

# Los Alamos

NATIONAL LABORATORY  
Laboratory Counsel  General Law Offices

P. O. Box 1663/MS A187  
1650 Trinity Drive  
Los Alamos, New Mexico 87545  
(505) 667-3766, FAX:665-4424



Date: August 14, 1998

Symbol: GL:10520-9808/9834

Nicholas F. Persampieri, Esq.  
Assistant General Counsel  
NMED Office of General Counsel  
1190 St. Francis Drive  
P.O. Box 26110  
Santa Fe, NM 87502

**SUBJECT: CO 98-01: SUMMARY OF REQUIREMENTS FOR RFI REPORT BASED  
ON MEETING ON JULY 7, 1998**

Dear Mr. Persampieri:

The purpose of this letter is to summarize the Laboratory's understanding of the key components of the deliverable mandated by the "Schedule of Compliance" contained in Compliance Order HRM 98-01 (Order). Our understanding of the key items agreed upon in the meeting is outlined below. We wish to thank you and the technical staff of NMED for taking the time to meet with us to help clarify the content of the deliverable mandated by the Order.

The deliverable will be substantially equivalent to the "Sampling and Analysis Plans/Workplans Outline" distributed by HRMB on March 3rd and 4th, 1998. The document will be entitled "RCRA Facility Investigation Workplan, Volume II". The Workplan will contain the following information:

All existing data including field notes, field screening (i.e., readings from a photo ionization detector or flame ionization detector) and sampling and analytical events that occurred in connection with the tank removal and subsequent sampling analysis at the DP Tank Farm and in the portion of DP Canyon adjacent to the Tank Farm site.

The existing data/information will be summarized or presented graphically as appropriate. Raw data (e.g., chromatograms) will be provided where available. Existing data/information include:



Nicholas Persampieri  
August 14, 1998  
Page 2

- 1988 decommissioning information, if available
- 1994 sampling of DP Tank Farm
- 1995 sampling of DP Tank Farm
- 1994/5 sampling of the "seep"
- 1996 VCA confirmation sampling
- alluvial groundwater data from LAUZ1 and 2 and data from DP Spring, all located down-gradient of the "seep"
- surface water, sediment, and alluvial aquifer sampling related to DP Canyon investigations

A discussion of fractures in the area.

This discussion will focus on previous site-wide and TA-21 (DP Mesa) specific research performed at LANL.

Information on how the "seep" will be investigated, including the following steps:

- walkover of the site to identify current visual extent of the seep
- water samples upstream, at the seep, and downstream
- sediment samples upstream, at the seep, and downstream
- water and sediment samples over time (to determine if concentrations are increasing or decreasing over time)
- near surface vadose zone samples (hand augering) to determine current extent and direction of the seep
- fingerprinting
- historical/archival investigation of other potential source terms

The primary objectives are to determine the current extent of the seep, the direction from which the seep came, and temporal effects on the seep, and hence to evaluate the relationship of the seep to potential source terms and in general to increase understanding of the conceptual model at this site (receptor scenarios will also be discussed to this end).

A discussion of contingencies, which will depend upon the data collected and the conclusions drawn from those data.

As agreed in the meeting, no additional characterization will be required on the mesa at the East or West Fill Stations at this time. As requested, the Underground Storage Tank Bureau and the Surface Water Quality Bureau will be copied on the deliverable.

Nicholas Persampieri  
August 14, 1998  
Page 3

We wish to state that by proceeding with steps towards clarifying the content of the deliverable mandated by the Order, we do not intend to make nor do we make an admission concerning any finding, conclusion or actions ordered that are contained in the Order, nor do we waive any defense in equity or at law to any findings, conclusions or actions ordered that are contained in the Order. We reserve the right to continue to dispute whether or not the Schedule of Compliance mandated by the Order is lawfully required or justified, as more fully set forth in our Answer to the Order.

Please let us know if NMED does not agree with our understanding stated above as to the agreed upon contents of the deliverable. Please do not hesitate to contact either of us should you desire to discuss this matter further. Hortense Haynes can be reached at (505) 667-4667 and Joe Rochelle can be reached at (505) 665-2286. Thank you for your continuing courtesies with regard to this matter.

Sincerely

  
\_\_\_\_\_  
Joseph B. Rochelle, Esq  
On behalf of the Regents  
The University of California

Cys: Hortense Haynes, DOE-LAAO, M316  
Joe Mose, DOE-LAAO, A316  
Tori George, EM-ER, M992  
John Tymkowych, NMED-HRMB  
Robert "Stu" Dinwiddie, NMED-HRMB  
Barbara Hoditschek, NMED-SWQB  
Gerard Schoeppner, NMED-USTB  
Lorana Gerber, NMED-USTB  
LC/GL  
File (2)

NICK

**COPY**



**STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF ENVIRONMENT**

**IN THE MATTER OF THE UNITED  
STATES DEPARTMENT OF ENERGY  
AND THE REGENTS OF THE UNIVERSITY**

*HRM 98-03 (CO)*

**NOTICE OF DOCKETING and  
NOTICE OF HEARING OFFICER ASSIGNMENT**

The above captioned case is hereby docketed pursuant to the Adjudicatory Procedures - Environment Department, 20 NMAC 1.5, Section 201. An application was received on July 24, 1998.

**In Accordance with NMSA 1978, Section 74-4-10 and 20 NMAC 1.5, Section 201.A,** Weldon L. Merritt has been designated as a Hearing Officer.

Tamella L. Gonzales, Hearing Clerk  
New Mexico Environment Department

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Docketing and Hearing Officer Assignment was hand-delivered on this 28 day of July, 1998 to the following:

**Nick Persampieri, Esq.**  
**Asst. General Counsel/NMED**  
**P.O. Box 26110**  
**Santa Fe, NM 87502**  
**505-827-2982**

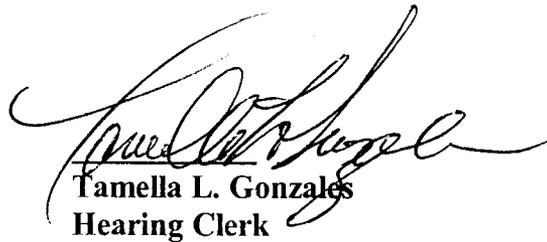
**Weldon L. Merritt, Hearing Officer**  
**NMED**  
**P.O. Box 26110**  
**Santa Fe, NM 87502**

and sent via first class mail to the following Counsel of Record for DOE and the Regents of the University of California:

**Joyce Hester Laeser**  
**Counsel**  
**United States Department of Energy**  
**Los Alamos Area Office**  
**528 35th Street**  
**Los Alamos, NM 87544**

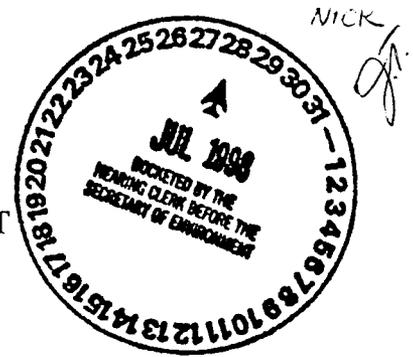
**Ms. Sheila Brown**  
**Los Alamos National Laboratory**  
**P.O. Box 1663, MS A187**  
**Los Alamos, NM 87545**

**Ms. Carol E. Dinkins**  
**Vinson & Elkins L.L.P.**  
**2300 First City Tower**  
**1001 Fannin**  
**Houston, TX 77002-6760**

  
**Tamella L. Gonzales**  
**Hearing Clerk**

**COPY**

STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF ENVIRONMENT



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

HRM 98-01 (CO)

NOTICE OF DOCKETING and  
NOTICE OF HEARING OFFICER ASSIGNMENT



The above captioned case is hereby docketed pursuant to the Adjudicatory Procedures - Environment Department, 20 NMAC 1.5, Section 201. An application was received on July 10, 1998.

In Accordance with NMSA 1978, Section 74-4-10 and 20 NMAC 1.5, Section 201.A, Weldon L. Merritt has been designated as a Hearing Officer.

Tamella L. Gonzales, Hearing Clerk  
New Mexico Environment Department

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Docketing and Hearing Officer Assignment was hand-delivered on this 28th day of July, 1998 to the following:

**Nick Persampieri, Esq.**  
**Asst. General Counsel/NMED**  
**P.O. Box 26110**  
**Santa Fe, NM 87502**  
**505-827-2982**

**Weldon L. Merritt, Hearing Officer**  
**NMED**  
**1190 St. Francis Drive**  
**Santa Fe, NM 87502**

and a copy was sent via first class mail to the following counsel of record for DOE and the Regents of the University of California:

**Joseph B. Rochelle**  
**Staff Attorney**  
**LANL**  
**P.O. Box 1663/MS A187**  
**1650 Trinity Drive**  
**Los Alamos, NM 87545**

**Hortense Haynes**  
**Counsel's Office**  
**Department of Energy**  
**Los Alamos Area Office**  
**528 35th Street**  
**Los Alamos, NM 87544**

  
\_\_\_\_\_  
Tamella L. Gonzales, Hearing Clerk  
New Mexico Environment Department



State of New Mexico  
**ENVIRONMENT DEPARTMENT**  
 Harold Runnels Building  
 1190 St. Francis Drive, P.O. Box 26110  
 Santa Fe, New Mexico 87502-0110  
 Tele (505) 827-2855  
 Fax (505) 827-2836



PETER MAGGIORE  
 ACTING SECRETARY

GARY E. JOHNSON  
 GOVERNOR

**COPY**

July 27, 1998

Joseph B. Rochelle  
 Staff Attorney  
 Los Alamos National Laboratory  
 P.O. Box 1663/MS A187  
 Los Alamos, NM 87544

Hortense Haynes  
 Counsels Office  
 DOE, Los Alamos Area Office  
 528 35th Street  
 Los Alamos, NM 87544

Joyce Hester Laeser  
 Counsel  
 DOE, Los Alamos Area Office  
 528 35th Street  
 Los Alamos, NM 87544

Nicholas F. Persampieri  
 Assistant General Counsel  
 NMED Office of General Counsel  
 P.O. Box 26110  
 Santa Fe, NM 87502

Re: *In the Matter of the United States Department of Energy and the Regents of the University of California, Los Alamos, New Mexico, Nos. HRM-98-01(CO), HRM-98-02(CO) & HRM-98-03(CO)*

Dear Counsel

The three above-captioned cases have been filed with my office. It seems to me that consolidation of these cases for hearing would be appropriate. Although I have signed Stipulated Orders in the first two of the cases, none of the orders have been for consolidation. If the parties agree that consolidation would be appropriate, I would appreciate it if one of you would prepare a motion and an order, or if you prefer, just a stipulated order to that effect and submit it to me for entry as soon as possible.

I also would appreciate some indication of when the parties would like the hearing to be scheduled. I understand that settlement discussions may be underway, and I certainly encourage that. At the same time, however, I prefer to have a hearing scheduled within a reasonable time, so that there will not be inordinate delay if the cases are not settled.

Thank you for your cooperation.

Sincerely,

Weldon L. Merritt  
 Hearing Officer



GARY E. JOHNSON  
GOVERNOR

State of New Mexico  
**ENVIRONMENT DEPARTMENT**

Harold Runnels Building  
1190 St. Francis Drive, P.O. Box 26110  
Santa Fe, New Mexico 87502-6110  
**OFFICE OF GENERAL COUNSEL**

PHONE: 505-827-2990  
FAX: 505-827-1628  
DIRECT LINE: 505-827-1031

July 17, 1998



MARK E. WEIDLER  
SECRETARY

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: DP Tank Farm, Compliance Order No. 98-01

Dear Joe:

In accordance with your request I enclose a copy of the documents in the Surface Water Quality Bureau's files regarding the DP Tank Farm.

In accordance with our telephone discussions, please be advised that I have included only the cover page to the RFI Report dated January 1996 and two pages from the Report which have handwritten notes.

I have also included only the cover letters for:

- (1) Two copies of the Final VCA Completion Report transmitted on August 12, 1996 and dated July 1996;
- (2) The Forty-Five Day Report dated July 11, 1995;
- (3) The Final Voluntary Corrective Action Plan transmitted April 10, 1996;
- (4) The Resubmittal of the RFI Report transmitted April 10, 1996.

I assume that your client has complete copies of each of these documents. If your client wants NMED to produce complete copies of any of these documents or if you have any questions about this production please advise.

Sincerely,

*Nicholas F. Persampieri*  
Nicholas F. Persampieri

John T.

