

# Los Alamos

NATIONAL LABORATORY

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Date: October 28, 1994

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BY THE HEARING CLERK

Ms. Kim Martinez, Acting Hearing Clerk  
P.O. Box 26110  
1190 St. Francis Drive  
Harold Runnels Building 8-4100  
Santa Fe, New Mexico 87502

OCT 28 1994

NO. NMHW 94-09(cc)  
BEFORE THE SECRETARY OF ENVIRONMENT

Dear Ms. Martinez:

Please find enclosed the Answer of the Department of Energy and the University of California in connection with Compliance Order NMHWA94-09.

Sincerely,



Joseph B. Rochelle  
Staff Attorney

JBR:las

Enc.: a/s

Cy: Kathleen M. Sisneros, NMED  
Susan McMichael, Esq., NMED  
Lisa Cummings, Esq., LAAO  
Joseph Vozella, ESH, LAAO  
Alan McMillan, ESH-DO, MS F690  
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File (2)



16631

DOCKETED  
STATE OF NEW MEXICO THE HEARING CLERK  
ENVIRONMENT DEPARTMENT

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

OCT 28 1994  
COMPLIANCE ORDER  
NO. NMHW 94-09  
BEFORE THE SECRETARY OF ENVIRONMENT

RESPONDENTS.

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

Respondents the Department of Energy (DOE) and the Regents of the University California (UC) hereby submit this joint Answer to Compliance Order 94-09 (Order).

FINDINGS

1. Respondents admit the findings contained in Paragraphs 1, 2, 3, 4, 5, 6, and 7.
2. Respondents admit the findings contained in the first sentence of Paragraph 8. Respondents admit the findings contained in the second sentence of Paragraph 8, except that as to the characterization of the inspection as conducted "jointly", Respondents are without knowledge or information sufficient to form a belief as to the truth or falsity of this finding and therefore deny same.
3. Respondents admit the findings contained in Paragraph 9.
4. Respondents admit the findings contained in Paragraph 10, except that Respondents deny that a conditionally exempt small quantity generator, as defined and described in 40 C.F.R. 261.5, must necessarily follow the mandate contained in Paragraph 10.
5. Respondents admit the findings contained in Paragraph 11.
6. Respondents admit the findings contained in the first sentence of Paragraph 12, except that Respondents deny that the wastes were "metal-containing" to the extent that they would exceed the TCLP limits for mercury or lead. Respondents affirmatively state that the wastes referred to in the first sentence of Paragraph 12 were not hazardous wastes. Respondents deny the findings contained in the second sentence of Paragraph 12, except that Respondents admit that the waste was generated as a result of remediation activities, and Respondents affirmatively state that an adequate hazardous waste determination was performed on the waste at issue in accordance with U.S.E.P.A. guidance provided in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" EPA Publication SW -846, and the determination concluded that the waste was not hazardous.
7. Respondents admit the findings contained in Paragraph 13.

8. Respondents deny the findings contained in Paragraph 14, and affirmatively state that a TCLP metals analysis has been performed at least since May of 1992 on each batch of sludge generated at TA-50.
9. Respondents deny the findings contained in Paragraph 15, and affirmatively state that the contents of the container referred to in this Paragraph received an adequate waste characterization as of June 17, 1993, prior to Complainant's inspection. Respondents admit that, through inadvertence, the container was not labelled as containing hazardous waste and that the container did contain hazardous mixed waste.
10. Respondents admit the findings contained in Paragraph 16.
11. With regard to the findings contained in the first sentence of Paragraph 17, Respondents are without knowledge or information sufficient to form a belief as to the truth or falsity of what was observed and therefore deny same; Respondents deny that the roadway referred to in this sentence is "public," deny that the transport was offsite, and deny that a U.S. E.P.A. Hazardous Waste Manifest was required for the two transports. With regard to the findings contained in the second sentence of Paragraph 17, Respondents admit that hazardous wastes are routinely transported on roads onsite without the use of U.S. E.P.A. form 8700-22, OMB Control Number 2050-0039, but deny that the roads are "public," and deny that the use of such manifest is required. Respondents affirmatively state that Respondents complied with the requirements of 40 C.F.R. 262.20(a). Respondents further affirmatively state that the use of LANL's Chemical Waste Disposal Request Form is recognized by LANL's Hazardous Waste Facility Permit, Permit Number 890010515-1, for onsite transportation of hazardous waste and that the permit was complied with.
12. With regard to the findings contained in the first sentence of Paragraph 18, Respondents admit all of these findings except that Respondents deny that the described equipment was not available within reasonable proximity. Respondents admit all the findings contained in the second sentence of Paragraph 18, but Respondents affirmatively state upon information and belief that Complainant has issued no regulation, guidance or policy mandating the distance from the storage area within which such equipment must be maintained.
13. With regard to the findings contained in the first sentence of Paragraph 19, Respondents admit all of these findings except that Respondents deny that the described equipment was not available within reasonable proximity. Respondents admit all the findings contained in the second sentence of Paragraph 19, but Respondents affirmatively state upon information and belief that Complainant has issued no regulation, guidance or policy mandating the distance from the storage area within which such equipment must be maintained.

