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Date: April 23, 1997

Symbol: GL: 10520-9703/9705

VIA HAND-DELIVERY

Ms. Gloria Miller, Hearing Clerk
P.O. Box 26110
1190 St. Francis Drive
Harold Runnels Building, S-4100
Santa Fe, New Mexico 87502

RE: STATE OF NEW MEXICO ENVIRONMENT DEPARTMENT COMPLIANCE
ORDER HRM 97-02

Dear Ms. Miller:

Enclosed please find the Respondents', Regents of the University of California and the United States Department of Energy, Answer to Administrative Compliance Order and Request for Hearing in the above referenced matter. Please file these documents in connection with Compliance Order HRM 97-02.

If you have any questions regarding the filing of these documents, please do not hesitate to contact me.

Sincerely,

Joseph B. Rochelle
Staff Attorney

Enc: a/s

Cys: Mark E. Weidler, Secretary, NMED
Ed Kelley, Director, NMED Water and Waste Management Division



16703

Ms. Gloria Miller

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Richard Mertz, Office of General Counsel, NMED
Benito Garcia, Chief, NMED HRMB
John Tymkowych, NMED RCRA Program Manager HRMB
James White, ESH-19, MS K490
Dennis Erickson, ESH-DIR, MS K491
Jack Ellvinger, ESH-19, MS K490
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LC/GL
File (2)

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

**IN THE MATTER OF
THE UNITED STATE DEPARTMENT OF ENERGY
AND THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, LOS ALAMOS, NEW MEXICO
NM0890010515**

**COMPLIANCE ORDER
HRM-97-02 (CO)**

**ANSWER TO ADMINISTRATIVE COMPLIANCE ORDER
AND REQUEST FOR HEARING**

Respondents the Department of Energy (DOE) and the Regents of the University of California (UC) hereby submit this joint Answer to Compliance Order HRM-97-02 (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 in Paragraph 8. Respondents admit the findings contained in the second sentence of Paragraph 8, and Respondents affirmatively state that the permit was effective for a period of one year from the date of the beginning of operation of the units described in Paragraph 8, as provided for in the New Mexico Hazardous Waste Regulation 20 NMAC 4.1.900, which adopts, *inter alia*, federal regulation 40 CFR §270.65(a).
3. Respondents admit the findings contained in the first sentence in Paragraph 9. Respondents admit the findings contained in the second sentence of Paragraph 9, and Respondents affirmatively state that the permit was effective for a period of one year from the date of the beginning of operation of the units described in Paragraph 9, as provided for in the New Mexico Hazardous Waste Regulation 20 NMAC 4.1.900, which adopts, *inter alia*, federal regulation 40 CFR §270.65(a).
4. With regard to the findings contained in the first sentence in Paragraph 10, Respondents admit that they did not apply for the continuation of the permits identified in Paragraphs 8 and 9 of the Order for the Los Alamos National Laboratory (LANL), but deny that the expiration dates had in fact occurred. Respondents deny the findings contained in the second sentence of Paragraph 10.
5. Respondents admit the findings contained in Paragraphs 11 and 12.
6. Respondents deny the findings contained in Paragraph 13 and Respondents affirmatively state that the units described in Paragraphs 8, 9 and 11 of the Order never began operation in treating or storing hazardous wastes.

CONCLUSIONS

7. Respondents admit the conclusions contained in Paragraphs 14, 15, 16, 17 and 18.
8. Respondents admit all the conclusions contained in Paragraph 19, except that, to the extent that these conclusions state, suggest or imply that (a) Respondents engage in the disposal of hazardous waste onsite or (b) Respondents treat, store or dispose of hazardous waste at the facilities identified in Paragraphs 8, 9 and 11 of the Order, Respondents deny these conclusions.
9. Respondents admit all the conclusions contained in Paragraph 20, except that Respondents deny that the cited regulations are applicable to the facilities identified in Paragraphs 8, 9 and 11 of the Order that they have violated regulations in Part 262 as specified in the remainder of the Order.
10. Respondents admit all the conclusions contained in Paragraph 21, except that Respondents deny that they have violated regulations in Part 270 as specified in the remainder of the Order.
11. With regard to the conclusions contained in the first sentence of Paragraph 22, Respondents admit that they have not submitted an application for permit renewal for the facilities identified in Paragraphs 8, 9 and 11 of the Order, but deny that they were required to do so, and further deny that not submitting such application constitutes a failure on their part. Respondents deny all the conclusions contained in the second sentence of Paragraph 22, except that Respondents admit that 20 NMAC 4.1.900 incorporates, *inter alia*, federal regulation 40 CFR Part 270, Subparts B and C.
12. Respondents deny the conclusions contained in the first sentence of Paragraph 23. Respondents deny all the conclusions contained in the second sentence of Paragraph 23, except that Respondents admit that 20 NMAC 4.1.900 incorporates, *inter alia*, federal regulation 40 CFR Part 270, Subparts B and C.
13. Respondents deny the conclusions contained in the first sentence of Paragraph 24. Respondents deny all the conclusions contained in the second sentence of Paragraph 24, except that Respondents admit that 20 NMAC 4.1.300 incorporates, *inter alia*, federal regulation 40 CFR §262.34(b).

