate; or (c) contends that Respondent is entitled to prevail as a matter of law, Respondent shall file a written Request for Hearing together with an Answer to the Order with the Hearing Clerk within thirty (30) days after service of the Order. The Answer must clearly and directly identify what specifically Respondent is appealing.

The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Order with regard to which Respondent has any knowledge. Where the Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. Failure of Respondent to admit, deny, or explain any material factual allegation contained in the Order constitutes an admission of the allegation.

The Answer shall also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent intends to place at issue; and (3) whether a hearing is requested.

A hearing upon the issues raised by the Order and Answer shall be held upon the request of the Respondent. The Respondent shall attach to the Answer a copy of the Compliance Order to which the Request for Hearing pertains.

The Hearing Clerk's address is:

Barbara Rivera, Acting Hearing Clerk
New Mexico Environment Department
Post Office Box 26110
1190 St. Francis Drive
Harold Runnels Building, S-4100
Santa Fe, NM 87502
(505) 827-2842

FINALITY OF ORDER

The Order shall become final unless Respondent files a written Request for Hearing with an Answer within thirty (30) days of service of this Order. For purposes of this action, failure by Respondent to file an Answer constitutes an admission of all facts alleged in the Order and a waiver of Respondent's right to a hearing under § 74-4-10 of HWA concerning such factual allegations. The proposed penalty shall become due and payable by Respondent without further proceedings sixty (60) days after Respondent's failure to file an Answer. Respondent must immediately comply with the Order provisions in this Order.

SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, Respondent may confer with Complainant concerning settlement. NMED encourages settlement consistent with the provisions and 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 a Request for Hearing must be submitted. The settlement conference may be pursued as an alternative to and simultaneously with the hearing proceedings. Respondent may appear at the settlement conference itself and/or be represented by counsel.

Any settlement reached by the parties shall be finalized by written Order by the NMED Secretary. The issuance of such an Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein. To explore the possibility of settlement in this matter, contact the attorney assigned to this case, Ripley B. Harwood, Assistant General Counsel, Office of General Counsel, Environment Department, PO Box 26110, 1190 St. Francis Drive, Santa Fe, NM 87502, (505) 827-2854.

Compliance with the requirements of this Order does not relieve Respondent of its obligations to comply with all applicable laws and regulations.

This Order shall terminate when Respondent certifies that all requirements of this Order have been completed, and NMED has approved such certification.

DATE/

1/25/93

JUDITH M. ESPINOSA, SECRETARY .

By:

Kathleen M. Sisneros
KATHLEEN SISNEROS, Director
Water and Waste Management
Division

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Administrative Order Requiring Compliance and Proposing To Assess A Civil Penalty was mailed postage prepaid, via certified mail, return receipt requested, on this 28 day of January, 1993, to the following:

Mr. Seigfried S. Hecker, Director
Los Alamos National Laboratory
P.O. Box 1663
MSK 490
Los Alamos, NM 87544



RIPLEY B. HARWOOD

C:LANL-AO4.UC