14. With regard to the findings contained in the first sentence of Paragraph 20, Respondents admit all of these findings except that Respondents deny that the described equipment was not available within reasonable proximity. Respondents admit all the findings contained in the second sentence of Paragraph 20, but Respondents affirmatively state upon information and belief that Complainant has issued no regulation, guidance or policy mandating that such equipment be maintained within 150 feet of the storage area.
15. With regard to the findings contained in the first sentence of Paragraph 21, Respondents admit all of these findings except that Respondents deny that the described equipment was not available within reasonable proximity. Respondents admit all the findings contained in the second sentence of Paragraph 21, but Respondents affirmatively state upon information and belief that Complainant has issued no regulation, guidance or policy mandating that such equipment be maintained within 100 feet of the storage area.
16. Respondents admit the findings contained in the first and second sentences of Paragraph 22. Respondents deny the findings contained in the third sentence of Paragraph 22.
17. With regard to the findings contained in the first sentence of Paragraph 23, Respondents admit all of these findings except that Respondents deny that the described system was not available within reasonable proximity. Respondents admit all the findings contained in the second sentence of Paragraph 23, but Respondents affirmatively state upon information and belief that Complainant has issued no regulation, guidance or policy mandating that such systems be maintained within 100 feet of the storage area.
18. With regard to the findings contained in the first sentence of Paragraph 24, Respondents admit all of these findings except that Respondents deny that the described devices were not available within reasonable proximity. Respondents admit all the findings contained in the second sentence of Paragraph 24, but Respondents affirmatively state upon information and belief that Complainant has issued no regulation, guidance or policy mandating that such devices be maintained within 100 feet of the storage area.
19. With regard to the findings contained in the first sentence of Paragraph 25, Respondents admit all of these findings except that Respondents deny that the described equipment was not available within reasonable proximity. Respondents admit all the findings contained in the second sentence of Paragraph 25, but Respondents affirmatively state upon information and belief that Complainant has issued no regulation, guidance or policy mandating that such equipment be maintained within 100 feet of the storage area.
20. Respondents admit the findings contained in Paragraph 26, but deny that the area described was "required to be included in the facility contingency plan," and affirmatively state that the area described was required to comply with Subparts C and D of 40 C.F.R. 265 and that this requirement was met.

21. Respondents admit the findings contained in the first two sentences of Paragraph 27. Respondents deny the findings contained in the third, fourth, and fifth sentences of Paragraph 27, except that Respondents admit that for at least 10 months no waste characterization was performed on the one quart container of waste and that subsequently a waste characterization was performed. Respondents affirmatively state that Complainant has issued no regulation, guidance, or policy mandating the period of time within which a hazardous waste determination must be made.
22. Respondents admit the findings contained in the first sentence of Paragraph 28. Respondents admit the findings contained in the second sentence of Paragraph 29, subject to the insertion of the phrase "during storage" between the word "times" and the comma. Thus, the sentence would read: "A container of hazardous waste must be kept closed at all times during storage, except during the instance waste is physically being added to or removed from the container."
23. With regard to the findings contained in the first sentence of Paragraph 29, Respondents state that the beaker contained a precipitate that was work in progress and that was not a waste, and that the beaker had been inadvertently placed in the same hood that contained satellite storage waste. Respondents deny that the beaker contained hazardous waste, and deny that as to the contents of this beaker, hazardous waste was being stored. To the extent that the findings in the first sentence of Paragraph 29 of the Order are inconsistent with or contrary to the preceding statements in this Paragraph 23, they are denied. Respondents admit the findings contained in the second sentence of Paragraph 29, subject to the insertion of the phrase "during storage" between the word "times" and the comma. Thus, the sentence would read: "A container of hazardous waste must be kept closed at all times during storage, except during the instance waste is physically being added or removed from the container."
24. Respondents admit the findings contained in Paragraphs 30 and 31.
25. Respondents deny the findings contained in Paragraph 32, and affirmatively state that volumetric calculations reveal that the actual volume of waste stored was no more than 37 gallons, well under the 55 gallons allowed. Respondents further state upon information and belief that Complainant's inspectors may have mistakenly viewed one portion of the accumulated waste, sheets of lead that were stored in a 30 gallon drum, as accounting for the entire volume of the 30 gallon drum within which they were stored, rather than calculating the actual volume of the lead sheets whose volume equivalent was calculated by LANL to be approximately 2.4 gallons.
26. Respondents admit the findings contained in Paragraph 33.
27. Respondents deny the findings contained in Paragraph 34, and Respondents affirmatively state upon information and belief that Complainant has issued no regulation, guidance or