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 8, 9, 10, 21 and 22, Respondents state that permits No. NM0890010515-RDD1 and No. NM0890010515-RDD2 are Research, Development and Demonstration Permits governed by 20 NMAC 4.1.900, which adopts in pertinent part federal regulation 40 CFR §270.65(a), and that this latter regulation provides that in the issuance of research, development and demonstration permits, the operation of facilities under such permit(s) is to be limited to a period not longer than one year, unless the permit is renewed. Respondents further state that since the facilities subject to permits No. NM0890010515-RDD1 and No. NM0890010515-

RDD2 never operated in treating or storing hazardous wastes and thus did not exceed the one year limitation on the operation timeframe, no renewal was required for these permits.

THIRD AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraph 13, Respondents state that the LANL facility has never operated for the treatment or storage of hazardous waste the treatment and storage facilities described in Paragraphs 8, 9, and 11 of the Order.

FOURTH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraph 19, Respondents state that the LANL facility engages in the treatment and storage of hazardous waste onsite pursuant to the LANL Hazardous Waste Facility Permit No. NM 0890010515-1, as amended, and pursuant to interim status, and that the LANL facility arranges for the treatment, storage and disposal of hazardous waste offsite by sending such waste to offsite treatment, storage or disposal facilities that have either hazardous waste permits or interim status for the treatment, storage and/or disposal of hazardous wastes.

FIFTH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraph 20 and 24, Respondents state that since the facilities identified in Paragraphs 8, 9 and 11 of the Order never operated in treating or storing hazardous wastes, these facilities are not subject to the regulations applicable to the storage of hazardous waste as provided for in 20 NMAC 4.1.300, which incorporates federal regulations in 40 CFR Part 262.

SIXTH AFFIRMATIVE DEFENSE

With regard to the allegations contained in Paragraph 21 and 23, Respondents state that since the facilities identified in Paragraphs 8, 9 and 11 of the Order have never operated in treating or storing hazardous wastes, these facilities are not subject to the regulations requiring a permit for the treatment or storage of hazardous waste as provided for in 20 NMAC 4.1.900, which incorporates federal regulations in Part 270.

SCHEDULE OF COMPLIANCE

The Compliance Order contains a section ordering Respondents to perform two actions. The first action ordered was to cease all operations identified in permit numbers NM0890010515-RDD1 and NM0890010515-RDD2 and to notify Complainant within 24 hours that compliance with the Order had been achieved. By way of a telephone call on the morning of March 26, 1997, and by way of a letter addressed to Complainant that was hand delivered on the afternoon of March 26, 1997,

Respondents have notified Complainant, as required, that the facilities were not in operation and would not operate in the future.

The second ordered action required Respondents to commence closure of the facilities described in paragraphs 8, 9 and 11 of the Order under the requirements of the closure plans contained in permit numbers NM0890010515-RDD1 and NM0890010515-RDD2 and to complete such closure within 180 days from receipt of the Order. Respondents intend to contact Complainant in order to explore the specific requirements, if any, necessary to accomplish the closing of the units that have never operated under the terms of the two permits. Respondents intend to fully comply with all applicable statutory and regulatory requirements with regard to the facilities identified in the Order.

FACTS PLACED AT ISSUE

Respondents state that they place at issue all facts denied in this Answer.

REQUEST FOR HEARING

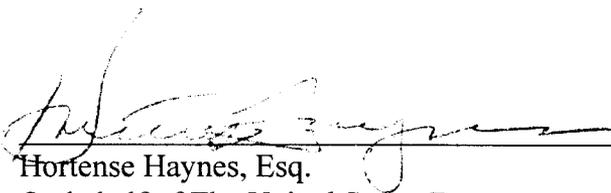
Pursuant to Section 74-4-10.H. of the New Mexico Hazardous Waste Act, Respondents hereby request a Hearing in connection with Compliance Order HRM-97-02.

WHEREFORE, Respondents request that the determination be made that Respondents did not commit the violations alleged by Complainant in the Order and 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.

