

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-98-03 (CO)

RESPONDENTS.

**ADMINISTRATIVE COMPLIANCE ORDER**

The Secretary of Environment, acting through the Director of the Water and Waste Management Division of the New Mexico Environment Department ("NMED" or "Complainant"), to whom authority to issue this Order has been delegated, issues this Administrative Compliance Order ("Order") to the United States Department of Energy and the Regents of the University of California (collectively "Respondents"), pursuant to the New Mexico Hazardous Waste Act, § 74-4-10, N.M.S.A. 1978 (Repl. Pamp. 1993).

**FINDINGS**

1. Complainant is the administrative head of the New Mexico Environment Department, an agency within the executive branch of the government of the State of New Mexico. Complainant is charged with administration and enforcement of the New Mexico Hazardous Waste Act, §§ 74-4-1 et seq., N.M.S.A. 1978 (Repl. Pamp. 1993) ("HWA").
2. Respondents are the United States 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.

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. Respondents at LANL, at all material times, generated more than 1000 kilograms of hazardous waste per month and had accumulated in excess of 6000 kilograms of hazardous waste on-site.

8. The Los Alamos County Landfill is located in or near Los Alamos, New Mexico on land owned by Respondent DOE.

9. The Los Alamos County Landfill contains cells into which solid waste has been disposed of.

10. Adjacent and contiguous to the solid waste disposal cells at the Los Alamos County Landfill is a rubble pile into which fill and other materials have been disposed of ("Rubble Pile").

11. The Rubble Pile is on land owned by Respondent DOE.

12. On or about November 8, 1989, the predecessor to NMED, the Environmental Improvement Division of the New Mexico Health and Environment Department, issued to DOE and UC a permit for the incineration, treatment and storage of hazardous waste at LANL under the HWA. ("Permit").

13. The Permit authorizes Respondents to incinerate, treat and store certain specified hazardous wastes at certain specified hazardous waste management units located at LANL, in accordance with the terms and conditions of the permit.

14. The Permit provides that any noncompliance with its terms is grounds for enforcement action, permit termination, revocation and reissuance, modification, or denial of a permit renewal application.

15. LANL is comprised of numerous Technical Areas, including Technical Area 54 ("TA-54").

16. Technical Area 54 is comprised of several areas, including Areas G and L.

17. Numerous pits, shafts and other areas into which wastes have been disposed of are located at TA-54, including a pit located in Area G known as Pit 37 and a pit located in Area L known as Pit A.

18. The Permit does not authorize the disposal of hazardous waste or mixed hazardous and radioactive waste regulated under the HWA at Pit 37, Area G, TA-54,

19. In its initial Part A permit application submitted on or about November 19, 1980, Respondents purported to identify Area G of TA-54 as an area where disposal of radioactive and "mixed stream" radioactive and hazardous waste takes place.

20. In a revised Part A permit application submitted on or about April 3, 1985, Respondents stated that they were dropping their permit request for TA-54, Area G, because the Area was no longer used for non-radioactive waste disposal.

21. Pit 37 was constructed in 1990.

22. Respondents have never submitted an original or amended Part A application which identifies Pit 37 as a hazardous waste or mixed hazardous and radioactive waste disposal area.

23. Respondents have never submitted an original or amended Part B application which identifies Pit 37 as a hazardous waste or mixed hazardous and radioactive waste disposal area.

24. Respondents have never submitted a request to modify the Permit for LANL to allow the disposal of hazardous waste or mixed hazardous and radioactive waste at Pit 37, Area G, Technical Area 54.

25. Respondents have maintained that Pit 37 is a low level radioactive solid waste landfill.

26. The Rubble Pile at the Los Alamos County Landfill is not part of LANL.

27. The Permit for LANL does not authorize the disposal of hazardous waste or mixed hazardous and radioactive waste at the Los Alamos County Landfill or Rubble Pile.

28. Neither the Los Alamos County Landfill nor the Rubble Pile have received an EPA identification number required of facilities that dispose of hazardous waste.

29. Neither the Los Alamos County Landfill nor the Rubble Pile are permitted under the HWA as facilities authorized to dispose of hazardous waste or mixed hazardous and radioactive waste.

