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**DOCKETED**

STATE OF NEW MEXICO  
ENVIRONMENT DEPARTMENT

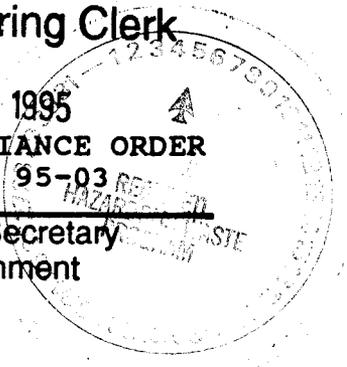
By The Hearing Clerk

JUN 29 1995

COMPLIANCE ORDER  
NMHWA 95-03

IN THE MATTER OF  
U.S. DEPARTMENT OF ENERGY  
AND REGENTS OF THE UNIVERSITY OF CALIFORNIA  
RESPONDENTS.

No. \_\_\_\_\_  
Before the Secretary  
of Environment



**ADMINISTRATIVE ORDER ON CONSENT**

**I. INTRODUCTION**

A. On March 22, 1995, the New Mexico Environment Department (NMED) issued Compliance Order NMHWA 95-03 (Compliance Order) to the United States Department of Energy and the Regents of the University of California (collectively referred to herein as "Respondents") pursuant to the New Mexico Hazardous Waste Act (HWA), NMSA 1978, §74-4-10 (Repl. Pamp. 1993) and the Hazardous Waste Management Regulations (HWMR-7), which, with a few exceptions, incorporate by reference the United States Environmental Protection Agency hazardous waste management regulations. On April 24, 1995, Respondents filed an Answer and Request for Hearing.

B. The purpose of this Administrative Order on Consent (AOC) is to set forth the agreement of the parties resolving all matters related to the Compliance Order, including agreement on the assessment and payment of civil penalties in the amount and method set forth in this AOC. This AOC shall apply to and be binding upon NMED and Respondents and their respective successors and assigns.



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## **II. JURISDICTION AND AUTHORITY.**

A. NMED asserts jurisdiction and authority over the subject matter of this AOC pursuant to and including without limitation, the following statutes, regulations, and laws:

1. The Resource Conservation and Recovery Act, 42 U.S.C. §6901 et. seq.;
2. The New Mexico Hazardous Waste Act, NMSA 1978, §74-4-1 et. seq.; and
3. The New Mexico Hazardous Waste Management Regulations, (HWMR-7).

B. Respondents admit the jurisdictional allegations of the Compliance Order and consent to the relief specified herein, including stated civil penalties to be paid by Respondents.

## **III. NMED'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

As a result of NMED's September 14-22, 1994 inspection at Los Alamos National Laboratory (LANL), NMED issued a Compliance Order, including findings of fact and conclusions of law set forth pursuant to HWA and HWMR-7. Those findings of fact and conclusions of law are set forth in the Compliance Order and are incorporated by reference into this AOC. Neither the execution of this AOC nor Respondents' payment or performance herein shall constitute an admission of any of the alleged facts or legal conclusions contained in the Compliance Order. Nothing in this AOC shall affect any right, claim, cause of action or defense of any party hereto with respect to others not parties to this AOC.

**IV. COMPROMISE AND SETTLEMENT OF COMPLIANCE ORDER.**

In compromise and settlement of all alleged violations and penalties set forth in the Compliance Order, and upon consideration of the seriousness of the alleged violations, any good faith efforts to comply and other matters as justice may require, it is hereby ORDERED that Respondents be assessed a civil penalty as follows:

**A. Civil Penalty.**

Respondents shall pay to the State of New Mexico a civil penalty in the amount of forty eight thousand and three hundred and twenty nine dollars (\$48,329.00) which is due and payable within forty-five (45) calendar days after the effective date of this AOC. Payment shall be made to the State of New Mexico Hazardous Waste Emergency Fund by certified check, bank draft or other guaranteed negotiable instrument and mailed or hand-delivered to the New Mexico Environment Department, Office of General Counsel, Attention: Linda Romero, 1190 St. Francis Drive, Post Office Box 26110, Santa Fe, New Mexico 87502. Unless and except as provided herein, payment of this civil penalty amount shall constitute full settlement and release of all claims, demands, ordered actions and alleged violations made in or relating to the Compliance Order and issues relating to the Compliance Order.

**B. Failure to Comply.**

In the event Respondents fail to pay the stated civil penalty of \$48,329.00 in the timeframe and manner provided above, the Secretary may, at his discretion, issue an order to show cause

and assess a stipulated penalty of not more than five-hundred dollars (\$500.00) per day for each day of noncompliance or declare this AOC null and void and that the full penalty set forth in the Compliance Order is immediately due and payable. In addition, if NMED does not receive payment of the stated civil penalty on or before the due date, interest will accrue on the amount due from the due date at the annual rate of eight and three-quarters percent (8 3/4%). This AOC shall be enforceable by the filing of a civil action in the First Judicial District of Santa Fe, New Mexico. In the event the filing of a civil action is necessary, Respondents agree to pay reasonable attorney fees and costs to NMED.