**COMPLIANCE ORDER SUMMARY:**

LOS ALAMOS NATIONAL LABORATORY:

Los Alamos National Laboratory (LANL) is owned and co-operated by the Department of Energy and administered for the Department of Energy by the University of California. Since its inception in 1943, the LANL's primary mission has been nuclear weapons research and development. In addition, the LANL does work in magnetic and internal fusion, nuclear fission, nuclear safeguards and security, laser isotope separation, and medical isotope development. NMED issued two letters of violation to the LANL in 1990 and two other letters concerned with the LANL's failure to address discharges of hazardous waste - in 1992 and 1996. Recently, NMED has determined that the LANL has violated the New Mexico Hazardous Waste Management Regulations (20 NMAC 4.1) and the New Mexico Water Quality Control Commission Regulations (20 NMAC 6.2). The LANL is being issued a compliance order which addresses three (3) violations with a proposed penalty of \$ ..... The violations include:

- \* Failure to perform an adequate facility investigation which addresses all necessary action to determine and verify the degree and extent of on-site and off-site releases of hazardous constituents from solid waste management units (SWMU 21-029) and identify actual or potential receptors.

Recipients of compliance orders have the option of requesting a settlement meeting with NMED to contest the allegations and/or discuss possible settlement factors. If the facility claims it is unable to pay all or a portion of the proposed penalty, it must submit financial status documentation to NMED before inability to pay can be considered by NMED.

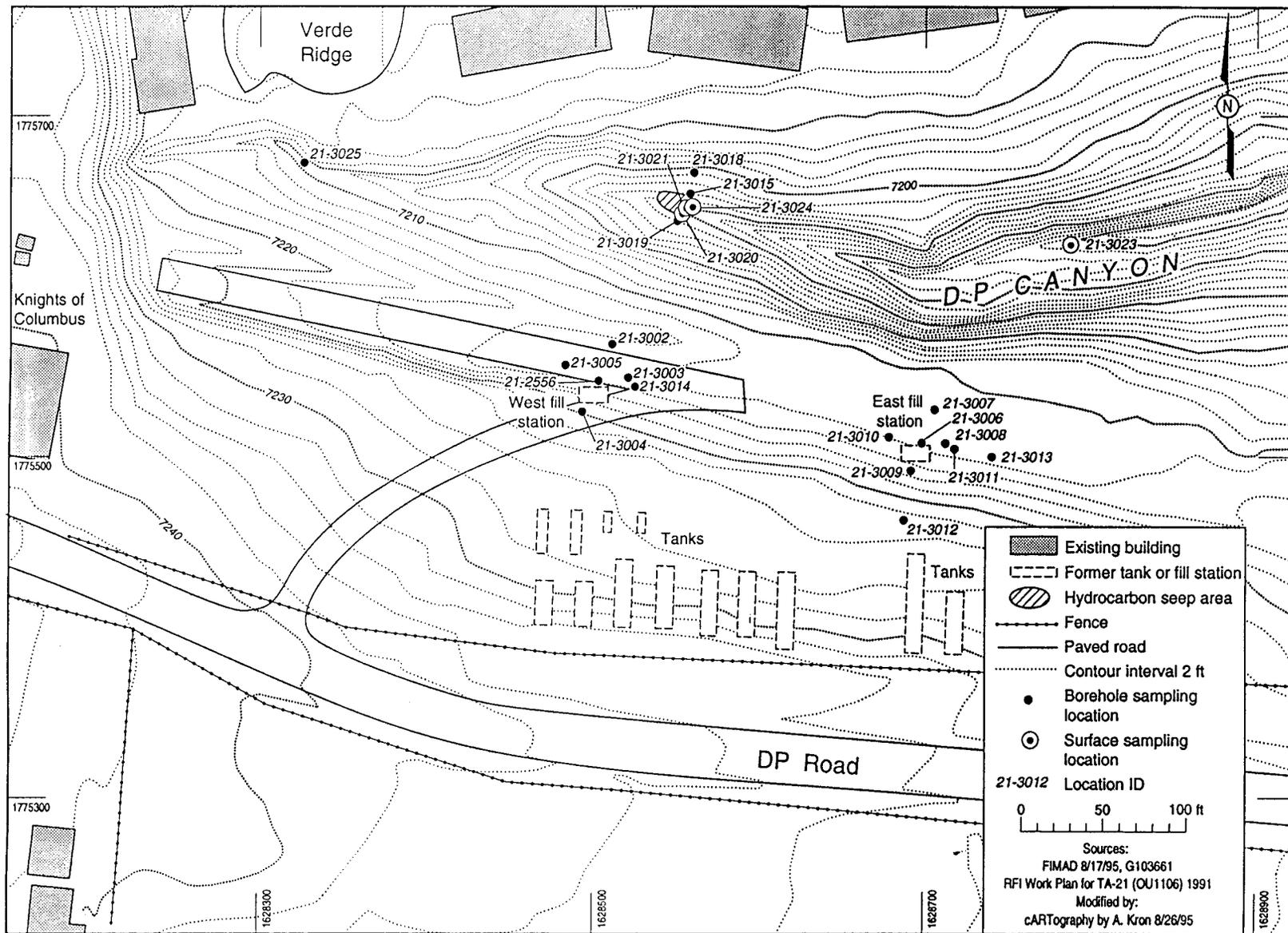


Fig. 5-2. Locations of samples collected during the 1995 investigation of DP Tank Farm, SWMU 21-029.

This is a listing of documents specifically regarding the Technical Area 21, Solid Waste Management Unit 21-029, DP Tank Farm. There is also the RCRA Facility Investigation Work Plan which is not included with this packet. Please do not write on the documents as some of them are part of the public file.

The following indicates the Date and Subject on the cover letter:

July 17, 1997 (EM/ER: 97-270) letter from DOE/LANL to HRMB:  
Response to Denial of RFI Report Dated January 1996 for LANL LA-UR-95-3693, TA 21 SWMU 21-029

June 12, 1997 letter from HRMB to DOE/LANL:  
Denial of RFI Report Dated January 1996 for LANL LA-UR-95-3693 Technical Area 21 SWMU 21-029

August 12, 1996 (EM/ER: 96-430) letter from DOE/LANL to HRMB:  
Final VCA Completion Report (LA-UR-96-2408) TA-21, PRS 21-029, DP Tank Farm

April 10, 1996 (EM/ER:96-204) letter from LANL to HRMB:  
Resubmittal of the RFI Report for SWMU 21-029

April 10, 1996 (EM/ER: 96-194) letter to HRMB from DOE/LANL:  
Final Voluntary Corrective Action Plan (LA-UR-96-1263) for Activities at Technical Area 21 (21-029)

January 22, 1996 (EM/ER:96-019) letter from DOE/LANL to EPA R6:  
RFI Report (LA-UR-95-3693) for Solid Waste Management Unit 21-029

November 2, 1995 letter from EPA R6 to DOE:  
Technical Memo for Technical Area 21, DP Tank Farm, Los Alamos National Laboratory

May 30, 1995 (EM/ER:95-229) letter to EPA R6 from DOE/LANL:  
Technical Memo for Technical Area 21, DP Tank Farm, SWMU 21-029: Briefing RFI Workplan Activities and Continued Investigation

May 11, 1995 Memo (Confidential) from Derek Faulk (consultant?) to Garry Allen (LANL):  
Revised DP Tank Farm Technical Memorandum

May 9, 1995, Revision 1, Sampling and Analysis Plan for Subsurface Soil Sampling at DP Tank Farm (21-029), Field Unit: 1, Technical Area: 21, FY 1995 Field Season, Prepared for LANL, Prepared by ERM/Golder

Please Return these Documents to John Kieling when you are finished

**COMPLIANCE ORDER SUMMARY:**

LOS ALAMOS NATIONAL LABORATORY:

Los Alamos National Laboratory (LANL) is owned and co-operated by the Department of Energy and administered for the Department of Energy by the University of California. Since its inception in 1943, the LANL's primary mission has been nuclear weapons research and development. In addition, the LANL does work in magnetic and internal fusion, nuclear fission, nuclear safeguards and security, laser isotope separation, and medical isotope development. NMED issued two letters of violation to the LANL in 1990 and two other letters concerned with the LANL's failure to address discharges of hazardous waste - in 1992 and 1996. Recently, NMED has determined that the LANL has violated the New Mexico Hazardous Waste Management Regulations (20 NMAC 4.1) and the New Mexico Water Quality Control Commission Regulations (20 NMAC 6.2). The LANL is being issued a compliance order which addresses three (3) violations with a proposed penalty of \$ ..... The violations include:

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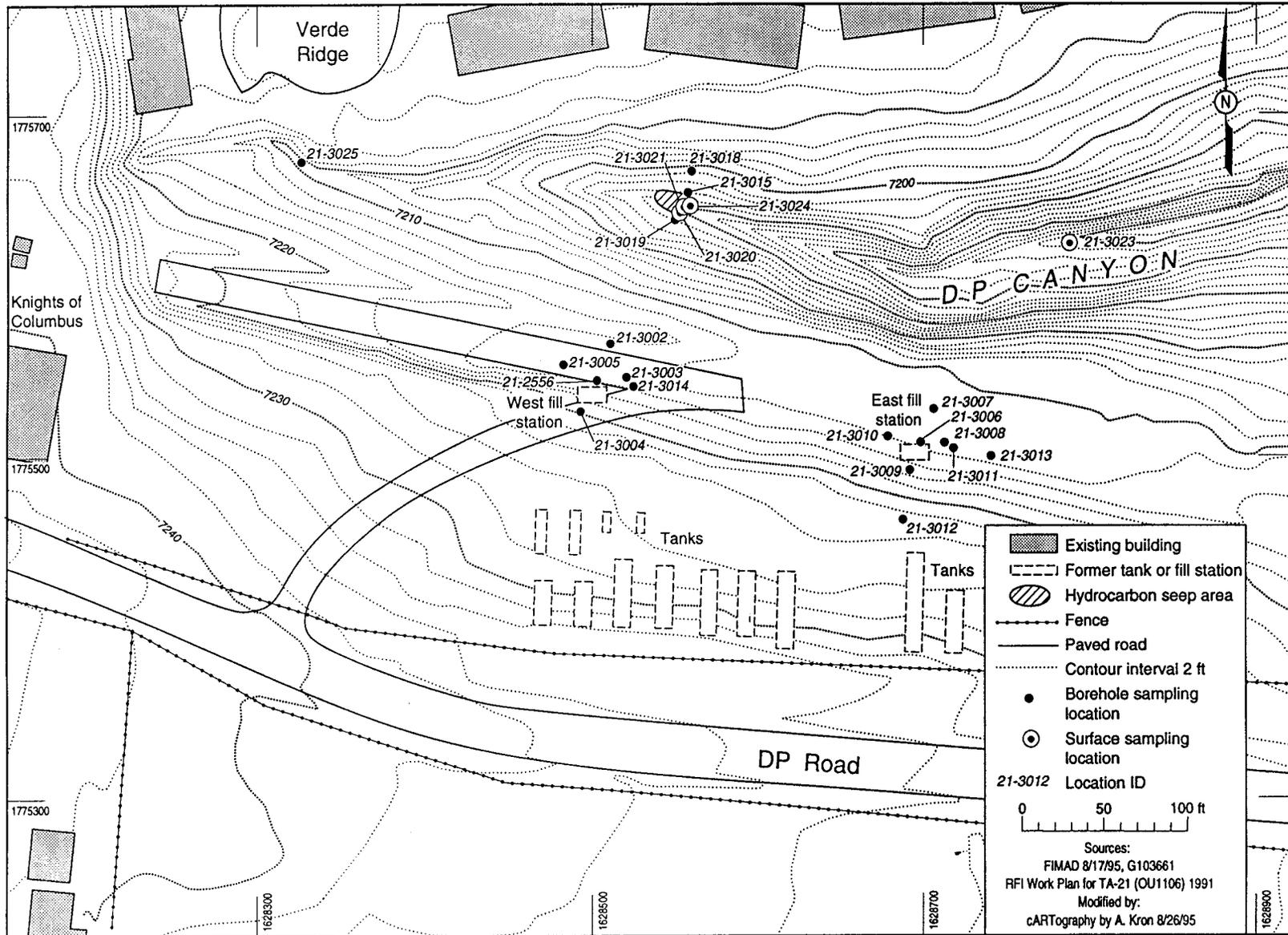


Fig. 5-2. Locations of samples collected during the 1995 investigation of DP Tank Farm, SWMU 21-029.

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SWMU 21-029

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21-029

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(21-029)

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Activities and Continued Investigation

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Revised DP Tank Farm Technical Memorandum

May 9, 1995, Revision 1, Sampling and Analysis Plan for Subsurface Soil Sampling at DP Tank  
Farm (21-029), Field Unit: 1, Technical Area: 21, FY 1995 Field Season, Prepared for LANL,  
Prepared by ERM/Golder

Please Return these Documents to John Kieling when you are finished

COPY

# Los Alamos

NATIONAL LABORATORY  
Laboratory Counsel  General Law Offices

P. O. Box 1663/MS A187  
1650 Trinity Drive  
Los Alamos, New Mexico 87545  
(505) 667-3766, FAX:665-4424

Date: July 9, 1998

Symbol: GL: 10520-9808/9818

Debra Gallegos  
P.O. Box 26110  
1190 St. Francis Drive  
Harold Runnels Building, N4084  
Santa Fe, NM 87502

RE: Compliance Order 98-01

Please find enclosed the original Answer to Administrative Compliance Order and Request For Hearing that has been signed by the United States Department of Energy and by the Regents of the University of California in connection with Compliance Order HRM - 98-01. Also enclosed is the Certificate of Service signed by Joseph Rochelle.

