

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-98-02 (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.



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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. 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. 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").

9. The Permit authorizes the incineration, treatment and storage of certain specified hazardous wastes in accordance with the conditions of the permit.

10. The Permit prohibits any incineration, treatment or storage of hazardous waste not authorized in the permit or conducted under interim status.

11. 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.

12. The Permit requires Respondents to maintain and operate the facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release to air, soil, or surface water of hazardous waste constituents which could threaten human health or the environment.

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

14. The Permit requires Respondents to comply with the requirements of 40 C.F.R. § 264.17, which is incorporated by reference into 20 N.M.A.C. 4.1.500, with respect to ignitable, reactive or incompatible wastes.

15. The Permit requires Respondents to report to the Secretary of Environment, orally within 24 hours from the time Respondents become aware of the circumstances, and in writing within five (5) working days of the time Respondents become aware of the circumstances, any noncompliance with the permit which may endanger human health or the environment.

16. The Permit authorizes Respondents to store gas cylinders containing certain

hazardous wastes at Technical Area 54, Area L, and prohibits storage of hazardous wastes in gas cylinders at other locations.

17. The Permit identifies in Permit Attachment G the hazardous wastes which Permittee is authorized to store and prohibits storage of hazardous wastes not identified in Permit Attachment G.

18. The Permit requires Respondents to manage containers as required by 40 C.F.R. § 264.173, which is incorporated by reference into 20 N.M.A.C. 4.1.500, and Permit Attachment F.

19. 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.

20. 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.

21. 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.

22. In 1995, NMED inspected LANL, discovered violations of the New Mexico Hazardous Waste Management Regulations, 20 N.M.A.C. 4.1, and issued LANL and DOE a compliance order which assessed civil penalties.

23. In 1996, NMED inspected LANL, discovered violations of the New Mexico Hazardous Waste Management Regulations, 20 N.M.A.C. 4.1, and issued LANL and DOE a letter of violation.

24. Violations cited in the enforcement actions described in Paragraphs 19-23, 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.

25. Technical Area 21 at Los Alamos National Laboratories is the site of former Defense Project DP Area 21 ("DP 21 Area"). The DP 21 Area formerly was the site of numerous laboratories built laterally off a main corridor which runs approximately East to West.

26. On information and belief, the laboratory buildings in the DP 21 Area were

designated for decommission and demolition some time in the 1970s, and different buildings in the area have been decommissioned and demolished at different times. Laboratory buildings which remained standing, including the buildings known as Building 3 North and Building 4 North, continued to be used.

27. On information and belief, in October 1993 officers, directors, employees, representatives, agents and/or servants of Respondents who worked in Buildings 3 and 4 North ("Occupants") were directed by Respondents' management to vacate the buildings and move to other locations so that the buildings could be decommissioned and demolished.

28. Occupants of Building 4 North began vacating that building in late 1993 and had completed vacating the building by some time in May 1994.

29. Occupants of Building 3 North began vacating that building in early 1994 and had completely vacated the building by no later than some time in May 1995.

30. Up until the time that Buildings 3 and 4 North were vacated, the Occupants conducted various experiments in the Buildings and maintained various gases in the Buildings in cylinders.

31. On information and belief some of the gases were produced by the Occupants in the buildings, and other gases were produced off-site.

32. Upon vacating Buildings 3 and 4 North, the departing Occupants discarded and abandoned at least 156 cylinders containing gases, by, among other things, leaving the cylinders on site, relinquishing control of the cylinders, and not putting the cylinders to further use.

33. The discarded and abandoned cylinders remained in Buildings 3 and 4 North until at least February 1997.

34. Numerous hazardous wastes under the HWA were identified in the gas cylinders discarded and abandoned in Buildings 3 and 4 North, including but not limited to:

