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GARY E. JOHNSON
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MARK E. WEIDLER
SECRETARY

July 1, 1998

BY FACSIMILE

Joseph B. Rochelle III, Esq.
Los Alamos Laboratory Counsel Office
P.O. Box 1663
M.S. 8187
Los Alamos National Laboratory
Los Alamos, NM 87545

Re: Compliance Order Nos. 98-02 and 98-03

Dear Joe:

In accordance with your request, I enclose copies of the Penalty Calculation Worksheets and accompanying Narrative Explanations for Compliance Order Nos. 98-02 and 98-03.

Sincerely,

Nicholas F. Persampieri
Nicholas F. Persampieri

Post-it® Fax Note		7671	Date	7/1/98	# of pages	14
To	Joe Rochelle		From	Nick Persampieri		
Co./Dept.			Co.			
Phone #	665 4424		Phone #			
Fax #	(505) 665 2786		Fax #			



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PENALTY CALCULATION WORKSHEET

Facility: LANL

Date of Investigation: July - December, 1997

Citation/Violation: 40 CFR 262.34(b)- Abandonment of Hazardous Waste by Illegal Storage in Lieu of Disposal

Location: TA-21, Buildings 3 and 4 North

PENALTY AMOUNT:

1.	Gravity based penalty from matrix	<u>\$10,000</u>	4,000
	(a). Potential for harm.....	<u>Major</u>	
	(b). Extent of deviation	<u>Major</u>	
2.	Amount selected from multiday matrix cell	<u>\$5,000</u>	2,200
3.	Multiply line 2 by number of days of noncompliance (or other appropriate number) minus 1 Number of days: <u>59</u>	<u>\$295,000</u>	129,800
4.	Add line 1 and line 3	<u>\$305,000</u>	133,800
5.	Percent increase/decrease for good faith	<u>0%</u>	0
6.	Percent increase for willfulness/negligence	<u>+25%</u>	0
7.	Percent increase for history of noncompliance	<u>+25%</u>	25%
8.	Total percentage from lines 5 thru 7	<u>+50%</u>	25%
9.	Multiply line 4 by line 8.....	<u>\$152,500</u>	33,450
10.	Calculate economic benefit	<u>-0-</u>	
11.	Add lines 4, 9, and 10 for penalty amount for this violation.....	\$475,500	167,250
		\$457,500	

NARRATIVE EXPLANATION OF FIGURES SELECTED

1. Gravity Based Penalty
 - (a). Potential for harm: Many of the wastes that were abandoned were highly toxic or acutely toxic and none of the proper internal waste management procedures were followed by the owners of the wastes prior to their vacating of the facility. This, along with the fact that the buildings were going to be decommissioned and numerous personnel were potentially at risk for exposure to these acute gases, a major potential for harm was created. Because Respondents failed to abide by the requirements for proper management of these wastes, a major potential for harm to the regulatory program has also resulted.
 - (b). Extent of deviation: Respondents failed to apply any of the regulatory requirements to the wastes prior to and during their abandonment. This is a major deviation from the regulatory requirements.
2. Multiday Penalty: A multiday penalty is mandatory for this penalty matrix and since the abandonment existed for at least sixty (60) days before discovery, the maximum number of days (60) is deemed appropriate.
3. Good Faith: Adjustment downward is not applicable because Respondents failed to maintain control over the generators in Buildings 3 and 4 North, nor did Respondents report the circumstances in a timely manner, waiting nearly two years before notifying NMED of the abandonment.
4. Willfulness/Negligence: This violation occurred due to the willful disregard of internal waste management procedures and the hazardous waste regulations. Because of this willful disregard, an upward adjustment of 25% is deemed appropriate.
5. History of Noncompliance: Numerous violations of improper storage have been cited in previous inspections and a history of noncompliance with the HWA can be demonstrated. Therefore, a 25% increase is considered appropriate for this violation.
6. Economic Benefit (considered negligible if less than \$2500): Because the economic benefit for non-compliance with this requirement is a delayed cost and it is less than \$2,500.00, this factor has not been added.