30. No Part A or Part B applications for a permit to dispose of hazardous waste or mixed hazardous and radioactive waste at the Los Alamos County Landfill or Rubble Pile have been submitted.

31. The Permit requires Respondents to follow the procedures for waste analysis described in the Waste Analysis Plan, attached to the Permit as Attachment A.

32. In 1992, NMED inspected LANL, discovered violations of the New Mexico Hazardous Waste Management Regulations HWMR-7, and issued LANL and DOE a compliance order which assessed civil penalties.

33. In 1993, NMED inspected LANL, discovered violations of the New Mexico Hazardous Waste Management Regulations HWMR-7, and issued LANL and DOE a compliance order which assessed civil penalties.

34. In 1994, NMED inspected LANL, discovered violations of the New Mexico Hazardous Waste Management Regulations HWMR-7, and issued LANL and DOE a compliance order which assessed civil penalties.

35. In 1995, NMED inspected LANL, discovered violations of the New Mexico Hazardous Waste Management Regulations HWMR-7, and issued LANL and DOE a compliance order which assessed civil penalties.

36. In 1996, NMED inspected LANL, discovered violations of the New Mexico Hazardous Waste Management Regulations, 20 NMAC 4.1, and issued a letter of violation.

37. Violations cited in the enforcement actions described In Paragraphs 32-36, above, included but were not limited to: failure to perform hazardous waste determinations, failure to keep a hazardous waste container closed, failure to label a hazardous waste container, failure to provide decontamination equipment at a less than 90 day storage area, exceeding storage time limits for hazardous waste, manifesting violations, LDR violations, and training violations.

38. A Compliance Order issued to Respondents in 1994, Compliance Order No. 94-12, cited Respondents for unlawful disposal in Pit 37, Area G, TA-54, of hazardous wastes removed from SWMU 3-010[a] (Building 30, Technical Area 3), including, among other things, the volatile organic compounds 1,1,1- trichloroethane and trichloroethylene.

39. In the Fall of 1993 Respondents initiated discussion with NMED on the need for a storage dome for mixed waste in TA-54, Area L.

40. Respondents proposed to construct the storage dome on top of a solid waste management unit (SWMU # TA-54 MDA-L Pit A)("Pit A"), which had been capped with an asphalt pad.

41. Numerous wastes have been disposed of in Pit A, including aniline dye; boric acid; potassium cyanide; solvents, including trichloroethylene; and metals; many of which wastes are hazardous wastes or mixed hazardous and radioactive wastes under the HWA.

42. In anticipation of constructing the storage dome, Respondents performed sampling and analysis on asphalt and soil from the proposed construction site. These analyses indicated that the asphalt and soils were contaminated with volatile organic compounds from the underlying SWMU. The sampling results dated April 22, 1994, indicated that the asphalt and soil were contaminated with hazardous wastes, including 1,1,1 trichloroethane and trichloroethylene.

43. Respondents knew that numerous wastes other than volatile organic compounds had been disposed of in the underlying SWMU, as described in Paragraph 41, above.

44. Respondents did not analyze the asphalt and soil from the construction site for substances other than volatile organic compounds before transporting the asphalt and soil to Pit 37 and the Rubble Pile and disposing of the asphalt and soil in Pit 37 and the Rubble Pile.

45. Respondents requested NMED approval of construction of the dome on June 14, 1994.

46. On July 22, 1994, the New Mexico Environment Department (NMED)/Hazardous and Radioactive Materials Bureau (HRMB) issued a letter to Mr. Joseph Vozella Mgr. Environment, Safety, and Health Branch, Department of Energy, Los Alamos Area Office, granting conditional approval for the construction of the storage dome for mixed waste at TA-54, Area L.

47. One of the conditions of the approval was for Respondents to treat and/or dispose of all waste asphalt removed from the construction site as hazardous waste.

48. In July and August 1994, Respondents performed a utility upgrade of Area L in the same location as the proposed storage dome.