policy interpreting what constitutes "under the control of the operator of the process generating the waste" (40 C.F.R. 262.34(c)), and affirmatively state that the hazardous waste stored at this satellite accumulation area was subject to adequate administrative controls, and that such storage was consistent with U.S.E.P.A. written guidance on storage of this kind of waste, thus complying with the requirements of 40 C.F.R. 262.34(c).

28. Respondents deny the findings contained in Paragraph 35, and Respondents affirmatively state upon information and belief that Complainant has issued no regulation, guidance or policy interpreting what constitutes "under the control of the operator of the process generating the waste" (40 C.F.R. 262.34(c)), and affirmatively state that the hazardous waste stored at this satellite accumulation area was subject to an adequate combination of administrative controls and physical controls, thus complying with the requirements of 40 C.F.R. 262.34(c).
29. Respondents admit the findings contained in Paragraph 36.
30. Respondents deny the findings contained in Paragraph 37, and affirmatively state upon information and belief that Complainant has issued no regulation, guidance or policy interpreting what constitutes "under the control of the operator of the process generating the waste" (40 C.F.R. 262.34(c)), and affirmatively state that the hazardous waste stored at this satellite accumulation area was under the control of the operator, thus complying with the requirements of 40 C.F.R. 262.34(c).
31. Respondents admit the findings contained in Paragraph 38.
32. Respondents deny the findings contained in Paragraph 39, and affirmatively state upon information and belief that Complainant has issued no regulation, guidance or policy interpreting what constitutes "under the control of the operator of the process generating the waste" (40 C.F.R. 262.34(c)), and affirmatively state that the hazardous waste stored at this satellite accumulation area was under the control of the operator, thus complying with the requirements of 40 C.F.R. 262.34(c).
33. Respondents deny the findings contained in Paragraph 40, and affirmatively state upon information and belief that Complainant has issued no regulation, guidance or policy interpreting what constitutes "under the control of the operator of the process generating the waste" (40 C.F.R. 262.34(c)), and affirmatively state that the hazardous waste stored at this satellite accumulation area was under the control of the operator, thus complying with the requirements of 40 C.F.R. 262.34(c).
34. Respondents admit the findings contained in Paragraphs 41, 42 and 43.
35. With regard to the findings contained in the first sentence of Paragraph 44, Respondents

- admit all of these findings except that Respondents deny that TA 9-21-AE191 is a satellite accumulation point. Respondents admit the findings contained in the second sentence of Paragraph 44.
36. Respondents admit the findings contained in Paragraph 45.
  37. With regard to the findings contained in Paragraph 46, Respondents admit all of these findings except that Respondents deny that cylinders #C92025952 and #GCP1636A were "gas cylinders of hazardous waste" (they have been classified as low-level radioactive), and deny that #C92029792 and #CLS0181 refer to separate and distinct cylinders (they are the same cylinder); Upon information and belief, Respondents state that Complainant has erroneously referred to Container #C92025952 as Container #C9202592.
  38. Respondents admit the findings contained in Paragraphs 47 and 48.
  39. Respondents admit the findings contained in Paragraph 49 except that upon information and belief Respondents state that Complainant has erroneously referred to Container #C92030417 as Container #C9203417.
  40. Respondents admit the findings contained in Paragraph 50.
  41. Respondents admit the findings contained in Paragraph 51 except that Respondents deny that the storage limit for some or all of the cylinders is necessarily allowable for only one year. Respondents affirmatively state that the one year limitation applies unless (a) Respondents can demonstrate that such storage was solely for the purpose of accumulation of this waste as is necessary to facilitate proper recovery, treatment, or disposal, or (b) Respondents can demonstrate that such waste is subject to the Federal Facility Compliance Act, Public Law 102-386, 102d Congress. Respondents further affirmatively state that some or all of the cylinders referred to in this Paragraph may be subject to and addressed in Appendix B to the Federal Facility Compliance Agreement (FFCA), executed in March, 1994 by Respondent DOE and the U.S.E.P.A., which mandated a workoff plan (Gas 100) to be developed for the cylinders. Respondents are currently in the process of making a determination on the applicability of the FFCA to each of the cylinders. The workoff plan was submitted to U.S.E.P.A., and in accordance with the plan, all shippable nonradioactive cylinders identified in the Gas Cylinder Project for which treatment capacity is available have been shipped to approved off-site treatment facilities. Some cylinders have not been shipped offsite for one or more of the following reasons: (1) no available treatment exists; (2) cylinders are contaminated with radiological constituents and are therefore not acceptable by treatment facilities; and (3) cylinders are in such a condition that they are non-shippable under DOT regulations. Complainant has been sent copies of all deliverables to U.S.E.P.A. under the FFCA, including Gas 100, and has not objected to the workoff schedule provided for in Gas 100.