Sincerely,



Joseph B. Rochelle

Cys: Nick Persampieri, NMED  
Hortense Haynes, LAAO  
LC/GL

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

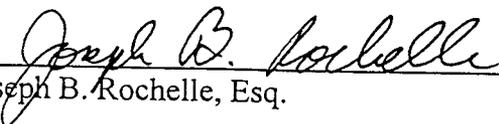
COMPLIANCE ORDER  
HRM - 98-01 (C0)

CERTIFICATE OF SERVICES

I hereby certify that a copy of the foregoing Answer was hand-delivered on the 9<sup>th</sup> day of  
July, 1998, to the following individuals:

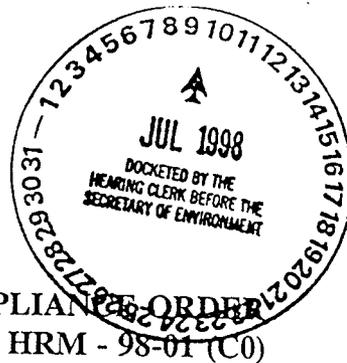
Nick Persampieri  
General Counsel  
New Mexico Environment Department  
1190 Runnels Building  
Santa Fe, NM 87505

Hortense Haynes  
Counsel's Office  
Department of Energy  
Los Alamos Area Office  
528 35<sup>th</sup> Street  
Los Alamos, NM 87544

  
\_\_\_\_\_  
Joseph B. Rochelle, Esq.



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 - 98-01 (C0)

ANSWER TO ADMINISTRATIVE COMPLIANCE ORDER  
AND REQUEST FOR HEARING

The United States Department of Energy (DOE) and The Regents of the University of California (UC) (collectively, Respondents) submit this joint Answer to Compliance Order HRM-98-01 (Order).

1. Respondents admit the findings contained in Paragraphs 1, 2, 3, 4, 5, and 6.
2. Respondents admit the findings contained in the first sentence of Paragraph 7. Respondents admit all of the findings contained in the second sentence of Paragraph 7, except that Respondents deny that Los Alamos National Laboratory (LANL) has applied for and received permits for the storage and management of wastes that are radioactive only.
3. Respondents admit the findings contained in Paragraphs 8, 9, 10, 11, 12, 13, and 14.
4. Respondents admit the findings contained in the first sentence of Paragraph 15. With regard to the findings contained in the second sentence of Paragraph 15, Respondents affirmatively state, as was stated in Section 1.1 of the RFI Report for Potential Release Site 21-029 (January 1996) that the property of the site of PRS 21-029 is surrounded by a 6 ft. chainlink fence, and further affirmatively state that outside the boundaries of the chainlink fence are the Knights of Columbus Hall to the west, a Los Alamos County fire station to the east, DP road to the south, and DP Canyon to the north. To the extent that the findings in the second sentence of Paragraph 15 are inconsistent or contrary to the affirmative statements in the preceding sentence, they are denied.
5. Respondents admit the findings contained in Paragraph 16.
6. Respondents admit the findings contained in the first sentence of Paragraph 17. With regard to the findings contained in the second sentence of Paragraph 17, Respondents affirmatively state that Module VIII of Respondents' Hazardous Waste Facility Permit, Permit No. NM0890010515, as amended (Module VIII), requires Respondents to "collect analytical data on groundwater, soils, surface water, sediment, and subsurface gas contamination when necessary to characterize contamination from a [Solid Waste Management Unit] SWMU", including SWMU

21-029. Respondents further affirmatively state that Module VIII requires that such data be sufficient to define the extent, origin, direction and rate of movement of contaminant plumes. To the extent that the findings in the second sentence of Paragraph 17 are inconsistent with the affirmative statements contained in the preceding two sentences, they are denied.

7. Respondents admit the findings contained in Paragraph 18 and Respondents affirmatively state that the term "off-site" as used in the LANL permit means off of or outside of the boundaries of the LANL facility.

8. Respondents admit the findings contained in Paragraph 19.

9. With regard to the findings contained in Paragraph 20, exclusive of the findings contained in subparagraphs a., b., and c., Respondents deny all of these findings except that Respondents admit upon information and belief that as to the "seep" located in DP Canyon, Respondents are continuing to take all necessary actions, as this seep is identified and referred to in the LANL Response to Denial Letter, transmitted to Complainant by way of letter from Respondents to Benito Garcia dated July 17, 1997.

10. With regard to the findings contained in subparagraph 20.a., Respondents admit that they applied UST criteria by testing for BTEX and Total Petroleum Hydrocarbons, but deny that this was improper, and further deny the remaining findings contained in this subparagraph. Respondents affirmatively state upon information and belief that their efforts to address contamination at the site through application of the UST regulations was both known and approved by various NMED Bureaus, including the Hazardous and Radioactive Materials Bureau and the Underground Storage Tank Bureau. Respondents further affirmatively state that they tested for individual hazardous constituents in 1994 by taking a number of surface and subsurface samples at SWMU 21-029, and determined on the basis of the analytical results of these samples that petroleum hydrocarbons were the only contaminants of concern.

11. With regard to the findings contained in subparagraph 20.b., Respondents deny that they have failed to conduct further characterization to define the vertical and horizontal extent of contamination in the area of the former West Fill Station, and deny that the remaining findings contained in this paragraph support this finding. Respondents deny that any samples were taken from Borehole 21-30003 and further deny that any such Borehole ever existed. Respondents admit that TPH levels in samples from Borehole 21-3003 exceeded 670 ppm and that no boring was made beyond that boring to determine the horizontal extent of contamination. Respondents further admit that samples from boreholes 21-3002 and 21-3005 showed that BTEX and benzene are at the bottom of those boreholes, that such boreholes were drilled to approximately 35 feet below the surface of the ground, and that samples were not taken from greater depths. Respondents affirmatively state that for the purposes of protecting human health and the environment, adequate bounding of the presence of TPH, BTEX and benzene was achieved.

12. Respondents admit the allegations contained in subparagraph 20.c. Respondents affirmatively state that these samples were confirmatory samples taken during a voluntary corrective action in May, 1996, and were taken from locations considerably below the ground surface. Respondents further affirmatively state that the concentrations of contaminants indicated by these samples analytical results do not pose a threat to human health or the environment.

13. With regard to the findings contained in Paragraph 21, Respondents admit that further evaluation is warranted of potential contamination migration pathways associated with the "seep" in DP Canyon, as identified and referenced in the LANL Response to Denial Letter, transmitted to Complainant by way of letter from Respondents to Benito Garcia, dated July 17, 1997, admit that what appears to be petroleum contamination has been observed on the surface of waters in the ephemeral stream at the headworks of DP Canyon, admit that the tuff underneath the site has been found to be fractured, and admit that contaminant fate and transport mechanisms potentially occurring in association with the "seep" in lower reaches of DP Canyon have not been completely evaluated. Respondents deny all findings contained in Paragraph 21 to the extent that they are inconsistent with or contrary to the admissions contained in the preceding sentence. Respondents affirmatively state that sufficient evaluation occurred within the fenced boundaries of SWMU 21-029, and that upon information and belief further evaluation of the "seep" may be warranted.

14. With regard to the findings contained in Paragraph 22, Respondents deny all of these findings except that Respondents admit that the referenced RFI report states that "[t]he area provides limited habitat for biota, does not contain sensitive habitats, and threatened or endangered species are not present there." Respondents affirmatively state that the referenced RFI report also concludes that threatened and endangered species are not in the immediate area of SWMU 21-029 by stating: "The mesa top at DP Tank Farm is within the townsite. The surrounding area has heavy commercial development and urban disturbance. The affected habitat in this area is assessed in the ecological surveys of TAs 1, 32, and 21 (Bennett 1992, 01-0008; Biggs 1993, 01-0019). As these surveys show, there are no threatened or endangered species in the immediate vicinity of DP Tank Farm."

### CONCLUSIONS OF LAW

15. Respondents admit the conclusions contained in Paragraphs 23, 24, 25 and 26.

16 Respondents admit the conclusions contained in Paragraph 27, except that Respondents deny that Respondents engage in the disposal of hazardous waste on-site.

17. Respondents deny the conclusions contained in Paragraph 28, except that Respondents admit that 20 NMAC 4.1.500 incorporates by reference federal regulation 40 CFR 264 (Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities) and that 20 NMAC 4.1.500 applies to the LANL facility to the extent that

the LANL facility engages in storage or treatment of hazardous wastes subject to hazardous waste permitting requirements.

18. Respondents deny all the conclusions contained in Paragraph 29, except that Respondents admit that 20 NMAC 4.1.500 incorporates in part federal regulation 40 CFR Part 264, Subpart F by reference, and admit upon information and belief that as to the "seep" located in DP Canyon, as this seep is identified and referred to in the LANL Response to Denial Letter, transmitted to Complainant by way of letter from Respondents to Benito Garcia, dated July 17, 1997, Respondents are completing all necessary actions to determine and verify the nature and extent of releases of hazardous waste or hazardous constituents associated with this seep.

19. Respondents deny all the conclusions contained in Paragraph 30, except that Respondents admit that 20 NMAC 4.1.500 incorporates in part federal regulation 40 CFR Part 264, Subpart F by reference, and admit that as to the "seep," located in DP Canyon, as this seep is identified and referred to in the LANL Response to Denial Letter, transmitted to Complainant by way of letter from Respondents to Benito Garcia, dated July 17, 1997, Respondents are continuing to further evaluate potential contaminant migration pathways.

20. Respondents deny all the conclusions contained in Paragraph 31, except that Respondents admit that 20 NMAC 4.1.500 incorporates in part federal regulation 40 CFR Part 264, Subpart F by reference.

### **FIRST AFFIRMATIVE DEFENSE**

Respondents' Answer and each denial or affirmative statement contained therein constitute Respondents' first affirmative defense.

### **SECOND AFFIRMATIVE DEFENSE**

Respondents state that Compliance Order 98-01 (Order) is unwarranted and premature and the subject matter of the Order is unripe for this administrative proceeding on the basis that SWMU 21-029 was subject to further ongoing review and action by the NMED UST Bureau (USTB), which in turn upon information and belief was awaiting final review and action on the site by the NMED Surface Water Bureau (SWB), all of which had not occurred at the time of the issuance of the Order. Complainant through communications from the Hazardous and Radioactive Materials Bureau (HRMB) to Respondents has admitted that the site of SWMU 21-029 (Site) is subject to closure requirements under the NMED UST Bureau.

### **THIRD AFFIRMATIVE DEFENSE**

Respondents state that the Order is unwarranted and premature and the subject matter of the Order is unripe for this administrative proceeding because Complainant is bound by the legal

doctrine of waiver. Complainant has acknowledged through communications from the NMED HRMB, USTB and SWQB received by Respondents that final action on this site would require closure under the USTB requirements and this latter agency had not finally acted on the site. Upon information and belief the USTB was awaiting final action by SWQB and this latter agency had not finally acted on the site. Complainant required and induced Respondents to rely and wait upon final actions by these two Bureaus; therefore, Complainant waived any right to object to Respondents' ongoing characterization of the site.

#### **FOURTH AFFIRMATIVE DEFENSE**

Respondents state that the Order is unwarranted and premature and the subject matter of the Order is unripe for this administrative proceeding because Complainant is bound by the legal doctrine of estoppel. Complainant has acknowledged through communications from the NMED HRMB, USTB and SWQB received by Respondents that final action on this site would require closure under the USTB requirements and this latter agency had not finally acted on the site. Upon information and belief the USTB was awaiting final action by the SWQB and this latter agency had not finally acted on the site. By inducing Respondents to rely and wait upon final actions by these two Bureaus, which Respondents did in fact rely upon, Complainant is estopped from complaining about Respondents ongoing characterization of the site, if any.

#### **FIFTH AFFIRMATIVE DEFENSE**

With regard to the allegations contained in Paragraph 20, Subparagraphs 20.a., b., and c., and Paragraphs 21, 29 and 30, Respondents state that Complainant through HRMB and its authorizing and predecessor administrative authority, the United States Environmental Protection Agency (EPA), acknowledged and represented orally, in writing and by way of practice that given SWMUs could be addressed through the application of alternate regulatory requirements, including UST regulatory standards for corrective action and closure of a site containing underground storage tanks. Respondents relied and acted upon such acknowledgments and representations in addressing SWMU 21-029 by applying UST corrective action and closure standards. Complainant is bound by the legal doctrines of waiver and estoppel with regard to Respondents' reliance and actions.