PENALTY CALCULATION WORKSHEET

Facility: LANLDate of Investigation: July - December, 1997Citation/Violation: 40 CFR 270.30(1) - Failure to Timely Report
Noncompliance to NMEDLocation: TA-21, Buildings 3 and 4 North**PENALTY AMOUNT:**

1. Gravity based penalty from matrix\$10,000
 - (a). Potential for harm.....Major
 - (b). Extent of deviation Major
2. Amount selected from multiday matrix cell\$5,000
3. Multiply line 2 by number of days of noncompliance
(or other appropriate number) minus 1
Number of days: 59\$295,000
4. Add line 1 and line 3\$305,000
5. Percent increase/decrease for good faith 0%
6. Percent increase for willfulness/negligence +25%
7. Percent increase for history of noncompliance +25%
8. Total percentage from lines 5 thru 7 +50%
9. Multiply line 4 by line 8.....\$152,500
10. Calculate economic benefit -0-
11. Add lines 4, 9, and 10 for penalty amount
for this violation.....\$475,500

NARRATIVE EXPLANATION OF FIGURES SELECTED

1. Gravity Based Penalty
 - (a). Potential for harm: Because Respondents failed to timely report this noncompliance with the hazardous waste regulations and there permit in the management of these wastes, a major potential for harm to personnel and the regulatory program has resulted.
 - (b). Extent of deviation: Respondents failed to comply with any of the regulatory requirements for reporting for nearly three years. Therefore, this is a major deviation from the requirements.
2. Multiday Penalty: A multiday penalty is mandatory for this penalty matrix and since the Respondent did not notify NMED for nearly three years, the maximum number of days (60) is deemed appropriate.
3. Good Faith: Adjustment downward is not applicable because Respondents report the circumstances in a timely manner, waiting nearly three years before notifying NMED of the abandonment.
4. Willfulness/Negligence: This violation occurred due to the willful disregard of internal waste management procedures and the hazardous waste regulations. Because of this willful disregard, an upward adjustment of 25% is deemed appropriate.
5. History of Noncompliance: Numerous violations of improper storage have been cited in previous inspections and a history of noncompliance with the HWA can be demonstrated. Therefore, a 25% increase is considered appropriate for this violation.
6. Economic Benefit (considered negligible if less than \$2500): Because the economic benefit for non-compliance with this requirement is a delayed cost and it is less than \$2,500.00, this factor has not been added.

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,
NM 08890010515

COMPLIANCE ORDER
HRM 98-02 (CO)

Respondents.

STIPULATED FINAL ORDER

I. Introduction

A. On June 27, 1998, the New Mexico Environment Department ("NMED") issued Compliance Order HRM 98-02 (CO) ("Compliance Order") to the United States Department of Energy ("DOE") and the Regents of the University of California ("UC") (collectively "Respondents") pursuant to the New Mexico Hazardous Waste Act, NMSA 1978, §§ 74-4-1 through 74-4-14 (1993) ("HWA") and the New Mexico Hazardous Waste Management Regulations, 20.4.1 NMAC ("HWMR").

B. DOE is an agency of the federal government and the owner and co-operator of the Los Alamos National Laboratory ("LANL").

C. UC is a public education 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.

D. Respondents filed timely answers to the Compliance Order

E. NMED and Respondents enter into this Stipulated Final Order ("SFO") pursuant to 20.1.5.601.B NMAC. The purpose of this 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 for the violations alleged in the Compliance Order and approval of a Supplemental Environmental Project ("SEP").

F. This SFO shall apply to and be binding upon NMED, Respondents and their respective successors and assigns.

II. Jurisdiction and Authority

A. NMED has jurisdiction and authority over the subject matter of this SFO pursuant

the HWA and the HMWR.

B. Respondents admit to the foregoing jurisdiction of NMED and consent to the relief specified herein, including the penalty to be paid by Respondents and timely completion of the SEP set forth in Section IV.B.

III. NMED'S Findings and Conclusions

A. NMED alleges violations of the HWA and HWMR as set forth in the Findings, Conclusions, and Civil Penalty, ¶¶ 1-75, of the Compliance Order. The allegations in paragraphs 1-75 of the Compliance Order are realleged and incorporated herein by reference.

B. Respondents neither admit nor deny the factual and legal allegations contained in the Compliance Order unless specifically admitted or denied in their Answers.

IV. 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 violations, any good faith efforts to comply and other matters as justice may require, it is hereby ORDERED that Respondent be assessed a civil penalty as follows:

A. Civil Penalties.

Respondents shall pay to the State of New Mexico a civil penalty in the amount of one hundred and sixty-five thousand dollars (\$165,000.00), sixty-five thousand (\$65,000.00) of which shall be suspended as described below, and one hundred thousand (\$100,00.00) which is due and payable within thirty 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, _____, Attention: _____, 1190 St. Francis Drive, Post Office Box 26110, Santa Fe, New Mexico 87502.

B. Supplemental Environmental Project

1. The \$65,000.00 suspended penalty component of this SFO shall be

contingent upon Respondents satisfactorily completing the activities set forth in the SEP as described below. Prior to demanding payment of the suspended penalty, NMED shall provide notice and an opportunity for Respondents to comply with the SFO.