**V. RESERVATION OF RIGHTS.**

NMED reserves the right to pursue civil or administrative relief for any other violations of state or federal law, past or future, which are not the subject matter of this AOC. NMED specifically retains the right to conduct environmental studies, investigations, monitoring, or emergency activities at property owned or controlled by Respondents, and to enforce all laws, statutes and regulations NMED is authorized to enforce. NMED's failure to exercise any power, authority, or right in this AOC, or its election not to exercise such power, authority or right, shall not be construed as a waiver or relinquishment of such power, authority or right at other times or under other circumstances.

**VI. COVENANT NOT TO SUE.**

NMED agrees that as long as Respondents remain in compliance with the terms and conditions of this AOC, NMED will not initiate

or pursue civil or administrative relief in any other forum which might otherwise be available under New Mexico and federal law, including without limitation the right to seek and recover damages or penalties against Respondents, their successors, assigns and employees for the allegations set forth herein or for the actions required to be performed under this AOC.

**VII. RIGHTS EXPRESSLY RESERVED.**

This AOC in no way relieves Respondents of their legal obligation to comply with all applicable federal and state environmental laws, regulations, and permit conditions in their future operations, including but not limited to the HWA and Regulations. This AOC is not to be construed as curtailing or in any way impeding NMED's legal right to require Respondents' compliance with all permitting or other statutory or regulatory requirements as may be lawfully asserted regarding any aspect of LANL's operation. This AOC is not to be construed as curtailing or in any way impeding NMED's legal right to seek penalties and damages for any other alleged noncompliance by Respondents with statutory or regulatory requirements.

**VIII. RELEASE FROM LIABILITY.**

Nothing in this AOC shall constitute or be construed as a satisfaction of release from liability from any conditions or claims arising as a result of past, current, or future operations of Respondents other than the violations alleged in the Compliance Order, the release of which is expressly conditioned on full and

complete performance by Respondents and NMED of the terms and conditions of this AOC.

**IX. GOOD FAITH PERFORMANCE.**

The Parties agree that they will act reasonably and in good faith at all times to accomplish the objectives of this AOC. If at any time while this AOC is in effect NMED determines that material facts or data have been intentionally misrepresented, or that misleading or intentionally erroneous data have been submitted, NMED may terminate this AOC, or pursue any other lawful remedies.

**X. WAIVER OF STATE LIABILITY.**

Respondents shall assume all costs and liabilities incurred in performing any of their obligations under the terms of this AOC. Respondents are performing these obligations at their own risk. The State of New Mexico and NMED do not assume any liability or costs whatsoever for Respondents' performance of any of its obligations under the terms of this AOC.

**XI. SEVERABILITY.**

The provisions of this AOC are severable. If any provision of this AOC is declared by a court of law to be invalid or unenforceable, all other provisions of this AOC shall remain in full force and effect, unless NMED in its sole discretion determines that the objectives of this AOC are substantially impaired by the court's ruling.

**XII. EXCHANGE OF INFORMATION.**

Respondents agree to cooperate fully with NMED in providing requested data and information. Respondents agrees to freely and

routinely communicate with NMED. No such communications shall alter or waive any rights or obligations of Respondents under this AOC. No guidance, suggestions or comments by NMED shall be construed as relieving Respondents of their obligations under this AOC.

**XIII. RECORDS, INSPECTION AND COPYING.**

Respondents shall permit NMED, its contractors, designees and agents to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this AOC. Respondents shall maintain records which adequately document all of the substantive procedures and requirements set forth in this AOC. In the absence of records adequately documenting and substantive procedures and requirements of this AOC, the burden of proof as to compliance with the procedure or requirement shall be upon Respondents. Respondents shall provide NMED with access to review and copy any records made or kept, or required to be made or kept under this AOC or under applicable state or federal laws or regulations.

**XIV. MERGER & INTEGRATION.**

This AOC merges all prior written and oral communications between the parties concerning this matter, and contains the entire agreement reached between the parties. This AOC shall not be altered, amended, or construed by any communications whether written or oral, which are not contained herein.

**XV. EFFECTIVE DATE.**

The effective date of this AOC shall be the date the Secretary, or his designee, signs and dates the final order approving this AOC.

**XVI. AUTHORITY OF SIGNATORY.**

The persons executing this AOC respectively represent that they have the requisite authority to bind Respondents and NMED to the terms of this AOC, and further agree that this representation of authority as to each such entity shall be legally sufficient evidence of actual or apparent authority to bind each of them to all of the terms and conditions of this AOC.

APPROVED:

Ed Kelley  
Director ~~WWMD~~ on behalf of the  
New Mexico Environment Department

6/26/95  
Date

Ray Kirk  
, on behalf of Respondent  
The U.S. Department of Energy

6/20/95  
Date

R Jackson  
, on behalf of Respondent  
The Regents of the University of California.

6/15/95  
Date

STATE OF NEW MEXICO  
ENVIRONMENT DEPARTMENT

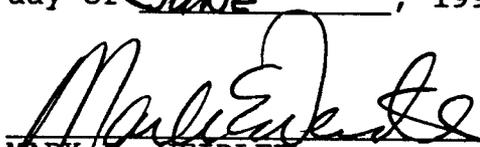
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RESPONDENTS.

FINAL ORDER

The Secretary, having reviewed the above-captioned Administrative Order on Consent, including all attachments incorporated by reference, and having determined that it is consistent with the New Mexico Hazardous Waste Act, hereby approves the Administrative Order on Consent and orders that it take full force and effect on this 27 day of JUNE, 1995.

  
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MARK E. WEIDLER