42. Respondents admit the findings contained in Paragraphs 52 and 53.
43. Respondents deny the findings contained in Paragraphs 54 and 55.
44. Respondents admit the findings contained in Paragraph 56, but Respondents affirmatively state that TCLP wastes were included in a list of authorized wastes in Attachment G of the draft modifications submitted to NMED for classification review in April, 1993. A request for permit modification to include TCLP wastes was submitted to NMED in November, 1993. Respondents further affirmatively state that a waste analysis plan that included TCLP was submitted to NMED as part of a Part B permit application in the first week of October, 1993.
45. With regard to the findings contained in the first sentence of Paragraph 57, Respondents admit these findings. With regard to the findings contained in the second sentence of Paragraph 57, Respondents admit that violations as described in this sentence were alleged by Complainant or its predecessor in interest, and that a number of these alleged violations were admitted by either Respondent DOE or Respondent UC or both of them, but deny that all the violations alleged by Complainant as identified during previous inspections were admitted or are admitted to be violations by either of Respondents or both of them, or that they in fact constituted actual violations.

#### CONCLUSIONS

46. Respondents admit the conclusions contained in Paragraphs 58, 59, 60, 61 and 62.
47. With regard to the conclusions contained in Paragraph 63, Respondents admit all of these conclusions, except that Respondents deny that they engage in the "disposal" of hazardous waste onsite.
48. Respondents admit the conclusions contained in Paragraph 64.
49. With regard to the conclusions contained in the first sentence of Paragraph 65, Respondents admit that the referenced regulations apply to Respondents, but deny that they have violated regulations in Part 262 as specified in the remainder of the Order, unless specifically admitted to by Respondents in this Answer. With regard to the conclusions contained in the second sentence of Paragraph 65, Respondents admit that the referenced regulations apply to Respondents, but deny that they have violated regulations in Part 268 as specified in the remainder of the Order, unless specifically admitted to by Respondents in this Answer. With regard to the conclusions contained in the third sentence of Paragraph 65, Respondents admit that the referenced regulations apply to Respondents, but deny that they have violated regulations in Part 270 as specified in the remainder of the Order, unless specifically admitted to by Respondents in this Answer.

50. Respondents admit the conclusions contained in Paragraphs 66 and 67.
51. Respondents deny all the conclusions contained in Paragraph 68, except that Respondents admit that Section 301 of HWMR-7 incorporates by reference federal regulation 40 C.F.R. 262.11. Respondents affirmatively state that an adequate hazardous waste determination was performed on the waste at issue in accordance with U.S.E.P.A. guidance provided in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" EPA Publication SW -846, and the determination concluded that the waste was not hazardous.
52. Respondents admit the conclusions contained in Paragraph 69.
53. Respondents deny all the conclusions contained in Paragraph 70, except that Respondents admit that Section 301 of HWMR-7 incorporates by reference federal regulation 40 C.F.R. 262.11, and Respondents affirmatively state that a TCLP metals analysis has been performed at least since May of 1992 on each batch of sludge generated at TA 50.
54. Respondents deny all the conclusions contained in Paragraph 71, except that Respondents admit that Section 301 of HWMR-7 incorporates by reference federal regulation 40 C.F.R. 262.11. Respondents affirmatively state that the contents of the container referred to in this Paragraph received an adequate waste characterization as of June 17, 1993, prior to Complainant's inspection. Respondents admit that, through inadvertence, the container was not labelled as containing hazardous waste and that the container did contain hazardous mixed waste.
55. Respondents admit the conclusions contained in Paragraph 72.
56. Respondents deny all the conclusions contained in Paragraph 73, except that Respondents admit that for at least 10 months no waste characterization was performed on the one quart container of waste stored at a satellite accumulation point at TA 55-3-170, that subsequently a waste characterization was performed, and that Section 301 of HWMR-7 incorporates by reference federal regulation 40 C.F.R. 262.11. Respondents affirmatively state that upon information and belief that Complainant has issued no regulation, guidance, or policy mandating the period of time within which a proper hazardous waste determination must be made.
57. Respondents deny all the conclusions contained in Paragraph 74, except that Respondents admit that they did not use a uniform hazardous waste manifest and that Section 301 of HWMR-7 incorporates by reference federal regulation 40 C.F.R. 262.20(a). Respondents affirmatively state that a uniform hazardous waste manifest is used for shipments offsite, but the use of such manifest is not required for onsite shipments; rather the use of LANL's Chemical Waste Disposal Request Form is recognized by LANL's Hazardous Waste Facility Permit, Permit Number 0890010515-1,