49. The utility upgrade generated over 100,000 pounds of hazardous waste contaminated asphalt and soil.

50. On August 30, September 15, and November 9, 1994, Respondents manifested and shipped for disposal the hazardous waste contaminated asphalt and soil generated in the utility upgrade of Area L. The hazardous waste contaminated asphalt and soil was transported to Rollins Environmental Services, Deer Park, Texas, for disposal.

51. In May and June of 1995, Respondents removed the hazardous waste contaminated asphalt and soil from the area of the SWMU for the construction of the dome.

52. Respondents stockpiled the hazardous waste contaminated asphalt and soil on site.

53. NMED verbally authorized Respondents to utilize the stockpiled hazardous waste contaminated asphalt and soils removed from the area of the SWMU as backfill on the construction of the dome. The verbal authorization did not include the removal of any of the wastes from Area L to be used as backfill material anywhere else. Any hazardous waste contaminated asphalt and soil not used as backfill in the construction of the storage dome was required to be managed and disposed of as hazardous waste in accordance with the conditions set forth in the July 22, 1994 letter.

54. Approximately 30 cubic yards of hazardous waste contaminated asphalt and soil was not used as backfill and remained after the construction of the dome.

55. On or about June 15, 1995, Respondents transported the 30 cubic yards of hazardous waste contaminated asphalt and soil to Area G under the direction of the Area L manager and placed it in a stockpile.

56. Respondents added additional asphalt and soil from other areas to this stockpile over a period of nearly one year, resulting in a stockpile of approximately 300 cubic yards.

57. Subsequently, approximately during the second week of April 1996, Respondents transported approximately 60 cubic yards of this mixture of hazardous waste contaminated asphalt and soil to the Los Alamos County Landfill.

58. During approximately the third week of April 1996, Respondents transported to and disposed of in Pit 37, Area G, approximately 225 cubic yards of the mixture.

59. Respondents disposed of the hazardous waste contaminated asphalt and soil transported to the Los Alamos County Landfill in the Rubble Pile at the Landfill, which Rubble Pile is located above an outfall regulated under the New Mexico Water Quality Act (WQA) and a wetland in Sandia Canyon.

60. Respondents failed to perform an adequate hazardous waste determination on the asphalt and soils removed during construction of the storage dome, prior to transporting the asphalt and soil to Pit 37 and the Rubble and disposing of the asphalt and soil in Pit 37 and the Rubble Pile.

61. Respondents failed to obtain an adequate detailed chemical and physical analysis of a representative sample of the waste asphalt and soil in accordance with the Waste Analysis Plan, Permit Attachment A, prior to transporting the asphalt and soil to Pit 37 and the Rubble Pile and disposing of the asphalt and soil in Pit 37 and the Rubble Pile.

62. Respondents failed to determine whether the asphalt and soil are restricted from land disposal before transporting the asphalt and soil to Pit 37 and the Rubble Pile and disposing of the asphalt and soil in Pit 37 and the Rubble Pile.

63. Respondents did not prepare a manifest for the hazardous waste contaminated asphalt and soil which they transported to the Los Alamos County Landfill and did not accompany the asphalt and soil transported to the Landfill with a manifest.

64. The disposal of hazardous waste contaminated asphalt and soil in the Rubble Pile poses a risk of harm to human health and the environment, including animal and plant life in the wetlands in Sandia Canyon, which risk of harm will remain unless and until the Schedule of Compliance set forth below is complied with.

### CONCLUSIONS

65. Respondents are each a "person" as defined at § 74-4-3.K. of HWA and 40 C.F.R. § 260.10, which is incorporated by reference into 20 N.M.A.C. 4.1.101.

66. Respondents manage "hazardous waste" as defined at § 74-4-3.I. of HWA, and 40 C.F.R. § 260.10, which is incorporated by reference into 20 N.M.A.C. 4.1.101.

67. Respondent DOE is an "owner" and "operator" of LANL, an "existing hazardous waste management facility," as defined at 40 C.F.R. § 260.10, which is incorporated by reference into 20 N.M.A.C. 4.1.101.

68. Respondent UC is an "operator" of LANL, an "existing hazardous waste management facility," as defined at 40 C.F.R. § 260.10, which is incorporated by reference into 20 N.M.A.C. 4.1.101.

