

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,  
RESPONDENTS

COMPLIANCE ORDER  
NMHWA 95-08

*Coty -  
Re set of  
internal meeting  
w/ me, you, Jim, Frank  
& mark on this report  
ASAP -  
Benito  
11/5/86*

ANSWER TO ADMINISTRATIVE COMPLIANCE ORDER  
AND CIVIL PENALTY

Respondent the Regents of the University of California (UC) submits this Answer to Compliance Order NMHWA 95-08 (Order).

1. UC admits the findings contained in Paragraphs 1, 2, 3, 4, 5, 6, and 7.
2. With regard to the findings contained in Paragraph 8, UC admits that NMED has issued prior compliance orders for violations of HWA, but denies that all such compliance orders were directed to or named Respondents the United States Department of Energy (DOE) and UC (hereinafter sometimes collectively referred to as "Respondents"), and further denies that any such compliance orders that were directed to or named Respondents involved violations of 20 NMAC 4.1.
3. UC admits the findings contained in the first sentence of Paragraph 9. With regard to the findings contained in the second sentence of Paragraph 9, UC admits that violations as described in this sentence were alleged in the referenced compliance order and that a number of these alleged violations were admitted by Respondent DOE or Respondent UC or both of them, but denies that all the violations alleged in the referenced compliance order or as described in this sentence were admitted by Respondents or are admitted by UC, or that all of the alleged violations constituted actual violations.
4. UC admits the findings contained in the first sentence of Paragraph 10. With regard to the findings contained in the second sentence of Paragraph 10, UC admits that violations as described in this sentence were alleged in the referenced compliance order and that a number of these alleged violations were admitted by Respondent DOE or Respondent UC or both of them, but denies that all the violations alleged in the referenced compliance order or as described in this sentence were admitted by Respondents or are admitted by UC, or that all of the alleged violations constituted actual violations.
5. UC admits the findings contained in Paragraph 11, 12, 13, 14, 15, 16, 17, and 18.



6. UC denies the findings contained in Paragraph 19. UC affirmatively states that satellite accumulation point #1348 is located at TA-52, Bldg. 0, Room 0000 and that upon information and belief the three open waste containers contained waste that was not hazardous and so the containers were not required to be closed. UC further affirmatively states that the waste was generated by an independent third party and was being managed by an independent third party in a facility (mobile laboratory van) that was owned and operated by that independent third party, and that UC should not be held responsible or liable for the acts or omissions, which, if any, upon information and belief are denied, of an independent third party that generated the waste and managed the waste in a facility that was owned and operated by that independent third party.
7. UC denies the findings contained in Paragraph 20. UC affirmatively states that the satellite accumulation point #1348 is located at TA-52, Bldg. 0, Room 0000 and that upon information and belief the three containers that were not labeled with the words "Hazardous Waste" or other words that would identify their contents did not contain hazardous waste and so were not required to be so labeled. UC further affirmatively states that the waste was generated by an independent third party and was being managed by an independent third party in a facility (mobile laboratory van) that was owned and operated by that independent third party, and that UC should not be held responsible or liable for the acts or omissions, which, if any, upon information and belief are denied, of an independent third party that generated the waste and managed the waste in a facility that was owned and operated by that independent third party.

## **CONCLUSIONS**

8. UC admits the conclusions contained in Paragraphs 21, 22, 23, 24 and 25.
9. UC admits the conclusions contained in Paragraph 26, except that UC denies that Respondents engage in the disposal of hazardous waste on-site.
10. UC admits the conclusions contained in Paragraphs 27 and 28.
11. UC denies the conclusions contained in the first sentence of Paragraph 29, except that UC admits that 20 NMAC 4.1.901 incorporates by reference federal regulations 40 CFR Part 270, and admits that certain hazardous waste management units are not operating under a permit. UC affirmatively states that any such units not operating under a permit have interim status as legally defined under NMSA 1978, §74-4-9 (Repl. Pamph. 1993) and 20 NMAC 4.1.901. Respondents admit the conclusions contained in the second and third sentences of Paragraph 29.