for onsite transport of hazardous waste and the permit was complied with. Respondents further affirmatively state that Respondents complied with the requirements of 40 C.F.R. 262.20(a).

58. Respondents deny all the conclusions contained in Paragraphs 75, 76, 77 and 78 except that Respondents admit that Section 301 of HWMR-7 incorporates by reference federal regulation 40 C.F.R. 262.34(a)(4). Respondents affirmatively state upon information and belief that Complainant has issued no regulation, guidance or policy mandating the distance from the storage area within which such equipment must be maintained, and that the described equipment was within reasonable proximity to the hazardous waste accumulation area in compliance with 40 C.F.R. 262.34(a)(4).
59. With regard to the conclusions contained in Paragraph 79, Respondents admit that on the day of the inspection, no grounding wires or bonding wires were available during mixing or pouring into the containers at the TA 21-427 less than ninety day hazardous waste accumulation area, and admit that Section 301 of HWMR-7 incorporates by reference federal regulation 40 C.F.R. 262.34(a)(4), but deny all the other conclusions contained in this Paragraph. Respondents affirmatively state upon information and belief that Complainant has issued no regulation, guidance or policy mandating the distance from the storage area within which fire and spill control equipment must be maintained, and that such equipment was within reasonable proximity to the hazardous waste accumulation area in compliance with 40 C.F.R. 262.34(a)(4).
60. Respondents deny all the conclusions contained in Paragraphs 80 and 81, except that Respondents admit that Section 301 of HWMR-7 incorporates by reference federal regulation 40 C.F.R. 262.34(a)(4). Respondents affirmatively state that upon information and belief Complainant has issued no regulation, guidance or policy mandating the distance from the storage area within which the equipment described in Paragraphs 80 and 81 must be maintained, and that such equipment was within reasonable proximity to the hazardous waste accumulation area in compliance with 40 C.F.R. 262.34(a)(4).
61. With regard to the conclusions contained in Paragraph 82, Respondents admit that they have not included the TA-21-427 less than ninety day hazardous waste accumulation area in the facility contingency plan and admit that Section 301 of HWMR-7 incorporates by reference federal regulation 40 C.F.R. 262.34(a)(4), but deny the remaining conclusions contained in this Paragraph. Respondents affirmatively state that the area described was not required to be included in the facility contingency plan, but rather was required to comply with Subparts C and D of 40 C.F.R. 265 and that this requirement was met.
62. Respondents admit the conclusions contained in Paragraph 83.
63. Respondents deny all the conclusions contained in Paragraph 84, except that Respondents admit that Section 301 of HWMR-7 incorporates by reference federal regulation 40

C.F.R. 262.34 (c)(1)(ii). Respondents affirmatively state that the container, a beaker, contained a precipitate that was work in progress and was not a waste, and that the beaker had been inadvertently placed in the same hood that contained satellite storage waste. The beaker did not contain hazardous waste.

