

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT

IN THE MATTER OF
THE UNITED STATES DEPARTMENT OF ENERGY
AND REGENTS OF THE UNIVERSITY OF CALIFORNIA
LOS ALAMOS, NEW MEXICO,

COMPLIANCE ORDER
NMHWA 95-08

RESPONDENTS.

ADMINISTRATIVE COMPLIANCE ORDER
AND CIVIL PENALTY

This Administrative Order (Order) is issued to the United States 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 Department (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 HWA, NMSA 1978 §§74-4-1 through 74-4-14 et seq. (Repl. Pamp. 1993) and the New Mexico Hazardous Waste Management Regulations (20 NMAC 4.1).

2. Respondents are the U.S. Department of Energy (DOE) and the Regents of the University Of California (UC).

3. DOE is an agency of the federal government and the owner and a co-operator of Los Alamos National Laboratory (LANL).

4. UC is a public educational institution of the State of California and the management and operating contractor for LANL pursuant to a contract with DOE, and is a co-operator of LANL.

5. LANL is principally located 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.



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6. LANL was chosen in 1942 as the site for the wartime development of the atomic bomb. The facility 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.

7. In association with the activities identified above, LANL generates, treats, and stores hazardous wastes and mixed hazardous and radioactive wastes.

8. NMED has issued prior compliance orders for violations of HWA and 20 NMAC 4.1.

9. On March 22, 1995, NMED issued a Compliance Order to LANL based upon results of an inspection conducted on September 14-22, 1994. The violations noted in this compliance order were: failure to place accumulation start dates on hazardous waste containers, failure to perform hazardous waste determinations, failure to maintain records of hazardous waste determinations, failure to provide required decontamination equipment, failure to store hazardous waste in a satellite accumulation point under the control of the operator generating the waste, failure to keep hazardous waste container closed, failure to label hazardous waste containers at satellite accumulation points and at <90 day storage areas with the words "Hazardous Waste" or with words that identify the contents, failure to provide required training for 3 employees, and failure to perform required physical and chemical analysis on hazardous wastes prior to thermal treatment.

10. On September 2, 1994, NMED issued a Compliance Order to LANL based upon the results of an inspection conducted jointly with the U.S. Environmental Protection Agency on August 2-12, 1993. The violations noted in this compliance order were: failure to perform hazardous waste determinations, failure to maintain records of hazardous waste determinations, failure to provide required decontamination equipment, failure to keep hazardous waste containers closed, failure to store hazardous waste in a satellite accumulation point under the control of the operator generating the waste, failure to provide required training for 2 employees, failure to place accumulation start dates on hazardous waste containers, failure to label hazardous waste containers at satellite accumulation points with the words "Hazardous Waste" or with words that identify the contents, failure to dispose of hazardous waste (tin/lead solder) in an authorized manner, failure to offer waste to a facility that has received an EPA identification number, failure to store hazardous waste in a safe manner at a <90 day storage area, failure to provide internal communication devices or an alarm system or spill control equipment within 100 feet of a <90 day storage area, exceedance of the one

year storage limit for storing land disposal restricted waste, failure to treat hazardous wastes using processes specified in the facility's Part A permit application and failure to indicate the manifest number on the accompanying Land Disposal Restriction (LDR) notice.

11. On September 14-18, 1995, NMED inspectors James Seubert, Coby Muckelroy, Michael Le Scouarnec, Frank Sanchez and Mark Coffman conducted a hazardous waste inspection (inspection) at LANL.

12. At the time of the inspection, at TA-22, Bldg. 91, Site #548, the required shower/eyewash decontamination equipment was not located within 100 feet allowing direct, unobstructed access from the <90 day storage area where corrosive and other chemical liquids were being stored.

13. At the time of the inspection, at TA-54, Area G, Dome 48, Site #343, hazardous waste containers numbered 910729, 910723, 910762 and 910798 did not have accumulation start dates on them.

14. At the time of the inspection, at TA-54, Area G, Dome 153, Site #468, five (5) containers of hazardous waste containing acetone and labeled only with the words "pending analysis", did not have accumulation start dates on them.

15. At the time of the inspection, at TA-54, Area G, Dome 153, Site #468, five (5) containers of hazardous waste containing acetone and labeled only with the words "pending analysis", were not marked with words identifying their contents.

16. At the time of the inspection, at TA-54, Area L, Mixed Waste Storage Area, hazardous waste container #C95054221 did not have an accumulation start date on it.