#### **SIXTH AFFIRMATIVE DEFENSE**

With regard to Complainant's issuance of this Compliance Order, which contains a Schedule of Compliance and assesses civil penalties, Respondents state that Complainant in its letter rejecting the RFI Report for PRS 21-029 (January 1996), dated June 12, 1997, from Robert S. Dinwiddie to Theodore J. Taylor and Jorg Jansen (Letter), provided no notice that any subsequent submittals of Respondents would be responded to by or the subject matter of a Compliance Order. Respondents submitted a response to the Letter by way of letter to Benito Garcia, dated July 17, 1997 and Complainant without any notice whatsoever issued this Compliance Order. In light of Complainant's failure to provide adequate notice to

Respondents, Complainant's issuance of this Compliance Order, which contains alleged violations, mandates specified actions and assesses civil penalties, constitutes arbitrary, capricious and unlawful action and violates the due process and equal protection clauses of the Fourteenth Amendment to the U.S. Constitution and the due process and equal protection clauses of Article II, Section 18 of the State of New Mexico Constitution.

#### **SEVENTH AFFIRMATIVE DEFENSE**

With regard to Complainant's issuance of this Compliance Order which contains a Schedule of Compliance and assesses civil penalties, Respondents state that Complainant has issued no regulations, nor provided any guidance, letter or policy notifying Respondents that upon Complainant's denial of a No Further Action Proposal, Complainant would resort to issuance of an administrative compliance order mandating specified actions and assessing civil penalties; in light of Complainant's failure to provide notice to Respondents through issuance of any such regulation, guidance, letter or policy, Complainant's alleging the violations contained in the Compliance Order, mandating specified actions, and assessing civil penalties in connection therewith constitute arbitrary, capricious and unlawful actions and violate the due process and equal protection clauses of the Fourteenth Amendment to the U.S. Constitution and the due process and equal protection clauses of Article II, Section 18 of the State of New Mexico Constitution.

#### **EIGHTH AFFIRMATIVE DEFENSE**

With regard to the allegations contained in Paragraph 20, Subparagraphs 20. a., b., and c., and Paragraphs 21, 29 and 30, Respondents state that they are in the process of meeting the applicable UST regulatory standards for corrective action and closure of a site containing underground storage tanks.

#### **NINTH AFFIRMATIVE DEFENSE**

With regard to the allegations contained in Paragraph 20, Subparagraphs 20. a., b., and c., and Paragraphs 21, 29, and 30, Respondents state that they have been in the process of meeting the applicable SWB standards as they may apply to the "seep," located in DP Canyon, as this seep is identified and referenced in the LANL Response to Denial Letter, transmitted to Complainant by way of letter from Respondents to Benito Garcia, dated July 17, 1997.

#### **TENTH AFFIRMATIVE DEFENSE**

Respondents state that in issuing this Order, Complainant has not acted in accordance with provision I. (4) of Module VIII, inasmuch as this provision states that in the event the Administrative Authority disapproves an RFI report, it shall specify the deficiencies and Respondents shall have 30 days to respond to the stated deficiencies, and that if the modified report is not approved, the Administrative Authority may make further modifications as

required. Respondents responded to the disapproved RFI Report for SWMU 21-029 by way of letter to Benito Garcia, dated July 17, 1997, and Complainant's apparent response has been to issue this Order, thereby failing to act in accordance with the above described provision. In issuing this Order, Complainant has not acted in accordance with subsection I. (4) of Module VIII, and Respondents invoke subsection B.3. of Module VIII as a shield and affirmative defense against the issuance of this Order and the civil penalties and relief it seeks.

#### ELEVENTH AFFIRMATIVE DEFENSE

With regard to the civil penalties proposed by Complainant, Respondents state that as to the alleged violations enumerated in the Order which Respondents have denied in this Answer, no civil penalty may be imposed.

#### TWELFTH AFFIRMATIVE DEFENSE

With regard to the civil penalties proposed by Complainant, Respondents assert the following defenses:

- a. Complainant failed to consider the good faith efforts of Respondents to comply with alleged applicable requirements, pursuant to 74-4-10.B NMSA 1978;
- b. Complainant failed to consider the seriousness of the violation, pursuant to 74-4-10.B. NMSA 1978;
- c. Complainant failed to adhere to the Hazardous Waste Penalty Policy adopted by Complainant on September 4, 1992;
- d. Complainant's imposition of penalties is arbitrary, capricious, unlawful and without substantial basis in law or in fact; and
- e. Complainant improperly imposed penalties for violations of law which did not occur.

The Compliance Order contains in Paragraph 33 a Schedule of Compliance and an ordered action requiring Respondents to submit an acceptable RCRA Facility Work Plan for SWMU 21-029 within 90 calendar days of receipt of the Order. Respondents object to this requirement on the basis of its being vague and overly broad. Notwithstanding any response on the part of Respondents to Paragraph 33, Respondents state (a) that in the event they complete the ordered action, Respondents do not admit the underlying finding or conclusion contained in any numbered Paragraphs of the Order that may be related to the ordered action, unless specifically admitted in this Answer; (b) that they reserve the right to contest and dispute any underlying finding or conclusion relating to the ordered action, unless the underlying finding or conclusion have been specifically admitted in this Answer; and (c) that Respondents deny on

both substantive and procedural grounds, Complainant's basis for requiring Respondents to complete the ordered action contained in Paragraph 33, and hereby place at issue all elements and aspects of the ordered action unless Respondents have admitted both the underlying finding and the underlying conclusion contained in the related numbered Paragraph in the Order.

**FACTS PLACED AT ISSUE**

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

**REQUEST FOR HEARING**

Respondents hereby request a hearing pursuant to Section 74-4-10 of the New Mexico Hazardous Waste Act, NMSA 1978 and 20 NMAC 1.5.200.

WHEREFORE, Respondents request that Complainant be required to rescind the Compliance Order in its entirety, or, in the alternative, that the determination be made that Respondents did not commit the violations alleged by Complainant in the Order unless specifically admitted to by Respondents in this Answer, that the civil penalties proposed by Complainant be denied, or, in the event that a violation is determined to have occurred, which Respondents specifically deny, any proposed civil penalty for any such violation be reduced, that the Schedule of Compliance and action ordered thereunder by Complainant be denied, and that other such relief as the Hearing Officer deems just and proper be granted.

I hereby affirm my belief that the information contained herein is to the best of my knowledge true and correct.

The Regents of the University of California

Date July 9, 1998

By Joseph B. Pochelle

I hereby affirm my belief that the information contained herein is to the best of my knowledge true and correct.

United States Department of Energy

Date 9 July '98

By [Signature]

COPY

# Los Alamos

NATIONAL LABORATORY  
*Laboratory Counsel*  *General Law Offices*

*P. O. Box 1663/MS A187  
1650 Trinity Drive  
Los Alamos, New Mexico 87545  
(505) 667-3766, FAX:665-4424*

*Date:* July 9, 1998

*Symbol:* GL: 10520-9808/9818

Debra Gallegos  
P.O. Box 26110  
1190 St. Francis Drive  
Harold Runnels Building, N4084  
Santa Fe, NM 87502

RE: Compliance Order 98-01

Please find enclosed the original Answer to Administrative Compliance Order and Request For Hearing that has been signed by the United States Department of Energy and by the Regents of the University of California in connection with Compliance Order HRM - 98-01. Also enclosed is the Certificate of Service signed by Joseph Rochelle.

Sincerely,



Joseph B. Rochelle

Cys: Nick Persampieri, NMED  
Hortense Haynes, LAAO  
LC/GL

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

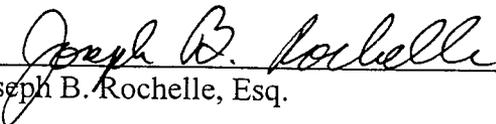
COMPLIANCE ORDER  
HRM - 98-01 (C0)

CERTIFICATE OF SERVICES

I hereby certify that a copy of the foregoing Answer was hand-delivered on the 9<sup>th</sup> day of  
July, 1998, to the following individuals:

Nick Persampieri  
General Counsel  
New Mexico Environment Department  
1190 Runnels Building  
Santa Fe, NM 87505

Hortense Haynes  
Counsel's Office  
Department of Energy  
Los Alamos Area Office  
528 35<sup>th</sup> Street  
Los Alamos, NM 87544

  
\_\_\_\_\_  
Joseph B. Rochelle, Esq.



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 - 98-01 (C0)

ANSWER TO ADMINISTRATIVE COMPLIANCE ORDER  
AND REQUEST FOR HEARING

The United States Department of Energy (DOE) and The Regents of the University of California (UC) (collectively, Respondents) submit this joint Answer to Compliance Order HRM-98-01 (Order).

1. Respondents admit the findings contained in Paragraphs 1, 2, 3, 4, 5, and 6.
2. Respondents admit the findings contained in the first sentence of Paragraph 7. Respondents admit all of the findings contained in the second sentence of Paragraph 7, except that Respondents deny that Los Alamos National Laboratory (LANL) has applied for and received permits for the storage and management of wastes that are radioactive only.
3. Respondents admit the findings contained in Paragraphs 8, 9, 10, 11, 12, 13, and 14.
4. Respondents admit the findings contained in the first sentence of Paragraph 15. With regard to the findings contained in the second sentence of Paragraph 15, Respondents affirmatively state, as was stated in Section 1.1 of the RFI Report for Potential Release Site 21-029 (January 1996) that the property of the site of PRS 21-029 is surrounded by a 6 ft. chainlink fence, and further affirmatively state that outside the boundaries of the chainlink fence are the Knights of Columbus Hall to the west, a Los Alamos County fire station to the east, DP road to the south, and DP Canyon to the north. To the extent that the findings in the second sentence of Paragraph 15 are inconsistent or contrary to the affirmative statements in the preceding sentence, they are denied.
5. Respondents admit the findings contained in Paragraph 16.
6. Respondents admit the findings contained in the first sentence of Paragraph 17. With regard to the findings contained in the second sentence of Paragraph 17, Respondents affirmatively state that Module VIII of Respondents' Hazardous Waste Facility Permit, Permit No. NM0890010515, as amended (Module VIII), requires Respondents to "collect analytical data on groundwater, soils, surface water, sediment, and subsurface gas contamination when necessary to characterize contamination from a [Solid Waste Management Unit] SWMU", including SWMU

21-029. Respondents further affirmatively state that Module VIII requires that such data be sufficient to define the extent, origin, direction and rate of movement of contaminant plumes. To the extent that the findings in the second sentence of Paragraph 17 are inconsistent with the affirmative statements contained in the preceding two sentences, they are denied.

7. Respondents admit the findings contained in Paragraph 18 and Respondents affirmatively state that the term "off-site" as used in the LANL permit means off of or outside of the boundaries of the LANL facility.

8. Respondents admit the findings contained in Paragraph 19.

9. With regard to the findings contained in Paragraph 20, exclusive of the findings contained in subparagraphs a., b., and c., Respondents deny all of these findings except that Respondents admit upon information and belief that as to the "seep" located in DP Canyon, Respondents are continuing to take all necessary actions, as this seep is identified and referred to in the LANL Response to Denial Letter, transmitted to Complainant by way of letter from Respondents to Benito Garcia dated July 17, 1997.

10. With regard to the findings contained in subparagraph 20.a., Respondents admit that they applied UST criteria by testing for BTEX and Total Petroleum Hydrocarbons, but deny that this was improper, and further deny the remaining findings contained in this subparagraph. Respondents affirmatively state upon information and belief that their efforts to address contamination at the site through application of the UST regulations was both known and approved by various NMED Bureaus, including the Hazardous and Radioactive Materials Bureau and the Underground Storage Tank Bureau. Respondents further affirmatively state that they tested for individual hazardous constituents in 1994 by taking a number of surface and subsurface samples at SWMU 21-029, and determined on the basis of the analytical results of these samples that petroleum hydrocarbons were the only contaminants of concern.

11. With regard to the findings contained in subparagraph 20.b., Respondents deny that they have failed to conduct further characterization to define the vertical and horizontal extent of contamination in the area of the former West Fill Station, and deny that the remaining findings contained in this paragraph support this finding. Respondents deny that any samples were taken from Borehole 21-30003 and further deny that any such Borehole ever existed. Respondents admit that TPH levels in samples from Borehole 21-3003 exceeded 670 ppm and that no boring was made beyond that boring to determine the horizontal extent of contamination. Respondents further admit that samples from boreholes 21-3002 and 21-3005 showed that BTEX and benzene are at the bottom of those boreholes, that such boreholes were drilled to approximately 35 feet below the surface of the ground, and that samples were not taken from greater depths. Respondents affirmatively state that for the purposes of protecting human health and the environment, adequate bounding of the presence of TPH, BTEX and benzene was achieved.

12. Respondents admit the allegations contained in subparagraph 20.c. Respondents affirmatively state that these samples were confirmatory samples taken during a voluntary corrective action in May, 1996, and were taken from locations considerably below the ground surface. Respondents further affirmatively state that the concentrations of contaminants indicated by these samples analytical results do not pose a threat to human health or the environment.