64. Respondents admit the conclusions contained in Paragraphs 85 and 86.
65. Respondents deny all the conclusions contained in Paragraph 87 except that Respondents admit that Section 301 of HWMR-7 incorporates by reference federal regulation 40 C.F.R. 262.34(c)(2). Respondents affirmatively state that volumetric calculations reveal that the actual total volume of waste stored was no more than 37 gallons, well under the 55 gallons allowed. Respondents further state upon information and belief that Complainant's inspectors may have mistakenly viewed one portion of the accumulated waste, sheets of lead that were stored in a 30 gallon drum, as accounting for the entire volume of the 30 gallon drum within which the sheets were stored, rather than calculating the actual volume of the lead sheets. Respondents affirmatively state that the actual volume of the lead sheets has been calculated by Respondents to be approximately 2.4 gallons.
66. With regard to satellite accumulation points TA 0-1237-203, TA 3-66-P1A, TA 35-46-102, and TA 35-255-101, Respondents admit the conclusions contained in Paragraph 88; with regard to satellite accumulation points TA 3-40, TA 3-40-W112, TA 11-24, TA 35-85-106B, TA 35-125-F108, Respondents deny the conclusions contained in Paragraph 88 except that Respondents admit that Section 301 of HWMR-7 incorporates federal regulation 40 C.F.R. 262.34(c)(1). Respondents affirmatively state upon information and belief that Complainant has issued no regulation, guidance or policy interpreting what constitutes "under the control of the operator of the process generating the waste" (40 C.F.R. 262.34 (c)(1), and that satellite accumulation points TA 3-40, TA 3-40-W112, TA 11-24, TA 35-85-106B, and TA 35-125-F108 were under the control of the operator in compliance with the requirements of 40 C.F.R. 262.34(c)(1).
67. Respondents admit the conclusions contained in Paragraph 89.
68. Respondents admit all the conclusions contained in Paragraph 90 except that Respondents deny that TA 9-21-AE191 is a satellite accumulation point.
69. Respondents admit the conclusions contained in Paragraphs 91 and 92.
70. Respondents admit all the conclusions contained in Paragraph 93 except that Respondents deny that they "have failed to legibly mark or mark outright at least seven (7) gas cylinders (enumerated in Paragraph 46 [of the Order]) of hazardous waste at the TA 54 Area L permitted container storage area", and affirmatively state that Respondents may have failed to legibly mark or mark outright no more than four gas cylinders of hazardous

waste at the TA 54 Area L permitted container storage area. Respondents further affirmatively state that cylinders #C92025952 and #GCP1636A were containers of low-level radioactive waste and not containers of hazardous waste, and that cylinder numbers #C92029792 and #CLS0181 refer to the same cylinder, not to two distinct cylinders.

71. Respondents admit the conclusions contained in Paragraph 94.
72. Respondents admit all the conclusions contained in Paragraph 95 except that Respondents upon information and belief affirmatively state that Complainant has erroneously referred to Container #C92030417 as Container #C9203417.
73. Respondents admit the conclusions contained in Paragraph 96.
74. With regard to the conclusions contained in Paragraph 97, Respondents admit that they have allowed approximately 644 containers of hazardous waste at the TA 54 Area L gas cylinder storage area to exceed one year of storage, beyond the limit applicable to land disposal restricted waste unless (a) Respondents can demonstrate that such storage was solely for the purpose of accumulation of this waste as is necessary to facilitate proper recovery, treatment, or disposal, or (b) Respondents can demonstrate that such waste is subject to the Federal Facility Compliance Act, Public Law 102-386, 102d Congress; and Respondents admit that Section 801 of HWMR-7 incorporates by reference federal regulation 40 C.F.R. 268.50(b). Respondents deny the conclusions contained in Paragraph 97 of the Order to the extent that such conclusions are inconsistent with or contrary to the admissions contained in the preceding sentence of this Paragraph 74. Respondents affirmatively state that some or all of the cylinders referred to in Paragraph 97 of the Order may be subject to and addressed in Appendix B to the Federal Facility Compliance Agreement (FFCA), executed in March, 1994 by Respondent DOE and the U.S.E.P.A., which mandated that a workoff plan be developed for the cylinders (Gas 100). Respondents are currently in the process of making a determination on the applicability of the FFCA to each of the cylinders. The workoff plan was submitted to U.S.E.P.A. by Respondent DOE, and in accordance with the plan, all shippable nonradioactive cylinders identified in the Gas Cylinder Project for which treatment capacity is available have been shipped to approved off-site treatment facilities. Some cylinders have not been shipped offsite for one or more of the following reasons: (1) no available treatment exists; (2) cylinders are contaminated with radiological constituents and are therefore not acceptable by treatment facilities; and (3) cylinders are in such a condition that they are non-shippable under DOT regulations. Complainant has been sent copies of all deliverables to U.S.E.P.A. under the FFCA, including Gas 100, and has not objected to the workoff schedule provided for in Gas 100.
75. Respondents admit the findings contained in Paragraphs 98 and 99.

76. Respondents deny the conclusions contained in Paragraph 100 except that Respondents admit that Section 901 of HWMR-7 incorporates by reference federal regulation 40 C.F.R. 270.71(a)(2).
77. Respondents deny the conclusions contained in Paragraph 101 except that Respondents admit that Section 901 of HWMR-7 incorporates by reference federal regulation 40 C.F.R. 270.71(a).
78. Respondents admit the conclusions contained in Paragraph 102, but affirmatively state that TCLP wastes were included in a list of authorized wastes in Attachment G of the draft modifications submitted to NMED for classification review in April, 1993. A request for permit modification to include TCLP was submitted to NMED in November, 1993. Respondents further affirmatively state that a waste analysis plan that included TCLP was submitted to NMED as part of a Part B permit application in the first week of October, 1993.
79. With regard to the conclusions contained in the first sentence of Paragraph 103, Respondents deny that the violations alleged in the enumerated Paragraphs necessarily constitute violations in law or in fact unless specifically admitted to by Respondents in this Answer, and deny that past violations alleged in the enumerated Paragraphs constituted actual violations in law or in fact, which were cited as a result of one or more of the inspections referred to in Paragraph 57 of the Order, unless such past alleged violations have been previously admitted to by Respondents. Respondents deny the conclusions contained in the second and third sentences of Paragraph 103.

