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February 29, 1996

Joseph B. Rochelle, Esq.
Los Alamos National Laboratories
P.O. Box 1663 MS A187
Los Alamos NM 87545

Re: In the Matter of U. S. Department of Energy and Regents of the
University of California, Los Alamos, NM; No. 96-08

Dear Mr. Rochelle:

Enclosed is a copy of the final Stipulated Order in the above-referenced matter. Please note that pursuant to the Order, the penalty of \$11,190.00 is due on or before April 15, 1996.

Thank you for your cooperation and assistance in bringing this matter to a successful conclusion.

Sincerely,

Lourdes Monserrat

LOURDES MARIA MONSERRAT
Assistant General Counsel

Enclosure(s)

cc: Coby Muckelroy



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STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT

DOCKETED
By The Hearing Clerk

FEB 29 1996
COMPLIANCE ORDER
NMHWA 96-08

IN THE MATTER OF
U.S. DEPARTMENT OF ENERGY
AND REGENTS OF THE UNIVERSITY OF CALIFORNIA^{No.}
LOS ALAMOS, NEW MEXICO,

Before the Secretary
of Environment

RESPONDENTS.

STIPULATED FINAL ORDER

I. INTRODUCTION

A. On November 30, 1995, the New Mexico Environment Department (NMED) issued Compliance Order NMHWA 95-08 (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 (20 NMAC 4.1), which, with a few exceptions, incorporate by reference the United States Environmental Protection Agency hazardous waste management regulations. On January 2, 1996, Respondents filed answers and requests for a hearing.

B. The purpose of this Stipulated Final Order (SFO) 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 SFO. This SFO shall apply to and be binding upon NMED and Respondents and their respective successors and assigns.

II. JURISDICTION AND AUTHORITY.

A. NMED asserts jurisdiction and authority over the subject matter of this SFO 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, (20 NMAC 4.1).

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 14-19, 1995 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 20 NMAC 4.1. Those findings of fact and conclusions of law are set forth in the Compliance Order and with the exception of findings numbered 19 and 20 and conclusions numbered 38 and 39 are incorporated by reference into this SFO. Respondents neither admit nor deny the specific factual or legal allegations contained in the Compliance Order except as otherwise admitted or denied in their Answers. Neither the execution of this SFO 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 SFO shall affect any right, claim, cause of action or defense of any party hereto with respect to others not parties to this SFO.

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 eleven thousand and one hundred and ninety dollars (\$11,190.00) which is due and payable within forty-five (45) calendar days after the effective date of this SFO. 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 \$11,190.00 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 SFO 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 SFO 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 SFO. 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 SFO, 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 SFO, 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 SFO.

VII. RIGHTS EXPRESSLY RESERVED.

This SFO 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 20 NMAC 4.1. This SFO 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 SFO 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 SFO 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 SFO.

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 SFO. If at any time while this SFO 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 SFO, or pursue any other lawful remedies.

X. SEVERABILITY.

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

XI. MERGER & INTEGRATION.

This SFO merges all prior written and oral communications between the parties concerning this matter, and contains the entire agreement reached between the parties. This SFO shall not be

altered, amended, or construed by any communications whether written or oral, which are not contained herein.

XII. AMENDMENTS.

This SFO may be amended only by agreement of the parties. Such amendments shall be in writing, signed by the parties and subject to the approval of the Secretary, and shall become effective upon written approval of the Secretary.

XIII. TERMINATION.

This SFO shall remain in effect until such time as Respondents comply with all the terms and conditions of this SFO.

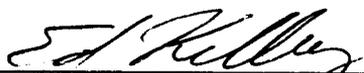
XIV. EFFECTIVE DATE.

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

XV. AUTHORITY OF SIGNATORY.

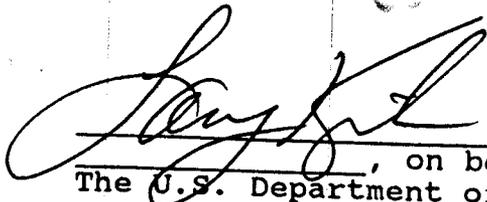
The persons executing this SFO respectively represent that they have the requisite authority to bind Respondents and NMED to the terms of this SFO, and further agree that this representation of authority as to each such entity shall be legally sufficient evidence of actual or apparent authority to bind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

APPROVED:

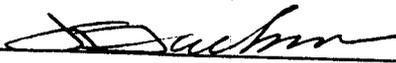


Director, on behalf of the
New Mexico Environment Department

2/29/96
Date

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

2/27/96
Date

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

2/22/96
Date