12. With regard to the conclusions contained in the first sentence of Paragraph 30, UC admits all of these conclusions, except that UC denies that "Respondents have violated regulations in Part 262" as specified in the CO, unless specifically admitted to by UC. With regard to the conclusions contained in the second sentence of Paragraph 30, UC admits all of these conclusions, except that UC denies that "Respondents have violated regulations in Part 268" as specified in the CO, unless specifically admitted to by UC.
13. UC admits the conclusions contained in Paragraphs 31, 32, 33, 34, 35, 36 and 37.
14. UC denies the conclusions contained in Paragraph 38, except that UC admits that 20 NMAC 4.1.301 incorporates by reference federal regulation 40 CFR 262.34(c)(1)(I). UC affirmatively states that satellite accumulation point #1348 is located at TA-52, Bldg. 0, Room 0000, and that upon information and belief the three open waste containers contained waste that was not hazardous and so the containers were not required to be closed. UC further affirmatively states that the waste was generated by an independent third party and was being managed by an independent third party in a facility (mobile laboratory van) that was owned and operated by that independent third party, and that UC should not be held responsible or liable for the acts or omissions, which, if any, are denied, of an independent third party that generated the waste and managed the waste in a facility that was owned and operated by that independent third party.
15. UC denies the conclusions contained in Paragraph 39, except that UC admits that 20 NMAC 4.1.301 incorporates by reference federal regulation 40 CFR 262.34 (c)(1)(ii). UC affirmatively states that satellite accumulation point #1348 is located at TA-52, Bldg. 0, Room 0000, and that upon information and belief the three containers not labeled with the words "Hazardous Waste" or other words identifying the contents of the containers did not contain hazardous waste and so were not required to be so labeled. UC further affirmatively states that the waste was generated by an independent third party and was being managed by an independent third party in a facility (mobile laboratory van) that was owned and operated by that independent third party, and that UC should not be held responsible or liable for the acts or omissions, which, if any, are denied, of an independent third party that generated the waste and managed the waste in a facility that was owned and operated by that independent third party.
16. With regard to the conclusions contained in the first sentence of Paragraph 40, UC denies that the violations alleged in the enumerated Paragraphs necessarily constitute violations in law or fact unless specifically admitted to by UC in this Answer, denies that the violations alleged in the enumerated Paragraphs were also violations alleged as a result of each inspection or included in each prior enforcement action referred to in Paragraphs 9 and 10 of the Order, and deny that alleged past violations constituted actual violations in law or fact that were cited as a result of one or more of the inspections and/or enforcement actions referred to in Paragraphs 9 and 10 of the Order, unless such past alleged violations have been

previously admitted to by Respondents. Respondents deny the conclusions contained in the second sentence of Paragraph 40.

#### FIRST AFFIRMATIVE DEFENSE

UC's Answer and each denial or affirmative statement contained therein constitute UC's first affirmative defense.

#### SECOND AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraphs 19, 20, 38 and 39, UC states upon information and belief that the waste materials in the containers were not hazardous wastes and so were not required to be either closed or labeled with the words "Hazardous Waste" or other words identifying their contents.

#### THIRD AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraphs 19, 20, 38 and 39, UC states that the waste was generated by an independent third party and was being managed by an independent third party in a facility (mobile laboratory van) that was owned and operated by that independent third party.

#### FOURTH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraphs 19, 20, 38 and 39, UC states that since the waste was generated by an independent third party and was being managed by an independent third party in a facility (mobile laboratory van) that was owned and operated by that independent third party, UC should not be held responsible or liable for, and is not responsible or liable for, the acts or omissions, if any, of the independent third party.

#### FIFTH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraph 29, UC affirmatively states that those hazardous management units not operating under a permit have interim status as legally defined under NMSA 1978, § 74-4-9 (Repl. Pamph. 1993) and 20 NMAC 4.1.901, which incorporates by reference federal regulations 40 CFR Part 270.

## SIXTH AFFIRMATIVE DEFENSE

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

## SEVENTH AFFIRMATIVE DEFENSE

With regard to the civil penalties proposed by Complainant for those findings and/or conclusions admitted to by UC, Respondents UC asserts 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, unlawful and without substantial basis in law or in fact; and
- e. Complainant improperly imposed penalties for violations of law which did not occur.

## FACTS PLACED AT ISSUE

Pursuant to the stated requirement on Page 7 of the Order, Respondents state that they place at issue all facts denied in this Answer.

## REQUEST FOR HEARING

Respondent UC hereby requests a hearing pursuant to Section 74-4-10 of the New Mexico Hazardous Waste Act, NMSA 1978 (Repl. Pamp. 1993).

**WHEREFORE**, Respondent UC requests that the determination be made that Respondents did not commit the violations alleged by Complainant in the Order unless specifically admitted to by UC in this Answer, that the civil penalties proposed by Complainant be denied where the underlying alleged violation has been denied by UC in this Answer, that the civil penalties proposed

by Complainant be reduced where the underlying alleged violation has been admitted by UC in this Answer, that the schedule of compliance and actions thereunder ordered by Complainant be denied, and that other such relief as the Hearing Office deems just and proper be granted.

THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA

By Joseph B. Rochelle by VAG with  
express permission

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Certificate of Service

I hereby certify that a copy of the foregoing Answer was hand-delivered on the 2nd of January, 1996 to the following individuals:

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