#### FIRST AFFIRMATIVE DEFENSE

Respondents' Answer and each denial contained therein constitute Respondents' first affirmative defense.

#### SECOND AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraphs 12 and 68 and to Ordered Action Number 3, Respondents state that the wastes were not hazardous wastes, and that an adequate waste determination was performed in accordance with U.S.E.P.A. guidance provided in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" EPA Publication SW -846.

#### THIRD AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraphs 14 and 70 and to Ordered action Number 3, Respondents state that a TCLP metals analysis has been performed at least since May of 1992 on each batch of sludge generated at TA 50.

#### FOURTH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraphs 15 and 71 and to Ordered Action Number 3, Respondents state that an adequate waste determination was performed.

#### FIFTH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraph 17 and 74 and to Ordered Action Number 4, Respondents state that the roadways referred to are not "public" roadways, but are owned and maintained by the United States Government.

#### SIXTH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraphs 17 and 74 and to Ordered Action Number 4, Respondents state that uniform hazardous waste manifests are not required for transportation of hazardous wastes "onsite," as this term is defined either in 40 C.F.R. 260.10 or in LANL's Hazardous Waste Facility Permit, Permit Number 0890010515-1 (Permit), but rather that LANL's Chemical Waste Disposal Request Form is used for onsite transportation of hazardous waste as recognized in LANL's Permit. Respondents further state that the uniform hazardous waste manifest is used for shipments of hazardous waste offsite.

#### SEVENTH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraphs 17 and 74 and to Ordered Action Number 4, Respondents state that Respondents' use of the Chemical Waste Disposal Request Form in lieu of the uniform hazardous waste manifest form for onsite shipments of hazardous waste has been recognized by Complainant through Complainant's issuance of Hazardous Waste Permit Number 0890010515-1 to Respondents, and thus Complainant's allegations and ordered actions are barred by the doctrines of ratification, waiver, and estoppel.

#### EIGHTH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraphs 18 through 21, Paragraphs 75 through 78, and to Ordered Action Number 5, Respondents state that Complainant has not issued any regulation, guidance, or policy requiring that such equipment be available within a specified distance.

#### NINTH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraphs 22 and 79 and to Ordered Action Number 6, Respondents state that the structure at issue was in the process of being relocated, that the grounding wire had been cut immediately preceding the inspection, and that the structure was grounded immediately following the inspection.

#### TENTH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraphs 23 through 25, Paragraphs 79 through 81, and to Ordered Actions Numbers 7 and 8, Respondents state that Complainant has not issued any regulation, guidance, or policy requiring that such equipment be available within a specified distance

#### ELEVENTH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraphs 26 and 82 and to Ordered action Number 9, Respondents state that Complainant has not issued any regulation, guidance, or policy requiring that the area be included in the contingency plan. Respondents further state that this area was required to comply with Subparts C and D of 40 C.F.R. 265 and that this requirement was met.

#### TWELFTH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraphs 27 and 73 and to Ordered Action Number 3, Respondents state that Complainant has not issued any regulation, guidance, or policy mandating the period of time within which a hazardous waste determination must be made.

#### THIRTEENTH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraphs 29 and 84 and to Ordered Action Number 10, Respondents state that the container at TA 9-21-135 contained a precipitate for a work in progress, not hazardous waste, and therefore was not subject to any requirements for storage of hazardous waste.

#### FOURTEENTH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraphs 32 and 87 and to Ordered action Number 13, Respondents state that volumetric calculations reveal that the actual volume of waste stored was no more than 37 gallons, and that the actual volume of lead sheets stored at this point was approximately 2.4 gallons.

#### FIFTEENTH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraphs 34 and 88 and to Ordered Action Number 14, Respondents state that Complainant has not issued any regulation, guidance, or policy specifying what constitutes "under the control of the operator of the process generating the waste" (40 C.F.R. 262.34(c)), and further state that the hazardous waste stored at this satellite accumulation point was subject to adequate administrative controls, and that such storage was consistent with U.S.E.P.A. written guidance on storage of this kind of waste, thus complying

with the requirements of 40 C.F.R. 262.34(c).