I hereby sign this Answer and Request for Hearing under oath and affirmation that the information contained herein is to the best of my knowledge believed to be true and correct.



Joseph B. Rochelle, Esq.
On behalf of The Regents of the University
of California at Los Alamos
Post Office Box 1663
Mail Stop A187
Los Alamos, New Mexico 87545-1663
(505) 667-3766



Hortense Haynes, Esq.
On behalf of The United States Department
of Energy
at the Los Alamos Area Office
Los Alamos, New Mexico 87544
(505) 667-4667

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT

IN THE MATTER OF
THE UNITED STATES DEPARTMENT OF ENERGY
AND THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
LOS ALAMOS, NEW MEXICO
NM0890010515

COMPLIANCE ORDER
HRM-97-02 (CO)

RESPONDENTS.

ADMINISTRATIVE COMPLIANCE ORDER

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 New Mexico Hazardous Waste Act §74-4-1 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"), who notified the Environmental Protection Agency ("EPA"), of their hazardous waste generation activities on November 19, 1980.
3. DOE is an agency of the federal government and the owner and 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 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 internal 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 waste and mixed hazardous and radioactive wastes. LANL has also applied for and received permits for the storage and management of hazardous wastes and mixed hazardous and radioactive wastes.

8. On April 21, 1994, LANL was issued a hazardous waste facility permit no. NM0890010515-RDD1 for the Packed-Bed Reactor/Silent Discharge Plasma Treatment Unit and an ancillary storage unit, all located southwest of Los Alamos, New Mexico, in Technical Area 35, Building 128. This permit was effective for the period of one year.

9. On April 21, 1994, LANL was issued a hazardous waste facility permit no. NM0890010515-RDD2 to operate a hazardous waste treatment unit consisting of a Hydrothermal Processing treatment unit and a container storage unit, all located southwest of Los Alamos, New Mexico, in Technical Area 9, Building 38. This permit was effective for the period of one year.

10. LANL did not apply for the continuation of the permits noted in paragraphs #8 and #9, on or before their expiration dates. As a result, the permits expired April 21, 1995.

11. LANL requested a Class II modification for permit #NM0890010515-RDD1 on August 25, 1995 to relocate the hazardous waste treatment unit from Building 128 to Building 421, both of which are located in Technical Area 35.

12. LANL received approval from NMED for the Class II modification of permit #NM0890010515-RDD1 on July 9, 1996.

13. LANL has operated and continues to operate the hazardous waste treatment and storage facilities described in paragraphs #8, #9, and #11 as of the date of this Order.

CONCLUSIONS

14. Respondents are a "person" as defined at §74-4-3.K. of HWA and §101 of the New Mexico Hazardous Waste Management Regulations (20 NMAC 4.1.101), effective March 1, 1997, which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

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

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

17. Respondent DOE is an "owner" of an "existing hazardous waste management facility" as defined at 20 NMAC 4.1.101 which incorporates with a few exceptions, federal regulation 40 CFR §260.10.

18. Respondent UC is an "operator" of an "existing hazardous waste management facility" as defined at 20 NMAC 4.1.101 which incorporates with a few exceptions, federal regulation 40 CFR §260.10.

19. Respondents engage in the "disposal", "storage", and or "treatment" of hazardous waste as defined at §74-4-3.C. N., and Q. Respectively, of the HWA, and 20 NMAC 4.1.100, which incorporates, with a few exceptions, federal regulation 40 CFR §260.10.

20. 20 NMAC 4.1.300, which incorporates federal regulation 40 CFR §262.34(b), makes the regulations in Part 262 (Standards Applicable To Generators Of Hazardous Waste), applicable to the Respondents and Respondents have violated regulations in Part 262 as specified below.

21. 20 NMAC 4.1.900, which incorporates federal regulation 40 CFR §270.1(a), makes the regulations in Part 270 (EPA Administered Permit Programs: The Hazardous Waste Permit Program), applicable to the Respondents and Respondents have violated regulations in Part 270 as specified below.

22. Respondents have failed to submit an application for permit renewal for the facilities identified in paragraphs #8 #9, and #11. This is a violation of 20 NMAC 4.1.900, which incorporates in pertinent part federal regulation 40 CFR Part 270, Subparts B and C.

23. Respondents have treated hazardous waste at the facilities identified in paragraphs #8, #9 and #11 without a permit. This is a violation of 20 NMAC 4.1.900, which incorporates in pertinent part federal regulation 40 CFR Part 270, Subparts B and C.