2. NMED agrees that Respondents may undertake a SEP described below:

Describe nature and timetable of SEP

3. The time-periods set forth above in Section IV.B.2 may be extended for time periods not to exceed sixty (60) days upon approval of NMED that a good faith reason exists which will not allow the obligation to be timely completed.

4. Respondents have attached as Exhibit A a certification that the actions set forth in Section IV.B.2 were not previously planned or budgeted for, that such actions are supplemental to actions planned and budgeted for by Respondents, and that such actions are undertaken solely to fulfill the requirements of this SFO.

5. Upon timely completion of the actions required above in Section IV.B.2, Respondents shall certify to NMED that all actions have been completed in accordance with the provisions of Section IV.B.2. NMED, in its sole discretion, shall determine whether the provisions of Section IV. B.2 have been satisfactorily completed and shall notify Respondents as to its determination.

C. Failure to Comply.

1. In the event Respondents fail to timely complete the requirements of the SEP, a suspended civil penalty in the amount of sixty-five thousand dollars (\$65,000.00) shall become due and payable within thirty days (30) after noncompliance.

2. In the event Respondents fail to pay the stated civil penalty of \$65,000.00 in the timeframe and manner provided above, the Secretary of NMED may, in his discretion, issue an order to show cause and assess a stipulated penalty of not more than five-hundred dollars (\$500.00) for each day beyond the payment due date specified above in Section IV.A. or declare this SFO null and void and that the full civil penalty set forth in the Compliance Order is immediately due and payable.

V. Enforceability

This SFO shall be enforceable by the filing of a civil action in the First Judicial District of Santa Fe, New Mexico.

VI. Dispute Resolution

A. Any dispute regarding compliance with Section IV of this SFO may in the first instance be the subject of informal negotiation between NMED and Respondents. Any party who wishes to commence informal dispute resolution shall notify the other party in writing and request informal dispute resolution. The other party may, in its discretion, enter into informal dispute resolution. There is nothing in this section, however, that binds either party to informal dispute resolution.

VII. 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.

VIII. Rights Expressly Reserved

This SFO does not relieve Respondents of their legal obligation to comply with all applicable federal and state environmental laws, regulations, and permit conditions, including but not limited to the HWA and HWMR. This SFO shall not be construed as curtailing or 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 shall not be construed as curtailing or impeding NMED's legal right to seek penalties and damages for any other violation of statutory or regulatory

requirements by Respondents. In addition, the parties expressly reserve any and all privileges, including attorney-client and work product privileges, to which they are entitled. Except as expressly provided herein, parties reserve all other legal privileges and rights.

IX. Release of Liability

Nothing in this SFO shall constitute or be construed as a satisfaction of release from liability from an conditions or claims arising as a result of past, current, or future operations of LANL other than the violation alleged in the Compliance Order, the release of which is expressly conditioned on full and complete performance by Respondents of the terms and conditions of this SFO.

X. Good Faith Performance

The parties agree that they will act reasonably and in good faith at all times to accomplish the object 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.

XI. Waiver of State Liability

Respondents shall assume all costs and liabilities incurred in performing all of their obligations under the terms of this SFO. Respondents perform these obligations at their own risk. The State of New Mexico and NMED do not assume any liability or costs whatsoever for Respondents' performance of any of their obligations under the terms of this SFO.

XII. 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.

XIII. Exchange of Information

Respondents agree to cooperate fully with NMED in providing requested data and information. Respondents agree to communicate freely and routinely with NMED. No such communications shall alter or

waive any rights or obligations of Respondents under this SFO. No guidance, suggestions or comments by NMED shall be construed as relieving Respondents of their obligations under this SFO.

XIV. Merger and Integration

This SFO merges and incorporates 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 here.

XV. 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.

XVI. Effective Date

The effective date of this SFO shall be the date the Secretary, or his delegatee, signs this SFO.

XVII. Termination

This SFO terminates upon written approval by the Secretary that Respondents have completed all requirements herein.

XVIII. Authority of Signatories

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:

Date

Greg Lewis
Director
Water and Waste Management Division

NMED

Date

UC

Date

DOE

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,
NM 08890010515

COMPLIANCE ORDER
HRM 98-02 (CO)

Respondents.

STIPULATED FINAL ORDER

The Secretary of the New Mexico Environment Department, having reviewed the above-captioned Stipulated Final Order, including all attachments incorporated by reference, and having determined that it is consistent with the New Mexico Hazardous Waste Act and 20.5.601.B NMAC, hereby approves the Stipulated Final Order and orders that it take full force and effect on this ____ day of _____, 2001.

PETER MAGGIORE
NMED Secretary