13. With regard to the findings contained in Paragraph 21, Respondents admit that further evaluation is warranted of potential contamination migration pathways associated with the "seep" in DP Canyon, as identified and referenced in the LANL Response to Denial Letter, transmitted to Complainant by way of letter from Respondents to Benito Garcia, dated July 17, 1997, admit that what appears to be petroleum contamination has been observed on the surface of waters in the ephemeral stream at the headworks of DP Canyon, admit that the tuff underneath the site has been found to be fractured, and admit that contaminant fate and transport mechanisms potentially occurring in association with the "seep" in lower reaches of DP Canyon have not been completely evaluated. Respondents deny all findings contained in Paragraph 21 to the extent that they are inconsistent with or contrary to the admissions contained in the preceding sentence. Respondents affirmatively state that sufficient evaluation occurred within the fenced boundaries of SWMU 21-029, and that upon information and belief further evaluation of the "seep" may be warranted.

14. With regard to the findings contained in Paragraph 22, Respondents deny all of these findings except that Respondents admit that the referenced RFI report states that "[t]he area provides limited habitat for biota, does not contain sensitive habitats, and threatened or endangered species are not present there." Respondents affirmatively state that the referenced RFI report also concludes that threatened and endangered species are not in the immediate area of SWMU 21-029 by stating: "The mesa top at DP Tank Farm is within the townsite. The surrounding area has heavy commercial development and urban disturbance. The affected habitat in this area is assessed in the ecological surveys of TAs 1, 32, and 21 (Bennett 1992, 01-0008; Biggs 1993, 01-0019). As these surveys show, there are no threatened or endangered species in the immediate vicinity of DP Tank Farm."

### CONCLUSIONS OF LAW

15. Respondents admit the conclusions contained in Paragraphs 23, 24, 25 and 26.

16 Respondents admit the conclusions contained in Paragraph 27, except that Respondents deny that Respondents engage in the disposal of hazardous waste on-site.

17. Respondents deny the conclusions contained in Paragraph 28, except that Respondents admit that 20 NMAC 4.1.500 incorporates by reference federal regulation 40 CFR 264 (Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities) and that 20 NMAC 4.1.500 applies to the LANL facility to the extent that

the LANL facility engages in storage or treatment of hazardous wastes subject to hazardous waste permitting requirements.

18. Respondents deny all the conclusions contained in Paragraph 29, except that Respondents admit that 20 NMAC 4.1.500 incorporates in part federal regulation 40 CFR Part 264, Subpart F by reference, and admit upon information and belief that as to the "seep" located in DP Canyon, as this seep is identified and referred to in the LANL Response to Denial Letter, transmitted to Complainant by way of letter from Respondents to Benito Garcia, dated July 17, 1997, Respondents are completing all necessary actions to determine and verify the nature and extent of releases of hazardous waste or hazardous constituents associated with this seep.

19. Respondents deny all the conclusions contained in Paragraph 30, except that Respondents admit that 20 NMAC 4.1.500 incorporates in part federal regulation 40 CFR Part 264, Subpart F by reference, and admit that as to the "seep," located in DP Canyon, as this seep is identified and referred to in the LANL Response to Denial Letter, transmitted to Complainant by way of letter from Respondents to Benito Garcia, dated July 17, 1997, Respondents are continuing to further evaluate potential contaminant migration pathways.

20. Respondents deny all the conclusions contained in Paragraph 31, except that Respondents admit that 20 NMAC 4.1.500 incorporates in part federal regulation 40 CFR Part 264, Subpart F by reference.

### **FIRST AFFIRMATIVE DEFENSE**

Respondents' Answer and each denial or affirmative statement contained therein constitute Respondents' first affirmative defense.

### **SECOND AFFIRMATIVE DEFENSE**

Respondents state that Compliance Order 98-01 (Order) is unwarranted and premature and the subject matter of the Order is unripe for this administrative proceeding on the basis that SWMU 21-029 was subject to further ongoing review and action by the NMED UST Bureau (USTB), which in turn upon information and belief was awaiting final review and action on the site by the NMED Surface Water Bureau (SWB), all of which had not occurred at the time of the issuance of the Order. Complainant through communications from the Hazardous and Radioactive Materials Bureau (HRMB) to Respondents has admitted that the site of SWMU 21-029 (Site) is subject to closure requirements under the NMED UST Bureau.

### **THIRD AFFIRMATIVE DEFENSE**

Respondents state that the Order is unwarranted and premature and the subject matter of the Order is unripe for this administrative proceeding because Complainant is bound by the legal

doctrine of waiver. Complainant has acknowledged through communications from the NMED HRMB, USTB and SWQB received by Respondents that final action on this site would require closure under the USTB requirements and this latter agency had not finally acted on the site. Upon information and belief the USTB was awaiting final action by SWQB and this latter agency had not finally acted on the site. Complainant required and induced Respondents to rely and wait upon final actions by these two Bureaus; therefore, Complainant waived any right to object to Respondents' ongoing characterization of the site.

#### **FOURTH AFFIRMATIVE DEFENSE**

Respondents state that the Order is unwarranted and premature and the subject matter of the Order is unripe for this administrative proceeding because Complainant is bound by the legal doctrine of estoppel. Complainant has acknowledged through communications from the NMED HRMB, USTB and SWQB received by Respondents that final action on this site would require closure under the USTB requirements and this latter agency had not finally acted on the site. Upon information and belief the USTB was awaiting final action by the SWQB and this latter agency had not finally acted on the site. By inducing Respondents to rely and wait upon final actions by these two Bureaus, which Respondents did in fact rely upon, Complainant is estopped from complaining about Respondents ongoing characterization of the site, if any.

#### **FIFTH AFFIRMATIVE DEFENSE**

With regard to the allegations contained in Paragraph 20, Subparagraphs 20.a., b., and c., and Paragraphs 21, 29 and 30, Respondents state that Complainant through HRMB and its authorizing and predecessor administrative authority, the United States Environmental Protection Agency (EPA), acknowledged and represented orally, in writing and by way of practice that given SWMUs could be addressed through the application of alternate regulatory requirements, including UST regulatory standards for corrective action and closure of a site containing underground storage tanks. Respondents relied and acted upon such acknowledgments and representations in addressing SWMU 21-029 by applying UST corrective action and closure standards. Complainant is bound by the legal doctrines of waiver and estoppel with regard to Respondents' reliance and actions.

#### **SIXTH AFFIRMATIVE DEFENSE**

With regard to Complainant's issuance of this Compliance Order, which contains a Schedule of Compliance and assesses civil penalties, Respondents state that Complainant in its letter rejecting the RFI Report for PRS 21-029 (January 1996), dated June 12, 1997, from Robert S. Dinwiddie to Theodore J. Taylor and Jorg Jansen (Letter), provided no notice that any subsequent submittals of Respondents would be responded to by or the subject matter of a Compliance Order. Respondents submitted a response to the Letter by way of letter to Benito Garcia, dated July 17, 1997 and Complainant without any notice whatsoever issued this Compliance Order. In light of Complainant's failure to provide adequate notice to

Respondents, Complainant's issuance of this Compliance Order, which contains alleged violations, mandates specified actions and assesses civil penalties, constitutes arbitrary, capricious and unlawful action and violates the due process and equal protection clauses of the Fourteenth Amendment to the U.S. Constitution and the due process and equal protection clauses of Article II, Section 18 of the State of New Mexico Constitution.

#### **SEVENTH AFFIRMATIVE DEFENSE**

With regard to Complainant's issuance of this Compliance Order which contains a Schedule of Compliance and assesses civil penalties, Respondents state that Complainant has issued no regulations, nor provided any guidance, letter or policy notifying Respondents that upon Complainant's denial of a No Further Action Proposal, Complainant would resort to issuance of an administrative compliance order mandating specified actions and assessing civil penalties; in light of Complainant's failure to provide notice to Respondents through issuance of any such regulation, guidance, letter or policy, Complainant's alleging the violations contained in the Compliance Order, mandating specified actions, and assessing civil penalties in connection therewith constitute arbitrary, capricious and unlawful actions and violate the due process and equal protection clauses of the Fourteenth Amendment to the U.S. Constitution and the due process and equal protection clauses of Article II, Section 18 of the State of New Mexico Constitution.

#### **EIGHTH AFFIRMATIVE DEFENSE**

With regard to the allegations contained in Paragraph 20, Subparagraphs 20. a., b., and c., and Paragraphs 21, 29 and 30, Respondents state that they are in the process of meeting the applicable UST regulatory standards for corrective action and closure of a site containing underground storage tanks.

#### **NINTH AFFIRMATIVE DEFENSE**

With regard to the allegations contained in Paragraph 20, Subparagraphs 20. a., b., and c., and Paragraphs 21, 29, and 30, Respondents state that they have been in the process of meeting the applicable SWB standards as they may apply to the "seep," located in DP Canyon, as this seep is identified and referenced in the LANL Response to Denial Letter, transmitted to Complainant by way of letter from Respondents to Benito Garcia, dated July 17, 1997.

#### **TENTH AFFIRMATIVE DEFENSE**

Respondents state that in issuing this Order, Complainant has not acted in accordance with provision I. (4) of Module VIII, inasmuch as this provision states that in the event the Administrative Authority disapproves an RFI report, it shall specify the deficiencies and Respondents shall have 30 days to respond to the stated deficiencies, and that if the modified report is not approved, the Administrative Authority may make further modifications as

required. Respondents responded to the disapproved RFI Report for SWMU 21-029 by way of letter to Benito Garcia, dated July 17, 1997, and Complainant's apparent response has been to issue this Order, thereby failing to act in accordance with the above described provision. In issuing this Order, Complainant has not acted in accordance with subsection I. (4) of Module VIII, and Respondents invoke subsection B.3. of Module VIII as a shield and affirmative defense against the issuance of this Order and the civil penalties and relief it seeks.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

With regard to the civil penalties proposed by Complainant, Respondents state that as to the alleged violations enumerated in the Order which Respondents have denied in this Answer, no civil penalty may be imposed.

#### **TWELFTH AFFIRMATIVE DEFENSE**

With regard to the civil penalties proposed by Complainant, Respondents assert the following defenses:

- a. Complainant failed to consider the good faith efforts of Respondents to comply with alleged applicable requirements, pursuant to 74-4-10.B NMSA 1978;
- b. Complainant failed to consider the seriousness of the violation, pursuant to 74-4-10.B. NMSA 1978;
- c. Complainant failed to adhere to the Hazardous Waste Penalty Policy adopted by Complainant on September 4, 1992;
- d. Complainant's imposition of penalties is arbitrary, capricious, unlawful and without substantial basis in law or in fact; and
- e. Complainant improperly imposed penalties for violations of law which did not occur.

The Compliance Order contains in Paragraph 33 a Schedule of Compliance and an ordered action requiring Respondents to submit an acceptable RCRA Facility Work Plan for SWMU 21-029 within 90 calendar days of receipt of the Order. Respondents object to this requirement on the basis of its being vague and overly broad. Notwithstanding any response on the part of Respondents to Paragraph 33, Respondents state (a) that in the event they complete the ordered action, Respondents do not admit the underlying finding or conclusion contained in any numbered Paragraphs of the Order that may be related to the ordered action, unless specifically admitted in this Answer; (b) that they reserve the right to contest and dispute any underlying finding or conclusion relating to the ordered action, unless the underlying finding or conclusion have been specifically admitted in this Answer; and (c) that Respondents deny on

both substantive and procedural grounds, Complainant's basis for requiring Respondents to complete the ordered action contained in Paragraph 33, and hereby place at issue all elements and aspects of the ordered action unless Respondents have admitted both the underlying finding and the underlying conclusion contained in the related numbered Paragraph in the Order.

### FACTS PLACED AT ISSUE

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

### REQUEST FOR HEARING

Respondents hereby request a hearing pursuant to Section 74-4-10 of the New Mexico Hazardous Waste Act, NMSA 1978 and 20 NMAC 1.5.200.

WHEREFORE, Respondents request that Complainant be required to rescind the Compliance Order in its entirety, or, in the alternative, that the determination be made that Respondents did not commit the violations alleged by Complainant in the Order unless specifically admitted to by Respondents in this Answer, that the civil penalties proposed by Complainant be denied, or, in the event that a violation is determined to have occurred, which Respondents specifically deny, any proposed civil penalty for any such violation be reduced, that the Schedule of Compliance and action ordered thereunder by Complainant be denied, and that other such relief as the Hearing Officer deems just and proper be granted.

I hereby affirm my belief that the information contained herein is to the best of my knowledge true and correct.

The Regents of the University of California

Date July 9, 1998

By Joseph B. Fochelle

I hereby affirm my belief that the information contained herein is to the best of my knowledge true and correct.

