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GOVERNOR

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

JUDITH M. ESPINOSA
SECRETARY

RON CURRY
DEPUTY SECRETARY

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

August 12, 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 NMHWA 94-12

The Hazardous and Radioactive Materials Bureau of the New Mexico Environment Department 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 out 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 NMSA 1978 §74-4-10.

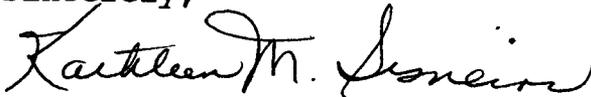


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Mr. Earl Bean and Mr. Seigfried Hecker
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Any inquiries concerning this Compliance Order should be directed to Mr. Coby Muckelroy, RCRA Inspection/Enforcement Program Manager, Hazardous and Radioactive Materials Bureau, New Mexico Environment Department, at (505) 827-4308.

Sincerely,



Kathleen M. Sisneros
Director
Water and Waste Management Division

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

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT

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

COMPLIANCE ORDER
NMHWA 94-12

RESPONDENT,

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

This Administrative Order ("Order") is issued to U.S. 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 ("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), an agency of the Federal Government, and the Regents of the University of California, a public educational institution of the State of California ("the University").

3. DOE is the owner and co-operator of the Los Alamos National Laboratory ("LANL"). The University is the management and operator contractor for LANL pursuant to a contract with DOE, and is a co-operator of LANL.

4. 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.

5. Upon information and belief, on or about April 15, 1994, Respondents began the removal of soils from Solid Waste Management Unit (SWMU) #3-010(a) located on the west end of Building 30 in Technical Area (TA) 3. The soil was removed as part of the remediation for this SWMU and had been characterized as being contaminated with mercury, vacuum pump oils, tritium, and plutonium. These characterizations were based primarily on "process knowledge" from former employees of the facility that generated the contamination. Relying on the "process knowledge" of the former employees, the Respondents sampled the soils and performed analyses on these samples limited to the constituents that were identified by the "process knowledge". As Respondents began remediation of the SWMU, the first lift of soils was found to contain gross mercury contamination. The mercury contaminated soils were containerized and handled as hazardous/mixed waste.

6. After the mercury contaminated soils were removed from the site, Respondents began excavation of the soils that had been identified as being contaminated with only petroleum hydrocarbon and radioactive components.

7. Respondents transported these soils without using a hazardous waste manifest to Pit 37, located in Area G, TA-54, which is an authorized low level radioactive solid waste landfill. Upon arrival at the landfill, the soils were spread out over the surface of the landfill and also deposited into two piles.

8. As the excavation of the SWMU encountered the soil/tuff contact, samples were taken to determine the level of total petroleum hydrocarbons (TPH). Analyses received by Respondents on May 13, 1994 indicated the presence of volatile organic constituents. Further analyses confirmed the presence of volatile organics, 1,1,1-trichloroethane (TCA) and trichloroethylene (TCE), both of which are listed hazardous wastes. Based on these analytical results, Respondents ceased the placement of all hazardous waste contaminated soils into the landfill and contacted Complainant by phone of the situation on May 20, 1994, with official notification by mail received by Complainant on June 2, 1994.

9. Upon information and belief, the amount of hazardous/mixed waste contaminated soils deposited into pit 37 was at least 40,000 kilograms. Respondents have not applied for a permit to treat, store, or dispose of hazardous/mixed waste at this location.

10. Upon information and belief, Respondents have failed to notify the Environmental Protection Agency and the NMED that it is a transporter of hazardous waste.

CONCLUSIONS

1. Respondents are a "person" as defined at §74-4-3.K. of HWA, and §101 of Hazardous Waste Management Regulations "HWMR-7", which incorporates federal regulation 40 CFR §260.10.

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

3. 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).

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

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

6. Respondents engage in the "storage", "treatment", and "disposal" of hazardous waste as defined at §74-4-4.3.C., N., and Q. of HWA, and §101 of HWMR-7, which incorporates federal regulation 40 CFR §260.10.

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

8. Respondents "transport" hazardous waste as defined at §101 of HWMR-7, which incorporates federal regulation 40 CFR §260.10.

9. §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. §901 of HWMR-7, which incorporates federal regulation 40 CFR §270.10, 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.

10. Respondents have failed to manifest at least 40,000 kilograms of hazardous/mixed waste contaminated soil generated during the remediation of SWMU #3-010(a). This is in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.20(a).

11. Respondents have failed to acquire the appropriate permit for the disposal of hazardous/mixed waste. This is in violation of §901 of HWMR-7, which incorporates federal regulation 40 CFR §270.10.

12. Respondents have failed to notify with EPA as a transporter of hazardous waste. This is in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.12(a).

13. Conclusions 10 and 11 entail violations which caused a substantial likelihood of exposure to hazardous waste and / or are substantial deviations from HWMR-7. Therefore, Respondents have demonstrated that they are high priority violators. Additionally, Respondents are chronic violators of HWMR-7.

13. Conclusion 12 entails a violation which is not a high priority violation.

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 twenty-six thousand and forty dollars (\$26,040) 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>
Concl. 10, Failure to manifest hazardous/mixed waste	\$13,020
Concl. 11, Failure to acquire the appropriate permit prior to disposal of hazardous/mixed waste	\$13,020

COMPLIANCE ORDER

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

1. Within sixty (60) days from the receipt of this Order, submit a complete site characterization plan for Pit 37, located in Area G, TA-54, in order to determine the vertical and horizontal extent of any hazardous waste contamination. Within one hundred and sixty (160) days after NMED approval of the plan, complete the site characterization of Pit 37 and submit a characterization report to Complainant. Based on the report, Complainant will determine what further regulatory action is required.

2. Within thirty (30) working days from the receipt of this Order, submit a corrective action plan to the Complainant that addresses the deficiencies of the current "knowledge of process" method used to identify hazardous wastes at Respondents facility. The plan will include remedies to the deficiencies to include but not limited to sampling strategies, documentation reviews, and improved personnel interviews.

NOTICE

If you fail to take the corrective action within the time 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 the 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 the 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 Respondents shall attach to the answer a copy of the Compliance Order to which the Request for Hearing pertains.

The Hearing Clerks address is:

Kim Martinez, Acting 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 of the service of this Order. For purposes of this action, failure by the Respondent to file an answer constitutes as admission of all facts alleged in the Order and a waiver of Respondents rights to a hearing under §74-4-10 of HWA concerning such 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 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. 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 rights 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 Environment Department, P.O. Box 26110, 525 Camino de Los Marquez, Suite 4, Santa Fe, New Mexico, 87502, telephone number 827-4308.

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

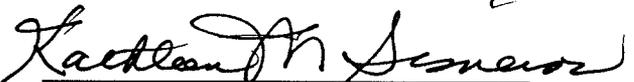
The Order shall terminate when Respondents certify that all requirements of this Order have been completed, and NMED has approved such certification.

JUDITH M. ESPINOSA, SECRETARY

DATE

8/12/94

By:



KATHLEEN SISNEROS, Director
Water and Waste Management
Division

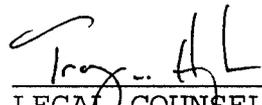
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Order Requiring Compliance was mailed postage prepaid as follows on this 12th day of August, 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, NM 87544

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



LEGAL COUNSEL