#### SIXTEENTH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraphs 35, 37, 39, 40 and 88 and to Ordered Action Number 14, Respondents state that Complainant has not issued any regulation, guidance, or policy specifying what constitutes "under the control of the operator of the process generating the waste," (40 C.F.R. 262.34(c)), and further state that the satellite accumulation points referred to are under the control of the operator within the meaning of 40 C.F.R. 262.34(c).

#### SEVENTEENTH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraphs 46 and 93 and to Ordered Action Number 19, Respondents state that of the alleged seven cylinders, two did not contain hazardous waste (cylinders #C92025952 and #GCP1636A), and that #C92029792 and #CLS0181 refer to the same cylinder.

#### EIGHTEENTH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraphs 51 and 97 and to Ordered Action Number 23, Respondents state that some or all of the cylinders referred to may be subject to Appendix B to the Federal Facility Compliance Agreement executed in March, 1994, by Respondent DOE and the U.S.E.P.A., and that such Agreement provides for a workoff schedule for the cylinders subject to the Agreement. Complainant has been informed of the workoff schedule and has not objected to the schedule and so Complainant's claims are barred by the doctrines of waiver and estoppel.

#### NINETEENTH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraphs 51 and 97 and to Ordered Action Number 23, Respondents state that the cylinders containing mixed waste are subject to and governed by the Federal Facility Compliance Act, Public Law 102-386, 102d Congress, and that Complainant's enforcement jurisdiction over such cylinders is therefore limited by the Supremacy Clause of the U.S. Constitution and the doctrine of sovereign immunity.

#### TWENTIETH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraphs 56 and 102 and to Ordered Action Number 28, Respondents state that TCLP wastes were included in a list of authorized wastes in Attachment G of the draft modifications that were submitted to NMED for classification review in April, 1993 and that a request for permit modification to include TCLP wastes was submitted to NMED in November, 1993. Respondents further state that a waste analysis plan that included TCLP was submitted to NMED as part of a Part B permit application in the first week of

October, 1993.

#### TWENTY-FIRST AFFIRMATIVE DEFENSE

With regard to the civil penalties proposed by Complainant, Respondents state that as to the alleged violations enumerated in the Compliance Order which Respondents have denied in this Answer, no civil penalty may be imposed.

#### TWENTY-SECOND AFFIRMATIVE DEFENSE

With regard to the civil penalties proposed by Complainant for those findings and/or conclusions admitted to by Respondents, Respondents assert the following defenses:

- a. Complainant failed to consider the good faith efforts of Respondents to comply with alleged applicable requirements, pursuant to 74-4-10.B. NMSA 1978;
- b. Complainant failed to consider the seriousness of the violation, pursuant to 74-4-10.B. NMSA 1978;
- c. Complainant failed to adhere to the Hazardous Waste Penalty Policy adopted by Complainant on September 4, 1992;
- d. Complainant's imposition of penalties is arbitrary, capricious and without substantial basis in law or in fact.

#### ORDERED ACTIONS

The Compliance Order contains a section ordering Respondents to take specified actions within specified timeframes. Respondents state that they have completed all actions ordered with the exception of (a) Ordered Action Number 9, for which Complainant has granted an extension, by letter dated September 14, 1994, allowing Respondents the timeframe of ten (10) days after the date upon which Respondents and Complainant have their first meeting (the date for which has yet to be determined) regarding the Compliance Order; and (b) Ordered Action Number 23, the due date of which is not until ninety (90) calendar days after receipt of the Order by Respondents.

#### FACTS PLACED AT ISSUE

Pursuant to the stated requirement on Page 19 of the Order, Respondents state that they place at issue all facts denied in this Answer.

REQUEST FOR HEARING

Respondents restate their request for hearing as previously submitted and filed with the Hearing Clerk on October 7, 1994.

**WHEREFORE**, Respondents request that the determination be made that Respondents did not commit the violations alleged by Complaint in the Order unless specifically admitted to by Respondents in this Answer, that the civil penalties proposed by Complainant be denied where the underlying alleged violation has been denied by Respondents in this Answer, that the civil penalties proposed by Complainant be reduced where the underlying alleged violation has been admitted to by Respondents in this Answer, that the schedule of compliance and actions thereunder ordered by Complainant be denied, and that other such relief as the Hearing Officer deems just and proper be granted.

UNITED STATES DEPARTMENT OF ENERGY

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Certificate of Service

I hereby certify that a copy of the foregoing Answer was hand-delivered on the twenty-eighth day of October, 1994 to the following individuals:

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