	<u>DESCRIPTION</u>	<u>CAS #</u>	<u>Haz. Waste #</u>
a.	Hydrogen Iodide	10034-85-2	D002
b.	Hydrogen Bromide	10035-10-6	D002
c.	Nitrogen Dioxide	10102-44-0	P078, D002
d.	Nitrogen Oxide	10544-72-6	P086

e.	Butadiene	106-99-0	D001
f.	Hydrogen	1333-74-0	D001, D003
g.	Nickel Carbonyl	13463-39-3	P073
h.	Carbonyl Fluoride	353-50-4	U033
i.	Cyanogen Gas	460-19-5	P031
j.	Cyanogen Chloride	506-77-4	P033
k.	Cis-2-butene	590-18-1	D001
l.	Methyl Mercaptan	74-93-1	D001, U153
m.	Cesium Metal	7440-46-2	D001, D003
n.	Sulfur Trioxide	7446-11-9	D003
o.	Hydrogen Chloride	7647-01-0	D002
p.	Phosphorus Pentafluoride	7647-19-0	D003
q.	Hydrogen Fluoride	7664-39-3	U134
r.	Fluorine	7782-41-4	P056
s.	Hydrogen Sulfide	7783-06-4	D001 & U135
t.	Sulfur Tetrafluoride	7783-60-0	D003
u.	Antimony Pentafluoride	7783-70-2	D003
v.	Bromine Pentafluoride	7789-30-2	D003
w.	Chlorine Monofluoride	7790-89-8	D003
x.	Chlorine Trifluoride	7790-91-2	D003
y.	Silane	7803-62-5	D001
z.	Phosphorus Oxyfluoride	82867-95-6	D003

aa.	Bromine Pentafluoride		D003
bb.	Oxygen Isotopic		D001
cc.	Ammonia		D002
dd.	Osmium Tetrafluoride/Hexafluoride		P087
ee.	Carbonyl Sulfide	463-58-1	D001
ff.	Bromotrifluoroethylene	598-73-2	D001, D003
gg.	Chlorotrifluoroethylene	79-38-9	D001
hh.	Phosphorus Oxyfluoride	82867-95-6	D003
ii.	3-Trifluoropropyne	661-54-1	D003

35. On information and belief, some of the hazardous wastes described in Paragraph 34, above, were produced by acts or processes of the Occupants. Other hazardous wastes described in Paragraph 34, above, were produced off-site and first became subject to regulation as hazardous wastes due to the acts of the Occupants, specifically, the Occupants' discarding, intention to discard and/or abandonment of the wastes.

36. Certain of the hazardous wastes contained in the gas cylinders discarded and abandoned in Buildings 3 and 4 North, including but not limited to wastes described in Paragraph 34, above, with Hazardous Waste Nos. D003 and P086, are not included in the list of hazardous wastes Respondents are authorized to store at LANL set forth in Permit Attachment G.

37. Respondents accumulated and stored hazardous wastes, including the hazardous wastes described in Paragraph 34, above, on site in Buildings 3 and 4, North, for more than ninety (90) days.

38. Respondents never applied for and never received a permit or interim status authorization to store the hazardous wastes described in Paragraph 34, above, in Buildings 3 and 4 North.

39. Respondents never applied for or received an extension pursuant to 40 C.F.R. 262.34(b), which is incorporated by reference into 20 N.M.A.C. 4.1.300, of the ninety (90) day period prescribed by 40 C.F.R. § 262.34(a), which is incorporated by reference into 20 N.M.A.C. 4.1.300, during which hazardous wastes may, if certain specified requirements are met, be accumulated on site without a permit or interim status authorization.

40. On information and belief, Respondents did not inspect the areas where the gas cylinders were stored at least weekly, looking for leaks and for deterioration caused by corrosion or other factors.

41. At all material times, the date on which accumulation of hazardous waste began was not clearly marked and visible for inspection on each container.

42. At all material times, each container containing hazardous wastes was not labeled or marked clearly with the words "Hazardous Wastes."

43. During the time that the hazardous wastes were stored in Buildings 3 and 4 North, the facilities were not maintained and operated to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

44. On information and belief, at all material times, the areas in Buildings 3 and 4 North in which the hazardous wastes described in Paragraph 34, above, were stored, were not equipped with the following equipment:

a. An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

b. A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

c. Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas or dry chemicals), spill control equipment, and decontamination equipment; and

d. Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

45. On information and belief all required facility communications and alarm systems, fire protection equipment, spill control equipment and decontamination equipment was not tested and maintained as necessary to assure its proper operation in time of emergency.

46. On information and belief, at all material times Respondents had not made the following arrangements with respect to the portions of Buildings 3 and 4 North in which the hazardous wastes described in Paragraph 34, above, were stored:

a. Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility and possible evacuation routes;

b. Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

c. Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

d. Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

47. On information and belief, Respondents at all material times, had not documented in their operating record any refusal by State or local authorities to enter into the arrangements described in Paragraph 46, above.