69. Respondents engage in the "disposal", "storage", and "treatment" of hazardous waste at LANL, as defined at § 74-4-3.C., N., and Q., respectively, of the HWA, and 40 C.F.R. § 260.10, which is incorporated by reference into 20 N.M.A.C. 4.1.101.

70. Respondents are a generator of and generated hazardous waste, including 1,1,1 trichloroethane and trichloroethylene, as defined in § 74-4-3.F., N.M.S.A. 1978, 40 C.F.R. § 260.10, which is incorporated by reference into 20 N.M.A.C. 4.1.101, and 40 C.F.R. Part 262, which is incorporated by reference into 20 N.M.A.C. 4.1.300.

71. Respondents failed to perform an adequate hazardous waste determination on the waste asphalt and soils removed during construction of the storage dome at TA-54, Area L, in violation of 40 C.F.R. § 262.11, which is incorporated by reference into 20 N.M.A.C. 4.1.300.

72. Respondents failed to obtain a detailed chemical and physical analysis of a

representative sample of the waste asphalt and soils as required by 40 C.F.R. § 264.13, which is incorporated by reference into 20 N.M.A.C. 4.1.500, and Respondents' Permit.

73. Respondents failed to determine whether the waste asphalt and soil is restricted from land disposal before land disposing of the wastes, in violation of 40 C.F.R. § 268.7, which is incorporated by reference into 20 N.M.A.C. 4.1.800, and Respondents' Permit.

74. The asphalt and soil removed during construction of the storage dome contained solid wastes as defined in N.M.S.A. § 74-4-3(M) and 40 C.F.R. § 261.2, which is incorporated by reference into 20 N.M.A.C. 4.1.200, including the wastes described in Paragraph 42, above.

75. The asphalt and soil removed during construction of the storage dome contained hazardous wastes as defined in N.M.S.A. § 74-4-3(I) and 40 C.F.R. § Part 261, which is incorporated by reference into 20 N.M.A.C. 4.1.200, including the wastes described in Paragraph 42, above.

76. Respondents did not prepare a manifest for the hazardous waste contaminated asphalt and soil Respondents transported to the Los Alamos County Landfill, in violation of 40 C.F.R. §§ 262.20(a)-(b), 262.22, and 262.23(a)-(b), which are incorporated by reference into 20 N.M.A.C. 4.1.300.

77. Respondents transported hazardous waste contaminated asphalt to the Los Alamos County Landfill without a manifest, in violation of 40 C.F.R. § 263.20, which is incorporated by reference into 20 N.M.A.C. 4.1.400.

78. Respondents offered hazardous waste contaminated asphalt and soil to Los Alamos County Landfill, a facility that has not received an EPA identification number, is not permitted and does not have interim status authorization to dispose of hazardous waste, in violation of 40 C.F.R. § 262.12(c), which is incorporated by reference into 20 N.M.A.C. 4.1.300.

79. Respondents operated a facility for the disposal of hazardous waste contaminated soil and asphalt at Pit 37, Area G, TA-54, without a permit or interim status authorization, in violation of § 74-4-4(A)(6), N.M.S.A. 1978 and 40 C.F.R. Part 270, which is incorporated by reference into 20 N.M.A.C. 4.1.900.

80. Respondent DOE owned a facility for the disposal of hazardous waste contaminated soil and asphalt at the Los Alamos County Landfill, without a permit or interim status authorization, in violation of § 74-4-4(A)(6), N.M.S.A. 1978 and 40 C.F.R. Part 270, which is incorporated by reference into 20 N.M.A.C. 4.1.900.

81. Respondents are required to submit an application for a post-closure permit for the Los Alamos County Landfill pursuant to 40 C.F.R. § 270.1(c), which is incorporated by

reference into 20 N.M.A.C. 4.1.900.

82. The Schedule of Compliance set forth below is reasonable and necessary to mitigate the risk of harm to human health and the environment posed by Respondents' disposal of hazardous waste contaminated asphalt and soil in the Rubble Pile at Los Alamos County Landfill.

83. Based on the history of noncompliance noted in Paragraphs 32-38, above, and the violations set forth in this Compliance Order, Respondents are high priority violators of 20 N.M.A.C. 4.1.