24. Respondents have stored hazardous waste at the facilities identified in paragraphs #8, #9, and #11 without a permit. This is a violation of 20 NMAC 4.1.300, which incorporates in pertinent part federal regulation 40 CFR Part 262.34(b)

CIVIL PENALTY

25. Section 74-4-10 of the HWA authorizes the assessment of a civil penalty of up to ten thousand dollars (\$10,000) per day for each violation of the HWA or the regulations promulgated thereunder. Complainant hereby assesses no penalty contingent upon the Respondents successful completion of the requirements set forth in the schedule of compliance.

SCHEDULE OF COMPLIANCE

26. Based on the foregoing Findings and Conclusions, Respondents are ordered to comply with the following Schedule of Compliance:

1. Upon receipt of this Order, cease all operations identified in permit numbers NM0890010515-RDD1 and NM0890010515-RDD2, at the locations described in paragraphs #8, #9 and # 11. Notify Complainant within 24 hours that compliance with this Order has been achieved.
2. Commence closure of the facilities identified in paragraphs #8, #9, and #11 under the requirements of the closure plans contained in Permit numbers NM0890010515-RDD1 and NM 0890010515-RDD2. Closure shall be completed within 180 days from receipt of this Order.

NOTICE

27. If Respondents fail to timely comply with the Schedule of Compliance or if Respondents elect not to comply with the schedule of Compliance and to challenge it as set forth below, the Secretary may assess additional civil penalties of not more than twenty-five thousand dollars (\$25,000) for each day of continued noncompliance pursuant to §74-4-10.C. of the HWA.

NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

28. Respondents have a right to answer this Order and request a hearing pursuant to §74-4-10.H. of the HWA and 20 NMAC 1.5.200 of NMED's Adjudicatory Procedures. Respondents shall file a written Request for Hearing, Answer and a copy of the Order with the Hearing Clerk within thirty (30) calendar days after receipt of the Order.

The Request for Hearing and Answer shall be signed under oath or affirmation that the information contained therein is to the best of the signer's knowledge believed to be true and correct. The Answer shall clearly and directly admit or deny 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 states, the allegation may be denied on that basis. Any allegation, finding or conclusion not specifically denied shall be deemed admitted. The Answer shall also state any affirmative defenses upon which Respondents intend to rely.

A hearing upon the issues raised by the Order and Answer shall be held upon the request of the Respondents. NMED's Adjudicatory Procedures 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, N4084
Santa Fe, New Mexico 87502
(505) 827-2842

FINALITY OF ORDER

29. This Order shall become final unless Respondents file a written Request for Hearing and Answer within thirty (30) calendar days of receipt of the Order. Failure by the Respondents to file an Answer constitutes an admission of all facts alleged in the Order and a waiver of Respondent's right to a hearing under §74-4-10 of the HWA.

SETTLEMENT CONFERENCE

30. Whether or not Respondents file an Answer and Request for 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 or be represented by counsel.

31. Any settlement reached by the parties shall be approved by a stipulated final Order of the Secretary of NMED pursuant to the conditions set forth in 20 NMAC 1.5.601. The issuance of such an Order shall serve to resolve all issues raised in the Order, shall be final and binding on all parties to the Order, and shall not be appealable.

32. To explore the possibility of settlement in this matter, contact Mr. Benito Garcia of the Environment Department, P.O. Box 26110, 2044 Galisteo, Santa Fe, NM 87501, telephone number (505) 827-1558.

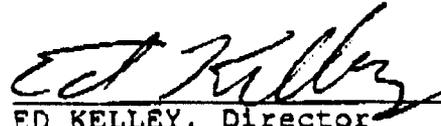
TERMINATION

33. 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 the Order have been completed and NMED has approved such certification, or when the Secretary approves a settlement agreement.

MARK E. WEIDLER, SECRETARY

3/21/97
DATE

By:


ED KELLEY, Director
Water and Waste Management Division

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Compliance Order was mailed postage prepaid as follows on this 24th day of March, 1997 to the following:

Via Certified Mail, Return Receipt Requested:

Mr. G. Thomas Todd, 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
MSK 490
Los Alamos, NM 87545


Eric Ames

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

**IN THE MATTER OF
THE UNITED STATE DEPARTMENT OF ENERGY
AND THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, LOS ALAMOS, NEW MEXICO
NM0890010515**

**COMPLIANCE ORDER
HRM-97-02(CO)**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer to Administrative Compliance Order and Request for Hearing was hand delivered as follows on this 23rd day of April 1997 to the following:

Mark E. Weidler, Secretary
New Mexico Environment Department
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502

Richard Mertz, Esq.
Office of General Counsel
New Mexico Environment Department
Harold Runnels Building
1190 St Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502



Joseph B. Rochelle