48. On information and belief, Respondents, at all material times, did not have, did not maintain at Buildings 3 and 4 North, and had not submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services, a contingency plan covering the portions of Buildings 3 and 4 North in which the hazardous wastes described in Paragraph 34, above, were stored.

49. Respondents did not obtain a detailed chemical and physical analysis of a representative sample of the hazardous wastes described in Paragraph 34, above, before storing the hazardous wastes in Buildings 3 and 4, North.

50. On information and belief, Respondents did not follow, or did not timely follow, a written waste analysis plan which describes the procedures to be used to obtain the detailed chemical and physical analyses described in Paragraph 35, with respect to the hazardous wastes stored in Buildings 3 and 4, North.

51. Some of the wastes stored in Buildings 3 and 4, North were ignitable and/or reactive.

52. At all material times, Respondents did not take appropriate precautions to prevent accidental ignition or reaction of ignitable or reactive wastes, and did not document the taking of such precautions.

53. At all material times, Respondents did not maintain a written operating record of hazardous waste storage in Buildings 3 and 4 North, which included the following:

a. A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its storage;

b. The location of each hazardous waste within the facility and the quantity at each location;

c. Records and results of waste analyses and waste determinations performed;

d. Summary reports and details of all incidents that require implementing the contingency plan;

e. Records and results of inspections;

f. Monitoring, testing or analytical data;

g. a certification by Respondents no less often than annually that Respondents have a program in place to reduce the volume and toxicity of hazardous waste generated to the degree determined by Respondents to be economically practicable; and the proposed method of treatment, storage or disposal is that practicable method currently available to Respondents which minimizes the present and future threat to human health and the environment;

54. Respondents did not submit to NMED a biennial report by March 1, 1986 and March 1, 1998 which, among other things, describes the method of storage, efforts undertaken to reduce the volume and toxicity of waste generated, and changes in volume and toxicity of waste received, with respect to the hazardous wastes generated and/or stored in Buildings 3 and 4 North.

55. Respondents at all material times did not have a written closure plan covering closure of the area in Buildings 3 and 4 North in which the hazardous wastes described in Paragraph 34, above, were stored.

56. Respondents did not notify NMED in advance of planned changes in its activities which might result in noncompliance with permit conditions, namely the plans to store hazardous waste in Buildings 3 and 4 North, contrary to the terms of the Permit.

57. Respondents' storage of the hazardous wastes in Buildings 3 and 4 North, was a noncompliance with the terms of the Permit which may endanger human health and the environment.

58. Respondents did not report the noncompliance with the Permit to NMED orally within 24 hours of the time Respondents became aware of the circumstances or in writing within 5 days after Respondents became aware of the circumstances.

59. Respondents first advised NMED of the "abandoned hazardous materials," in discussions on February 12, 1997, which discussions were confirmed by a March 6, 1997 letter from the Area Manager of DOE's Los Alamos Area Office and the Director of ESH-

DO, LANL, to the Chief of NMED's Hazardous and Radioactive Materials Bureau.

CONCLUSIONS

60. 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.

61. 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.

62. 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.

63. 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.

64. 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.

65. Respondents generated hazardous wastes, including the hazardous wastes described in Paragraph 34, above, at Buildings 3 and 4 North, Technical Area 21, LANL.

66. Respondents did not timely make a hazardous waste determination for the purposes of determining whether the gas cylinders described in Paragraph 32, above, contained hazardous waste and whether there were restrictions on management of the materials contained in the containers, in violation of 40 C.F.R. §§ 262.11 and 262.10(c), which are incorporated by reference into 20 N.M.A.C. 4.1.300, and in violation of Respondents' Permit.

67. Respondents discarded and abandoned materials as those terms are used in 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 34, above, at Buildings 3 and 4 North.

68. The wastes discarded and abandoned by Respondents in Buildings 3 and 4 North, including the wastes described in Paragraph 34, above, are 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.

69. The wastes discarded and abandoned by Respondents in Buildings 3 and 4

North, including the wastes described in Paragraph 34, above, are 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.

70. Respondents stored and accumulated hazardous wastes, including the hazardous wastes described in Paragraph 34, above, on-site, in containers, in Buildings 3 and 4 North, for more than ninety (90) days, without having obtained a permit or interim status authorization for such storage and accumulation, in violation of 40 C.F.R. § 262.34 and 40 C.F.R. Part 270, which are incorporated by reference into 20 N.M.A.C. 4.1.300 and 4.1.900, and in violation of Respondents' Permit.