United States Department of Energy

Date 9 July '98

By [Signature]

## MEMORANDUM

TO: *RS* Robert S. (Stu) Dinwiddie, Ph.D.  
RCRA Permits Management Program Manager

THROUGH: Stephanie Kruse, DOE Team Supervisor  
*JK* John Kieling, LANL Facility Manager

FROM: *MS* Barbara Toth, Environmental Specialist D  
*CH* Kim Hill, Environmental Engineer

DATE: July 2, 1998

RE: Recommended Phased Approach for the Evaluation of 21-029

This phased evaluation, developed in cooperation with the NMED/USTB, consists of two phases. The first phase focuses on the determination of the nature and extent (both horizontal and vertical) of on-site and off-site releases of hazardous constituents from solid waste management unit (SWMU) 21-029. Based on results of the first phase of investigation, the second phase will evaluate potential impacts of contamination on local and regional ground water quality and human health and the environment.

### Phase I Investigation

#### I. Compilation of Existing Data

1. Present all historical environmental media (e.g., soil, ground water, surface water, etc.) sampling results.
2. Present historical ground water sampling results from wells LAUZ-1 and LAUZ-2 and DP Spring.

#### II. Data Acquisition

Conduct full suite analyses for SVOCs, VOCs, metals, radionuclides, including EDC, EDB, and MTBE to determine and verify the nature and extent of on-site and off-site releases of hazardous constituents from SWMU 21-029.

##### 1. On-site

###### a) Former East Fill Station

- Determine the horizontal extent of contamination. At a minimum, HRMB recommends the installation of a boring southwest of

boring 21-3009 (see Figure 1);

- Determine the vertical extent of soil contamination remaining following excavations conducted as part of Voluntary Corrective Action.

b) Former West Fill Station

- Determine the horizontal extent of contamination. At a minimum, HRMB recommends the installation of a boring northeast of boring 21-3003 (see Figures 2 through 4);
- Determine vertical extent of contamination in the area where boreholes 21-3002 and 21-3005 were completed (see Figures 5 and 6). Regional and/or local fracture maps would be helpful to locate those areas with the highest potential for downward contaminant migration through "fracture flow";
- Determine the nature and extent of contamination (both horizontal and vertical) at the following locations:
  - beneath and around the former above-ground storage tanks (ASTs) themselves,
  - beneath the former underground-storage tanks (USTs), and
  - beneath and along the associated pipe lines (ALL).

2. Off-site

- a) Determine the nature and extent of off-site contaminant migration including the hydrocarbon seep in the DP Canyon drainage north of the former West Fill Station;
  - Evaluate contaminant fate and transport mechanisms and processes potentially occurring from the mesa top into the DP Canyon (e.g., through the tuff bedrock fractures and cracks). The mesa top site should be treated as the potential source for contaminant releases into the DP Canyon until proven otherwise;
- b) Sample and analyze the seep's water and associated soil/sediment to "fingerprint" the source of it's contamination;

- c) Describe and investigate historical and current locations of potential alternate sources for the hydrocarbon seep in the DP Canyon drainage north of the former West Fill Station to prove or disapprove their contribution.

### **Phase II Investigation**

If warranted, the second phase of this investigation should address the following:

1. Impacts on the alluvial and deeper aquifers ground water quality; and
2. Impacts on human and ecological receptors and their habitats.

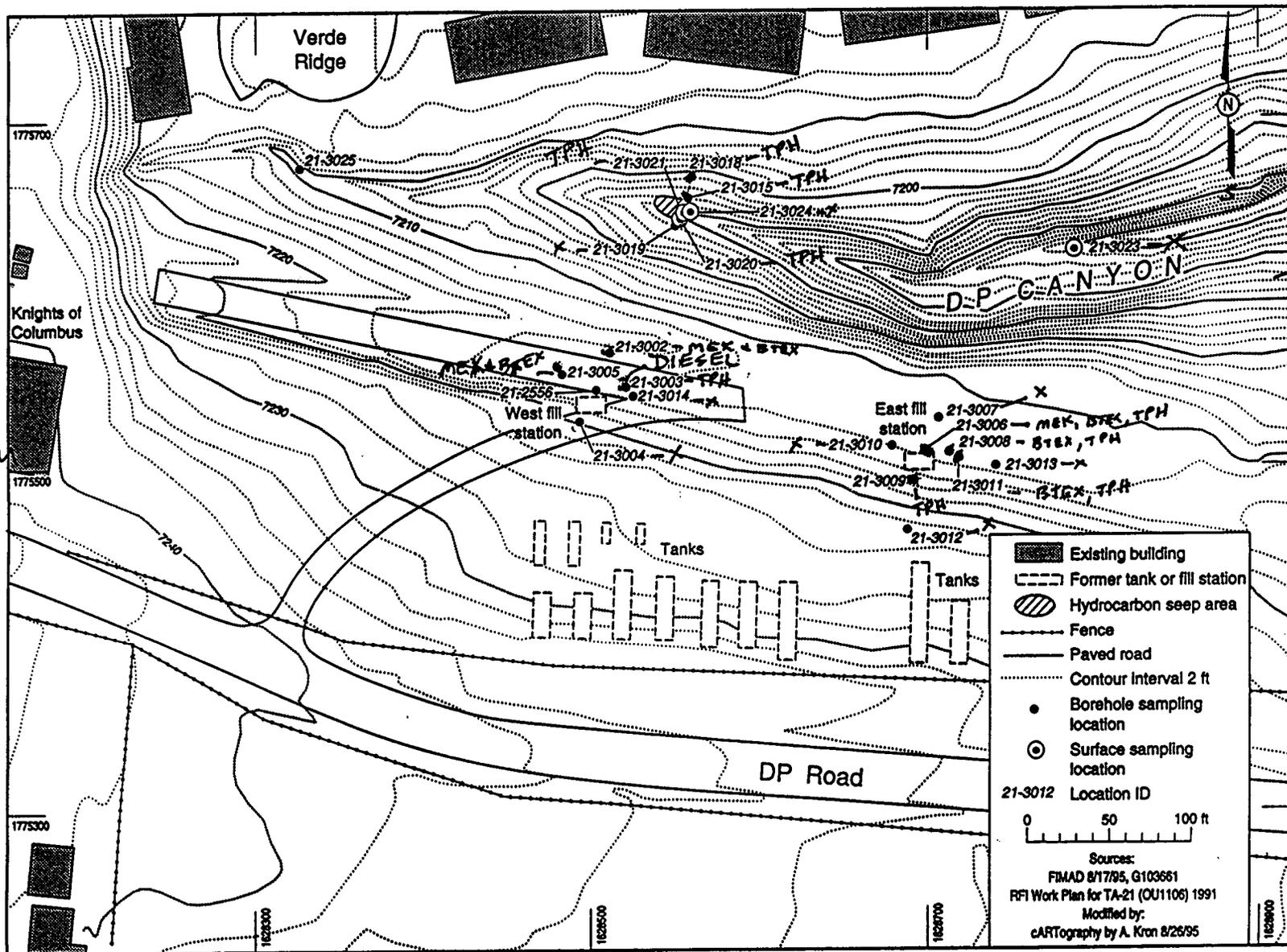
migration ↘  
 storm runoff ↑

HIT of BTEX, MEK or TPH

RFI Report for SWMU 21-029

21-3003  
 ↓  
 Diesel =  
 647  
 ppm

27



Surface  
 water, NO

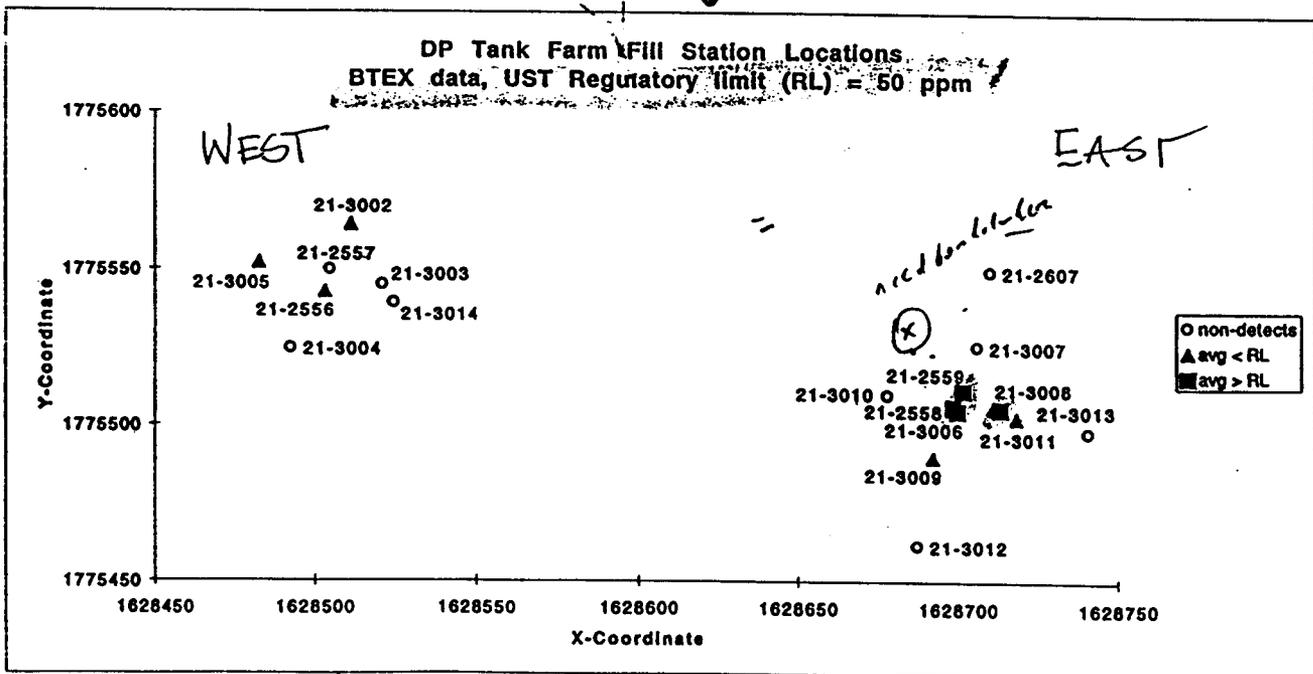
Fig. 1. Locations of samples collected during the 1995 investigation of DP Tank Farm, SWMU 21-029.

FIGURE 1

January 19, 1996

RFI Report

hydrocarbon  
Seep



DP Tank Farm BTEX data summary.

FIGURE 2



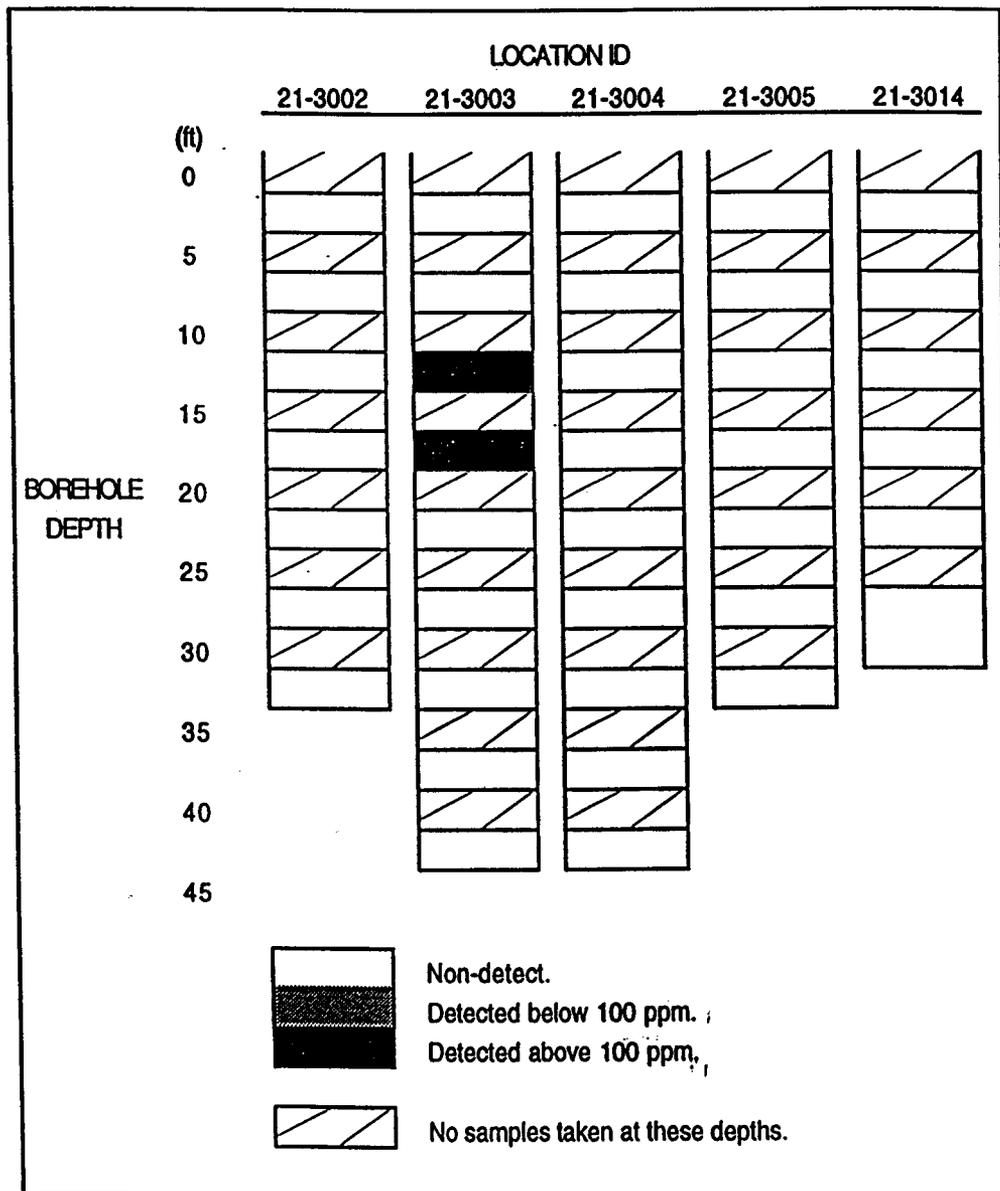
TABLE 5-6

CONCENTRATIONS GREATER THAN NMED UST BUREAU<sup>a</sup> REGULATORY THRESHOLDS AT THE WEST FILL STATION

ANALYTE	LOCATION ID	SAMPLE ID	SAMPLE VALUE	REGULATORY LIMIT	DEPTH (ft)
TPH <sup>b</sup>	21-3003	0121-95-0017	> 600	100	13.5 - 14.3
	21-3003	0121-95-0018	> 670		18.5 - 19.2

<sup>a</sup> NMED UST Bureau = New Mexico Environment Department Underground Storage Tank Bureau.