*#1738,000.00*  
**CIVIL PENALTY**

84. 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 a civil penalty of Five Hundred Eighty Eight Thousand Dollars (~~\$ 588,000.00~~), against Respondents. The penalty is based on the seriousness of the violations and the lack of good faith efforts on the part of Respondents to comply with the applicable requirements, and any economic benefit resulting from noncompliance accruing to Respondents and such other matters as justice may require. The penalty amount is calculated pursuant to the NMED's Civil Penalty Policy. The penalty for each violation is:

	<u>VIOLATION</u>	<u>AMOUNT</u>
¶¶ 71-73	Failure to Perform Waste Determination and Analysis and to Determine Applicability of Land Disposal Restrictions	\$ 15,000 <i># 90,000.00</i>
¶¶ 76-77	Failure to Prepare Manifest and Transport Hazardous Waste With Manifest	\$ 20,250
¶ 78	Offering Hazardous Waste for Disposal to an Unauthorized Facility	\$ 20,250
¶¶ 79-80	Owning and Operating Unpermitted Facilities for Disposal of Hazardous Waste	<del>-\$532,500</del> <i># 607,500.00</i>

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 to 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

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

1. Within sixty (60) calendar days of receipt of this Order, Respondents will submit to NMED-HRMB and SWQB, a plan of action to take appropriate measures to assure that the hazardous wastes disposed of at the Los Alamos County Landfill will not migrate during stormwater events, leach, move due to erosion, or with any reasonable probability threaten, injure or be detrimental to human health, animal or plant life, or property or unreasonably interfere with the public welfare or the use of property. Upon approval and within one hundred and twenty (120) calendar days of receipt of this Order, Respondents will implement the plan of action. Respondents will provide evidence of construction of the preventive measures required above and will submit quarterly maintenance reports on these preventive measures and biannual monitoring reports of the watercourse to assure that the hazardous waste has not been released to the environment.
  
2. Within one hundred and eighty (180) calendar days from receipt of this Order, Respondents shall submit an application for a post-closure permit for the Los Alamos County Landfill in accordance with the requirements of 20 N.M.A.C. 4.1.900.

## NOTICE

86. 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

87. Respondents have a right to request a hearing pursuant to §74-4-10.H. of the HWA and 20 N.M.A.C. 1.5.200 of NMED's Adjudicatory Procedures by filing a written request for Hearing with the Hearing Clerk within thirty (30) calendar days after receipt of this Order. The Request for Hearing shall include an Answer. The Answer shall:

1. clearly and directly admit or deny each of the factual assertions contained in the Compliance Order/Determination; but where the Respondent/Complainant has no knowledge of a particular factual assertion and so states, the assertion may be denied on basis. Any allegation of the Compliance Order/Determination not specifically denied shall be deemed admitted;
2. indicate any affirmative defenses upon which the Respondent/Complainant intends to rely. Any affirmative defense not asserted in the Request for Hearing, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived;
3. be signed under oath or affirmation that the information contained therein is to the best of the signers knowledge believed to be true and correct; and
4. have a copy of the compliance Order/Determination attached.

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 name and address is:

Debra Gallegos, 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

88. 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

89. 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.

90. 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.

91. To explore the possibility of settlement in this matter, contact Mr. John M. Tymkowych of the Environment Department, P.O. Box 26110, 1220 St. Francis Drive, Santa Fe, NM 87501, telephone number (505) 827-1508.

## TERMINATION

92. 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 stipulated final order.

MARK E. WEIDLER  
SECRETARY OF ENVIRONMENT

6/25/98  
DATE

By: Ed Kelley  
ED KELLEY, Director  
Water and Waste Management Division

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Compliance Order was mailed, postage prepaid, by certified mail- return receipt requested on this 25th day of June, 1998 to the following:

Mr. G. Thomas Todd, Area Manager  
U.S. Department of Energy  
Los Alamos Area Office  
528 35th Street, MS A316  
Los Alamos, NM 87544

Dr. John C. Browne, Director  
Los Alamos National Laboratory  
P.O. Box 1663, MS A100  
Los Alamos, NM 87545

Nicholas F. Perramparis  
Attorney NMED/OGC