71. Respondents stored and accumulated hazardous wastes, including the hazardous wastes described in Paragraph 34, above, without meeting the requirements prescribed by 40 C.F.R. 262.34 and 40 C.F.R. Part 265, Subpart I, which are incorporated by reference into 20 N.M.A.C. 4.1.300 and 4.1.600, for accumulation of hazardous waste on-site for no more than 90 days without a permit or interim status authorization, including but not limited to the requirements that Respondents inspect the areas where the wastes were stored at least weekly, looking for leaks and for deterioration caused by corrosion or other factors; that the date on which accumulation of hazardous waste began in each cylinder containing hazardous waste be clearly marked and visible for inspection on each container; and that each container containing hazardous wastes be labeled or marked clearly with the words "Hazardous Wastes."

72. Respondents operated a hazardous waste storage facility and did not comply with the requirements of 40 C.F.R. Parts 264, 265 and 270, applicable to such storage facilities, including requirements regarding waste analysis; ignitable, reactive and incompatible wastes; maintenance of a written operating record; preparedness and prevention; contingency plan; and closure, as described in Paragraphs 40-59, above.

73. Respondents did not timely report to NMED orally and in writing the noncompliance with their Permit attributable to the unlawful abandonment and storage of hazardous wastes, which noncompliance endangered human health and the environment, in violation of Respondents' Permit and 40 C.F.R. § 270.30(I), which is incorporated by reference into 20 N.M.A.C. 4.1. 900.

74 . Based on the history of noncompliance noted in Paragraphs 19-23 and the violations set forth in this Compliance Order, Respondents are high priority violators of 20 N.M.A.C. 4.1.

CIVIL PENALTY

75. 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 Nine Hundred Fifty One Thousand Dollars (\$951,000.00) , 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>
¶¶ 70-72	Unlawful storage of hazardous waste without a permit or interim status authorization and in violation of management requirements	\$475,500.00
¶ 73	Failure to timely report noncompliance to NMED	\$475,500.00

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

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

1. Within 15 calendar days from receipt of this Order, Respondents shall provide proof of final disposition of all wastes discarded and abandoned at TA-21, Buildings 3 and 4 North, which demonstrates that all wastes have been transported to one or more appropriate, authorized facilities for the treatment, storage and/or disposal of hazardous wastes.

NOTICE

77. 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

78. 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

79. 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

80. 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.

81. 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 N.M.A.C. 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.

82. 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

83. 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

6/23/98
DATE

By: Ed Kelley
ED KELLEY, Director
Water and Waste Management Division
New Mexico Environment Department

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Compliance Order was mailed postage prepaid as follows on this 24 day of June 1998 to the following:

Via Certified Mail, Return Receipt Requested:

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 J. Rasmussen
Attorney NMED/OGC

INVESTIGATION REPORT
ABANDONMENT OF HAZARDOUS WASTE AT LOS ALAMOS NATIONAL LABORATORY
TECHNICAL AREA 21, BUILDINGS 3 AND 4 NORTH

by
John M. Tymkowych
RCRA Inspection/Enforcement Program Manager
Hazardous and Radioactive Materials Bureau
New Mexico Environment Department

Introduction:

This investigation was initiated based on information received from LANL staff during a meeting on February 12, 1997 to discuss the events which will follow in this report. The information related during the meeting did not include certain facts which became evident during the course of this investigation.

Background Information:

The area in which this situation occurred was in the old Defense Project (DP) Area 21 which was designated back in the 1970's for Decommission and Demolition (D&D). The area has been going through D&D slowly over the last few years however much of the facility has been in use. The buildings in this area consisted of numerous labs built laterally off of a main corridor which runs east/west. These labs performed numerous classified and unclassified experiments related to nuclear testing. At the time of this investigation, approximately half of the laboratories had been demolished leaving only the east/west corridor with the administration building on the west end, laboratories on the east end with a few labs in the middle. (see building plan, attachment 1)

Results of Investigation:

This investigation was prompted by the course of events outlined in a joint letter to Benito Garcia, Chief of HRMB on March 6, 1997 from Mr. G. Thomas Todd, DOE/LAAO and Mr. Dennis J. Erickson, LANL. Specifically, the fact that this incident began in 1993 and had not been resolved as of the February 12, 1997 meeting was of major concern. Beginning with the notification to the occupants of Buildings 3 and 4 North, the time line, course of events and actions (or inactions) of the tenants and LANL staff are delineated as follows:

October 1993:

Occupants of Buildings 3 and 4 North are notified by LANL and DOE management to vacate their labs by December.