17. At the time of the inspection, at TA-43, Bldg. 47, Site #850, a container of hazardous waste in the <90 day storage area containing acetic acid and acetone, did not have an accumulation start on it.

18. At the time of the inspection, at TA-3, Bldg. 32, Room 111, Site #1297, a satellite accumulation point, a container of liquid hazardous waste containing methanol and acetone was found open.

19. At the time of the inspection, at TA-3, Bldg. 0, Room 0000, Site #1348, a satellite accumulation point, three (3) containers of hazardous waste containing F001 and F002 contaminated wastes were found open.

20. At the time of the inspection, at TA-3, Bldg. 0, Room 0000, Site #1348, a satellite accumulation point, three (3)

containers of hazardous waste containing F001 and F002 contaminated wastes were not labeled with the words "Hazardous Waste" or with words that identified the contents.

CONCLUSIONS

21. Respondents are a "person" as defined at §74-4-3.K. of HWA, and 20 NMAC 4.1.101, which with a few exceptions, incorporates federal regulation 40 CFR §260.10.

22. Respondents are a "generator" as defined at §74-4-3.F. of HWA, and 20 NMAC 4.1.101, which with a few exceptions, incorporates federal regulation 40 CFR §260.10.

23. Respondents generate "hazardous waste" as defined at §74-4-3.I. of HWA, and 20 NMAC 4.1.101, which with a few exceptions, incorporates federal regulation 40 CFR §260.10.

24. Respondent DOE is an "owner" of an "existing hazardous waste management facility" as those terms are defined at §74-4-3.I. of HWA, and 20 NMAC 4.1.101, which with a few exceptions, incorporates federal regulation 40 CFR §260.10.

25. Respondent UC is an "operator" of an "existing hazardous waste management facility" as those terms are defined at §74-4-3.I. of HWA, and 20 NMAC 4.1.101, which with a few exceptions, incorporates federal regulation 40 CFR §260.10.

26. Respondents engage in the "treatment", "storage", and/or "disposal" of hazardous waste as defined at §74-4-4.3.C., Q., and N. of HWA, and 20 NMAC 4.1.101, which with few exceptions, incorporates federal regulation 40 CFR §260.10.

27. Respondents store hazardous waste in "containers" as defined at 20 NMAC 4.1.101, which with few exceptions, incorporates federal regulation 40 CFR §260.10.

28. Respondents store hazardous waste in "tanks" as defined at 20 NMAC 4.1.101, which with few exceptions, incorporates federal regulation 40 CFR §260.10.

29. Certain of Respondents' hazardous waste management units may not have "interim status" as legally defined under NMSA 1978, §74-4-9 (Repl. Pamp. 1993) and 20 NMAC 4.1.901, which incorporates by reference federal regulations 40 CFR Part 270, and are not operating under a permit. 20 NMAC 4.1.601, which incorporates 40 CFR 265, governs waste management units that have interim status. 20 NMAC 4.1.501, which incorporates federal regulation 40 CFR §264, governs waste management units which are permitted and which do not

have interim status.

30. 20 NMAC 4.1.301, 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. 20 NMAC 4.1.801, which incorporates federal regulation 40 CFR §268.1(a), makes the regulations in Part 268 (Land Disposal Restrictions) applicable to the Respondents, and Respondents have violated regulations in Part 268 as specified below.

31. Respondents have failed to provide required decontamination equipment in the form of adequate shower/eyewash capability at the <90 day Storage Area in TA-22, Bldg. 91. This is in violation of 20 NMAC 4.1.301, which incorporates 40 CFR §262.34(a)(4).

32. Respondents have failed to place the accumulation start date on containers numbered 910729, 910723, 910762 and 910798 in TA-54, Area G, Dome 48. This is in violation of 20 NMAC 4.1.801, which which incorporates 40 CFR §268.50(a)(2)(i).

33. Respondents have failed to place the accumulation start date on five (5) containers labeled only with the words "pending analysis" in TA-54, Area G, Dome 153. This is in violation of 20 NMAC 4.1.801, which incorporates 40 CFR §268.50(a)(2)(i).

34. Respondents have failed to mark five (5) hazardous waste containers with words that identify their contents in TA-54, Area G, Dome 153. This is in violation of 20 NMAC 4.1.801, which incorporates 40 CFR §268.50(a)(2)(i).

35. Respondents have failed to place the accumulation start date on a container numbered C95054221 in TA-54, Area L, mixed waste storage area. This is in violation of 20 NMAC 4.1.801, which incorporates 40 CFR §268.50(a)(2)(i).