<sup>b</sup> TPH = Total petroleum hydrocarbons.



DP Tank Farm West Fill Station TPH data by boreholes.

FIGURE 4

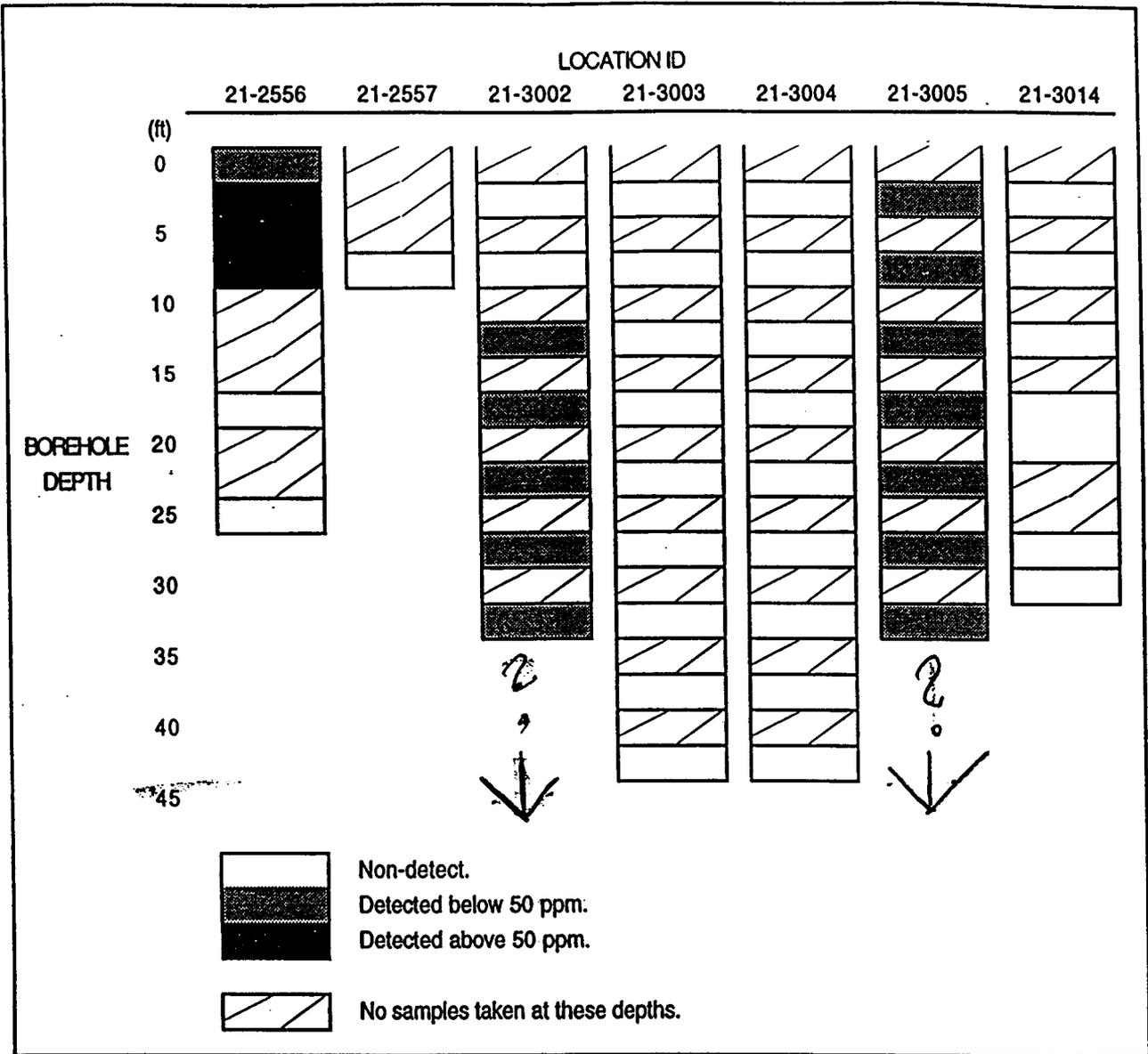


FIGURE 5

DP Tank Farm West Fill Station BTEX data by boreholes.

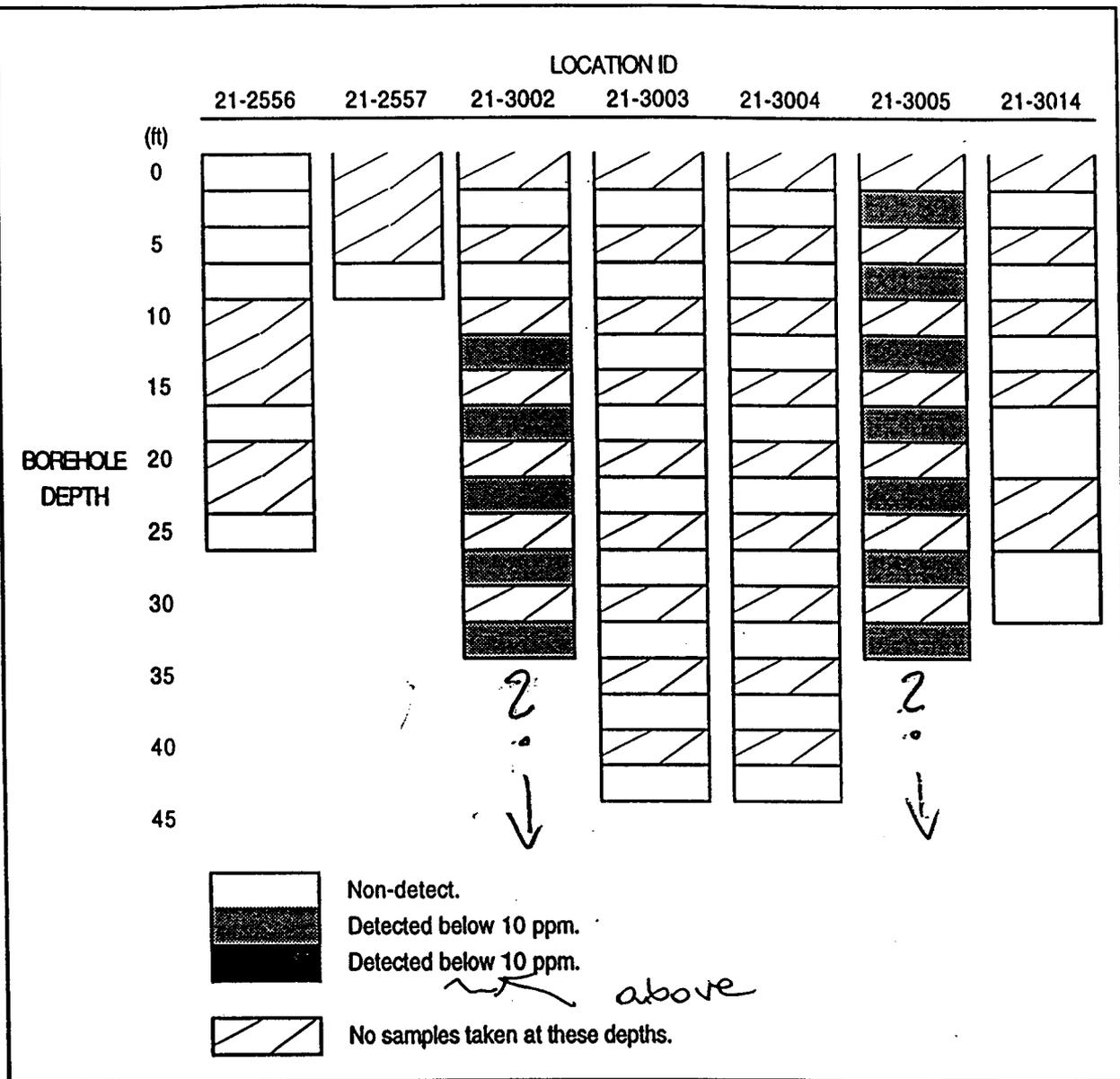


FIGURE 6

DP Tank Farm West Fill Station benzene data by boreholes.

- Introductions: Joe & Nick.
- Informal nature of meeting, nothing said to be used in further mtg.
- Limited time for meeting (1 hour).
- Review of history, Torij George.
- Tech. issues
  - nature & extent
  - acknowledge the req. to delineate the 1 & → extent
- LAND will supply:
  - raw data
  - plan of action on the seep.

DP Tank Farm

7/7/98

Stephanie Kruse	NMED HRMB	827-1561/1544
Barbara Gosh	NMED HRMB	827-1558
JOHN KIELING	NMED/HRMB	827-1558
LIRENA GORGER	NMED/USTB	827-0110
JERRY SCHOEPPNER	"	827-0214
Robert S. (SH) Dinwiddie	NMED/HRMB	827-1581
JOHN TYMKOWYCH	NMED/HRMB	827-1508
DAVE MCINROY	LANL/ER Compliance	667-0819
TORI GEORGE	LANL/ER Compliance	667-0808
Joseph Mose	DOE/LAEO ER	667-5808
PAUL BLACK	NEPTUNE/ER	662-2121
HORTENSE HAYNES	DOE/LAEO Counsel	667-4267
ALEX PUGLISI	LANL/ESH -19	667-4882
Joe Rockelle	LANL/LC/GL	665-2286
Nick Persampieri	NMED/OGC	827-1031

## PENALTY CALCULATION WORKSHEET

Facility: Los Alamos National Laboratories  
 Date of Inspection: Month/Day/Year  
 Citation/Violation: Failure to cleanup the petroleum contamination near the watercourse resulting in leaving a seep discharging petroleum products in the watercourse.  
 Location: DP Canyon drainage directly north of the West Fill Station (TA 21-029)

**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.	Number of days of noncompliance (or other appropriate number) minus 1 .....	59
4.	Multiply line 2 by line 3.....	295,000
5.	Add line 1 and line 4 .....	305,000
6.	Percent increase/decrease for good faith .....	10%
7.	Percent increase/decrease for willfulness/negligence .....	20%
8.	Percent increase for history of noncompliance .....	20%
9.	Total percentage from lines 6 thru 8.....	50%
10.	Multiply line 5 by line 9 .....	152,500
11.	Economic benefit of noncompliance .....	0%
12.	Add lines 5, 10, and 11 for penalty amount for this violation.....	457,500

## NARRATIVE EXPLANATION OF FIGURES SELECTED

### 1. Gravity Based Penalty

- (a). Potential for harm: At least diesel, gasoline, and other fuel products have been discharging as a seep into the watercourse. The violation poses a substantial adverse effect on statutory and regulatory purposes of the New Mexico Water Quality Control Commission (WQCC) regulations.
- (b). Extent of deviation: The requirement of the WQCC regulations (20 NMAC 6.2), Section 2201 that "No person shall dispose of any refuse in a natural watercourse or in location and manner where there is a reasonable probability that the refuse will be moved into a natural watercourse by leaching or otherwise" has not been fulfilled resulting in substantial noncompliance. The Respondents should be aware of the above requirement.