May 1994:

Occupants of Building 4 North were completely moved out as documented in John Fitzpatrick's statement and interview. Mr. Fitzpatrick also stated that at the time his building was vacated, there were 75 to 100 gas cylinders stored inside and outside of his lab (mostly Fluorine gases), and that they "just moved the gases they needed and wanted" and "left all of the other cylinders in the area." Occupants of Building 3 North were also apparently completely moved out. Lead researcher Scott Kincaid, in his statement and interview, said that when he left the facility in January of 1994 he "was responsible for keeping some of the gas cylinders at the site". He also stated that "not all the cylinders were his and does not know who took responsibility of the gas cylinders left after he moved out to TA-48."

May 1994 to late 1995 (September - December):

Wastes were apparently not under the control of the generators nor could LANL management get anyone to accept responsibility for these wastes. As stated in the March 6, 1997 letter to Benito Garcia, "the LANL Management Group discovered abandoned hazardous materials not previously associated with known activities, or specific research projects, and in spaces not previously inspected or, in some instances known to exist. To assure proper management of these materials, the Facility Manager (FM) assumed ownership of these chemical materials." This statement is not accurate. Mr. Kincaid identified his work in the lab as "Artinid and Fluorine chemistry in support of the Plutonium facility". Mr. Fitzpatrick identified his work as mostly dealing with Fluorine compounds and he also identified Mr. Kincaid as the user of the Osmium gases in the area and stored them in the SAP in Room 3154. The attached inventory of the cylinders declared waste from this incident include numerous hazardous waste Fluorine gas cylinders and five acute hazardous waste Osmium gas cylinders.(attachment 2)

Late 1995 to August 19, 1996:

Hazardous waste cylinders (including gas cylinders with unknown contents) and other wastes are staged and under going waste profiling. On August 19, 1996, realizing that there are too many cylinders with unknown contents or with acute hazardous wastes, activities to identify and manage these wastes are suspended.

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August 21, 22 and 26, 1996:

LANL's Hazardous Materials Emergency Response Team is called out to address the situation. Unknown cylinders are placed in a sealed secondary containment (overpack) vessel, the acutely toxic Osmium gas cylinders are also placed in a separate overpack vessel.

September 1996 to January 1997:

LANL personnel receive SCBA training, a special outdoor laboratory for cylinder identification is constructed and gas cylinders are once again processed for identification. Included in identification activities are John Fitzpatrick and Trudi Forman, previous residents of the labs.

February 12, 1997:

LANL first notifies NMED of this entire course of events and the situation, after the fact.

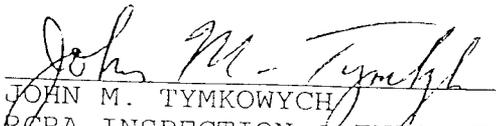
Conclusion:

The fact that the occupants and Lead Researchers and Chemists occupied these buildings for over ten years performing the same research indicates that their explanation of ignorance of the existence of these cylinders is not believable. The explanation that many of these cylinders were either "community" property or legacy does not hold credence either. These researchers are very possessive of their project materials and their research dollars. It is my opinion that even though there was consistent contact with waste management people in TA-21, the occupants of these labs, and most likely others in the facility as well, chose to ignore their obligation of declaring unwanted or unusable gases and chemicals as waste because of the impact it would have on their operating budget. They therefore simply decided to let LANL management take the responsibility and cost for disposing of these wastes. What makes this entire incident even more disturbing is that the acute gases abandoned could have easily caused serious injury or death.

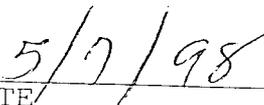
In numerous statements and reports from LANL personnel and management, these cylinders are identified as "abandoned materials". I concur with this designation. Due to the fact that these were abandoned and ultimately disposed of as a hazardous waste, their abandonment is an enforceable issue under

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20 NMAC 4.1. Because this situation was not reported to NMED until after the fact only increases the severity of the impact to the regulatory program. Therefore, a Compliance Order with penalties should be issued for this incident.



JOHN M. TYMKOWYCH
RCRA INSPECTION & ENFORCEMENT PROGRAM MANAGER



DATE