36. Respondents have failed to place the accumulation start date on a container of hazardous waste in TA-43, Bldg. 47, <90 day storage area. This is in violation of 20 NMAC 4.1.301, which incorporates 40 CFR §262.34(a)(2).

37. Respondents have failed to close a hazardous waste container at a satellite accumulation point in TA-3, Bldg. 32, Room 111. This is in violation of 20 NMAC 4.1.301, which incorporates 40 CFR §262.34(c)(1)(i).

38. Respondents have failed to close three (3) hazardous waste containers at a satellite accumulation point in TA-3, Bldg. 0, Room 0000. This is in violation of 20 NMAC 4.1.301, which incorporates 40 CFR §262.34(c)(1)(i).

39. Respondents have failed to label three (3) hazardous waste containers at a satellite accumulation point in TA-3, Bldg. 0, Room 0000, with the words "Hazardous Waste" or with words that identify the contents. This is in violation of 20 NMAC 4.1.301, which incorporates 40 CFR §262.34(c)(1)(ii).

40. Paragraphs 31 through 33 and 35 through 39 entail violations which were cited as a result of the inspections and were included in prior enforcement actions referred to in ¶¶9-10. Therefore, Respondents have demonstrated that they are a high priority violator of 20 NMAC 4.1.

CIVIL PENALTY

41. 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 fourteen thousand seven hundred ninety five dollars (\$14,795.00), 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>
Paragraph 31 Failure to provide required decontamination equipment at a <90 day storage area.	\$1,260
Paragraph 32 Failure to place an accumulation start date on a hazardous waste container.	\$690
Paragraph 33 Failure to place accumulation start dates on five (5) containers.	\$4,830
Paragraph 35 Failure to place an accumulation start date on a hazardous waste container.	\$1,470
Paragraph 36 Failure to place an accumulation start date on a hazardous waste container.	\$1,470

Paragraph 37	Failure to close a hazardous waste container.	\$1,470
Paragraph 38	Failure to close three (3) hazardous waste containers.	\$2,240
Paragraph 39	Failure to label three (3) hazardous waste containers.	\$1,365

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 Linda Romero, Office of General Counsel, New Mexico Environment Department, P.O. Box 26110, Santa Fe, New Mexico 87502.

SCHEDULE OF COMPLIANCE

42. All cited violations were corrected prior to the issuance of this Order.

NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

43. Respondents have the right to answer this Order and request a hearing pursuant to §74-4-10.H. of the HWA and §204 of the Rules Governing Appeals From Compliance Orders Under the Hazardous Waste Act and the Solid Waste Act. 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 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.

44. 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 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 Rules Governing Appeals from Compliance Orders Under the Hazardous Waste Act and the Solid Waste Act shall govern all hearing and pre-hearing procedures. Respondents may contact the Hearing Clerk for a copy of these regulations.

The Hearing Clerk's address is:

Gloria Miller, 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

45. 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. Failure by the Respondents to file an Answer constitutes as admission of all facts alleged in the Order and a waiver of Respondents' right to a hearing under §74-4-10 of HWA. Unless Respondents request a hearing, the penalty proposed in this Order shall become due and payable without further proceedings within sixty (60) days after receipt of this Order.

SETTLEMENT CONFERENCE

46. Whether or not Respondents file an Answer and Request for a Hearing, Respondents may confer with Complainant concerning settlement. A request for a settlement conference does not extend the thirty (30) day period during which the Answer and Request for Hearing must be submitted. The settlement conference may be pursued as an alternative to, or simultaneously with, the hearing proceedings. Respondents may appear at the settlement conference by themselves or be represented by counsel.

47. Any settlement reached by the parties shall be finalized by written Order by the Secretary of NMED. The issuance of such an Order shall serve to resolve all issues raised in the Order, and shall not be appealable.

48. To explore the possibility of settlement in this matter, Contact Mr. Coby Muckelroy, of the Environment Department, P.O. Box 26110, 2044 Galisteo, Santa Fe, New Mexico, 87502, telephone number 827-1558.

TERMINATION

49. Compliance with the requirements of this Order does not relieve Respondents of their obligation to comply with all applicable laws and regulations. This Order shall terminate when Respondents certify that all requirements of this Order have been completed, and NMED has approved such certification or when the Secretary approves a settlement agreement.

MARK E. WEIDLER, SECRETARY

DATE

By:



ED KELLEY, 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 30 day of ~~December~~ *November*, 1995 to the following:

Via Certified Mail, Return Receipt Requested:

Larry Kirkman, 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
Los Alamos, NM 87545

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Lourdes M. Monserrat

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