### 2. Multiday Penalty:

The violation is known by NMED to have occurred for at least 2 years. For a major/major category, a multiday penalty is mandatory for 60 days and discretionary for the remaining number of days. NMED considers a penalty assessment for 60 days adequate to address the seriousness of this violation.

### 3. Good Faith:

Adjustment upward of 10% is applicable because Respondents have not corrected the violation.

### 4. Willfulness/Negligence:

Respondents were negligent in that they should have known of the regulatory requirement for not leaving the refuse in the watercourse and did not take reasonable precaution against the event constituting the violation. Because similar violations have occurred in the recent past, the upward adjustment of 20% seems appropriate.

### 5. History of Noncompliance:

Respondents have previously violated 20 NMAC 6.2, Section 2201, which may serve as a clear evidence that the Respondents were not deterred by the previous enforcement response:

- 1) June 6, 1990. Notice of Violation regarding violations at the Otowi Well Drill Site. The letter cites DOE/UC for violations pursuant to WQCC Sections 1201, 1203, and 2201. In addition, NMSA, 1978 Sections 30-8-1 and 30-8-2 are cited. Reference is also made to possible violation of 40 CFR

122.2.

- 2) May 25, 1990. Notice of Violation Concerning a sulfuric acid spill at TA-3 NPDES Outfall 01A-001 of Sandia Canyon. Note: U.S.EPA is the Administrative Authority for the NPDES Program in New Mexico.
- 3) September 10, 1992. Letter concerning a discharge of mercury contaminated oil at TA-3. The letter requires LANL to remove all potential contamination from the banks and channel and states failure to do so would be a violation for WQCC Sections 1203 and 2201.
- 4) February 8, 1996. Letter citing DOE/LANL's failure to address discharges emanating from SWMU's as violation of WQCC and the New Mexico Standards for Interstate and Intrastate Streams (WQS) and/or other federal water quality standards, such as 40 CFR 129.105 (a)(4).

The above four (4) violations and the current noncompliance with 20 NMAC 6.2, Section 2201 demonstrate that the upward adjustment of 20 % is warranted.

6. Economic Benefit (considered negligible if less than \$2500):

No economic benefit can be demonstrated .

## PENALTY CALCULATION WORKSHEET

Facility: Los Alamos National Laboratories  
 Date of Inspection: Month/Day/Year  
 Citation/Violation: Failure to report the presence of threatened, endangered, and sensitive wildlife species habitats at the SWMU 21-029 or in it's immediate vicinity and evaluate the potential ecological impacts.  
 Location: TA 21-029 (also known as DP Tank Farm) located near the western end of DP Mesa on a moderate slope descending from DP Road toward DP Canyon.

*cite  
module  
or reg.*

### PENALTY AMOUNT:

1.	Gravity based penalty from matrix .....	4,000
	(a) Potential for harm .....	Moderate
	(b) Extent of deviation .....	Major
2.	Amount selected from multiday matrix cell .....	2,200
3.	Number of days of noncompliance (or other appropriate number) minus 1 .....	59
4.	Multiply line 2 by line 3.....	129,800
5.	Add line 1 and line 4 .....	133,800
6.	Percent increase/decrease for good faith .....	10%
7.	Percent increase/decrease for willfulness/negligence .....	0%
8.	Percent increase for history of noncompliance .....	0%
9.	Total percentage from lines 6 thru 8.....	10%
10.	Multiply line 5 by line 9 .....	13,380
11.	Economic benefit of noncompliance .....	0
12.	Add lines 5, 10, and 11 for penalty amount for this violation.....	147,180

## NARRATIVE EXPLANATION OF FIGURES SELECTED

### 1. Gravity Based Penalty

- (a). Potential for harm: TA 21 and its immediate area provide a nesting habitat for the Mexican Spotted Owl and a foraging habitat for the American Peregrine Falcon. At least diesel, gasoline, and other fuel products are known to have been discharging to the surface and into the DP Canyon and other hazardous constituents may be present there at levels of ecological concern. Therefore, the failure to evaluate the potential impacts to the threatened, endangered, and sensitive species nesting and foraging at or near the SWMU 21-029 <sup>and</sup> may have a substantial adverse effect on statutory and regulatory purposes and RCRA program permit requirements.
- (b). Extent of deviation: The requirement of the RCRA program permit to evaluate potential ecological impacts from the SWMU 21-029 has not been met. The extent of this deviation results in substantial noncompliance. Respondent were fully aware of this requirement. ←

### 2. Multiday Penalty:

The violation is known by NMED to have occurred for at least 7 years. For a moderate/major category, a multiday penalty is mandatory for 60 days and discretionary for the remaining number of days. NMED considers a penalty assessment for 60 days adequate to address the seriousness of this violation.

*time line  
deadline*

3. Good Faith: — *(use other good faith cite)*  
Adjustment downward is not applicable because Respondents have not corrected the violation.

### 4. Willfulness/Negligence:

Repondents were negligent in that they have known of the regulatory requirement for reporting the presence of threatened, endangered, and sensitive wildlife species and evaluating the potential ecological impacts to these species. Because the violation has occurred for the first time, the upward adjustment of 5% seems appropriate.

*previous permit violations!*

### 5. History of Noncompliance:

~~No history of noncompliance with HSWA can be demonstrated, therefore, no upward adjustment is warranted.~~

*Facility noncompliance with permit requirements.*

6. Economic Benefit (considered negligible if less than \$2500):

No economic benefit can be demonstrated.

## PENALTY CALCULATION WORKSHEET

Facility: Los Alamos National Laboratories  
 Date of Inspection: Month/Day/Year  
 Citation/Violation: Failure to address all necessary action to determine and verify the nature and extent of on-site and off-site releases of hazardous constituents from solid waste management unit (SWMU 21-029).  
 Location: TA 21-029 (also known as DP Tank Farm) located near the western end of DP Mesa on a moderate slope descending from DP Road toward DP Canyon.

*cite permit module or reg.*

### 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.	Number of days of noncompliance (or other appropriate number) minus 1 .....	59
4.	Multiply line 2 by line 3.....	295,000
5.	Add line 1 and line 4 .....	305,000
6.	Percent increase/decrease for good faith .....	<del>10%</del>
7.	Percent increase/decrease for willfulness/negligence .....	10%
8.	Percent increase for history of noncompliance .....	10%
9.	Total percentage from lines 6 thru 8.....	0%
10.	Multiply line 5 by line 9 .....	0%
11.	Economic benefit of noncompliance .....	0%
12.	Add lines 5, 10, and 11 for penalty amount for this violation.....	305,000

*59 timeline? deadline?*

*plus or minus?*

## NARRATIVE EXPLANATION OF FIGURES SELECTED

### 1. Gravity Based Penalty

- (a). Potential for harm: Respondents have failed to address all necessary action to determine and verify the nature and extent of hazardous waste releases, which resulted in leaving the total petroleum hydrocarbons (TPH) in the ground at levels substantially exceeding acceptable cleanup standards for TPH. The THP contamination left in the ground at ~~the~~ SWMU 21-029 ranges from 430 ppm to 8,900 ppm (applicable cleanup standard for TPH is 100 ppm). The violation poses a substantial adverse effect on statutory and regulatory purposes and procedures for implementing the RCRA program.
- (b). Extent of deviation: The violator deviates from the RCRA program requirements for addressing all necessary action to determine and verify the nature and extent of hazardous waste releases from solid waste management units to the extent that these requirements are not met resulting in substantial noncompliance. Respondents were aware of the requirements.

### 2. Multiday Penalty:

The violation is known by NMED to have occurred for at least 7 years. For a major/major category, a multiday penalty is mandatory for ~~50 days and discretionary for the remaining number of days~~. NMED considers a penalty assessment for 60 days adequate to address the seriousness of this violation.

3. Good Faith: *No adjustment up or down is applicable because Respondent has attempted to address necessary action to determine and verify the nature and extent of releases of hazardous constituents from solid waste management units. The downward adjustment of 10% seems appropriate. necessary steps to address this requirement, however they were not extensive enough nor*

4. Willfulness/Negligence: *did they fulfill the permit requirements,*  
Respondents were negligent in that they should have known of the regulatory requirement for addressing all necessary action to determine and verify the nature and extent of releases of hazardous constituents from solid waste management units. ~~The upward adjustment of 10% seems appropriate.~~  
*cite their failure to perform adequate site investigation.*

### 5. History of Noncompliance:

~~No history of noncompliance with HSWA can be demonstrated, therefore, no upward adjustment is warranted.~~ *Cite noncompliance with other permit requirements, eg. RDD compliance order 97-02*

### 6. Economic Benefit (considered negligible if less than \$2500):

No economic benefit can be demonstrated.

*cite the Reg.*

*NOD timeline, etc.*



GARY E. JOHNSON  
GOVERNOR

State of New Mexico  
**ENVIRONMENT DEPARTMENT**  
Harold Runnels Building  
1190 St. Francis Drive, P. O. Drawer 26  
Santa Fe, New Mexico 87502-0110  
(505) 827-2855  
Fax: (505) 827-2836



June 25, 1998

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Mr. G. Thomas Todd, Area Manager  
U.S. Department of Energy  
Los Alamos Area Office  
Los Alamos, NM 87544

Dr. John Browne, Director  
Los Alamos  
P.O. Box 1663  
MSK 490  
Los Alamos, NM 87545

**RE: *Illegal Transportation and Disposal of Hazardous Waste from TA-54 Area L to Pit 37, Area G and the Los Alamos County Landfill.***

Dear Mr. Todd and Dr. Browne:

The New Mexico Environment Department (NMED) issues the enclosed Compliance Order to the U.S. Department of Energy (DOE) and the Regents of the University of California (Regents), pursuant to the New Mexico Hazardous Waste Act, NMSA 1978 §74-4-10 (Repl. Pamp. 1993). The Compliance Order is issued because Los Alamos National Laboratory (LANL) has failed to comply with the New Mexico Hazardous Waste Management Regulations (20 NMAC 4.1). The violations are specifically set out in the Compliance Order and the Compliance Order sets out a schedule of compliance required of LANL. LANL may be subject to additional civil penalties for each day of noncompliance with the schedule of compliance, as set forth in §74-4-10.

Any inquiries concerning this Compliance Order should be directed to Mr. John M. Tymkowych, RCRA Enforcement/Inspection Program Manager, Hazardous and Radioactive Materials Bureau, New Mexico Environment Department, at (505) 827-1508.

Sincerely,

Ed Kelley, Ph.D., Director  
Water and Waste Management Division

- cc: Benito Garcia, Bureau Chief, HRMB
- John Tymkowych, RCRA Enforcement/Inspection Manager, HRMB
- Robert S. Dinwiddie, RPMP Manager, HRMB
- File: Blue/Red LANL TA-21 1997
- Track: LANL, 1/98,DOE/LANL, HRMB/BT,RE, File
- File: HSWA LANL 1/1106/21/21-029

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.

~~\$738,000.00~~  
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	<del>\$ 15,000</del> \$ 90,000.00
¶¶ 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> \$ 607,500.00

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

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. Perumpoor  
Attorney NMED/OGC

**COMPLIANCE ORDER SUMMARY:**

LOS ALAMOS NATIONAL LABORATORY:

Los Alamos National Laboratory (LANL) is own<sup>ed</sup> and co-operated by the Department of Energy and administered for the Department of Energy by the University of California. Since its inception in 1943, the LANL's primary mission has been nuclear weapons research and development. In addition, ~~the~~ LANL does work in magnetic and internal fusion, nuclear fission, nuclear safeguards and security, laser isotope separation, and medical isotope development. NMED issued two letters of violation to the LANL in 1990 and two other letters concerned with ~~the~~ LANL's failure to address discharges of hazardous waste - in 1992 and 1996. Recently, NMED has determined that ~~the~~ LANL has violated the New Mexico Hazardous Waste Management Regulations (20 NMAC 4.1), ~~and the New Mexico Water Quality Control Commission Regulations (20 NMAC 6.2)~~. ~~The~~ LANL is being issued a compliance order which addresses three (3) violations with a proposed penalty of \$

~~409,680~~. The violations include:

- \* Failure to ~~address~~<sup>perform</sup> all necessary action to determine and verify the nature and extent of on-site and off-site releases of hazardous constituents from solid waste management unit (SWMU 21-029). *ref - HSWA module*
- \* Failure to cleanup the petroleum contamination near the watercourse resulting in leaving a seep discharging petroleum products in the watercourse.
- \* Failure to report the presence of threatened, endangered, and sensitive wildlife species habitats at ~~the~~ SWMU 21-029 or in its immediate vicinity and evaluate the potential ecological impacts.

Recipients of compliance orders have the option of requesting a settlement meeting with NMED to contest the allegations and/or discuss possible settlement factors. If the facility claims it is unable to pay all or a portion of the proposed penalty, it must submit financial status documentation to NMED before inability to pay can be considered by NMED.

STATE OF NEW MEXICO  
ENVIRONMENT DEPARTMENT