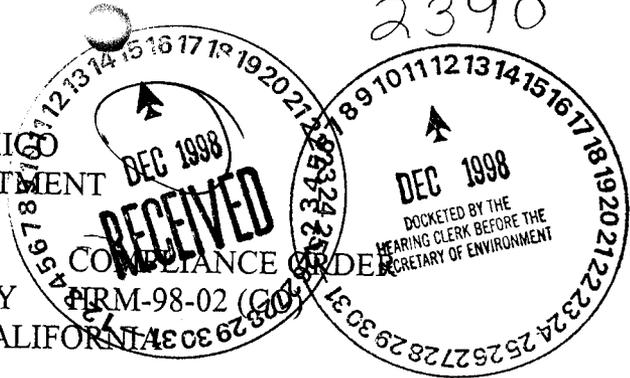


Generator

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

**ORDER ALLOWING NMED TO SERVE ITS FIRST
SETS OF INTERROGATORIES TO RESPONDENTS
REGENTS OF THE UNIVERSITY OF CALIFORNIA AND
THE UNITED STATES DEPARTMENT OF ENERGY**

This matter having come before the Hearing Officer on the request of the Secretary of Environment ("NMED") for leave to serve its First Sets of Interrogatories to Respondents Regents of the University of California ("UC") and the United States Department of Energy ("DOE"), and the Hearing Officer having been advised that the request is not opposed by DOE or UC,

FINDS that the grounds for allowing such discovery set forth in 20 N.M.A.C. 300.A. are met; and

ORDERS that NMED shall be permitted to serve its First Sets of Interrogatories to Respondents UC and DOE in the form attached hereto as Exhibit A.

WELDON L. MERRITT
HEARING OFFICER



16757

Submitted and Approved:

NEW MEXICO ENVIRONMENT DEPARTMENT
OFFICE OF GENERAL COUNSEL

Nicholas F. Persampieri

By: Nicholas F. Persampieri

Assistant General Counsel

P.O. Box 26110

Santa Fe, NM 87502

(505) 827-1031

Approved:

REGENTS OF THE UNIVERSITY OF CALIFORNIA

approved by telephone 12/10/98 JFR

By: Joseph B. Rochelle

Los Alamos National Laboratory

P.O. Box 1663, MS A187

Los Alamos, NM 87545

(505) 667-3766

UNITED STATES DEPARTMENT OF ENERGY

approved by telephone 12/11/98 JFR

By: Hortense Haynes

Counsel's Office

Department of Energy

Los Alamos Area Office

528 35th Street

Los Alamos, NM 87544

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT

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

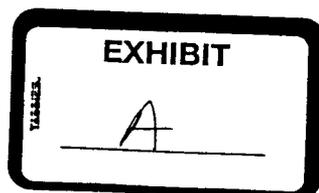
COMPLIANCE ORDER
HRM-98-02 (CO)

**NMED'S FIRST SET OF INTERROGATORIES TO RESPONDENT REGENTS
OF THE UNIVERSITY OF CALIFORNIA**

Complainant, The Secretary of Environment, acting through the Director of the Water and Waste Management Division of the New Mexico Environment Department ("NMED"), hereby requests Respondent Regents of the University of California to answer the following Interrogatories in writing, under oath on or before January 29, 1999.

Definitions

1. "DOE" means the United States Department of Energy and the Regents of the University of California ("UC"), and all employees, agents, consultants, contractors, representatives and attorneys of DOE and/or UC.
2. "Compliance Order" means the Administrative Compliance Order in Cause No. 98-02 served by the Secretary of Environment on the United States Department of Energy and the Regents of the University of California on or about June 24, 1998.
3. "Exhibit A" means Exhibit A to these Interrogatories.
4. "Relevant Time Period" means the time period from when a container and/or its contents were first acquired or synthesized by DOE through the time that the container and/or its contents were removed from Building 5S, TA-21, Los Alamos National Laboratory or its immediate vicinity in 1997.



5. "UC" means the Regents of the University of California and all employees, agents, consultants, contractors, representatives and attorneys thereof.

Interrogatories

Interrogatory No. 1: Please state the name, title, business address and telephone number of each person who prepared or assisted in preparing Answers to these Interrogatories.

Interrogatory No. 2: For each container identified in Exhibit A, please state whether the contents of the container identified in Exhibit A: (1) prior to discard were a "commercial chemical product," "manufacturing chemical intermediate," or "off-specification commercial chemical product or manufacturing chemical intermediate"; or (2) are waste from a manufacturing or laboratory process; and explain your reasons for asserting that the contents were either (1) or (2).

Interrogatory No. 3: For each container, the contents of which you identify in your Answer to Interrogatory No. 2 as prior to discard having been a "commercial chemical product," "manufacturing chemical intermediate," or off-specification commercial chemical product or manufacturing chemical intermediate," please state whether the contents were purchased by DOE or synthesized by DOE and state the date of such purchase or synthesis.

Interrogatory No. 4: For each container, the contents of which you identify in your Answer to Interrogatory No.2 as waste from a manufacturing or laboratory process, please describe the process which generated the waste and the date(s) the waste was generated.

Interrogatory No. 5: For each container the contents of which you identify in your Answer to Interrogatory No. 2 as being waste from a manufacturing or laboratory process, please provide the following information for the Relevant Time Period:

- A. Describe each and every location at which the container and/or its contents were placed, stored or maintained, the dates the container and/or its contents were at each such location, and whether each such location had been identified, marked and/or designated as a satellite accumulation area or a less than 90 day storage or accumulation area;
- B. State the name, current or last known business and home address, business and home telephone number and job title of each person who had possession, custody or control of the container and/or its contents, and the dates of such possession, custody or control.

Interrogatory No. 6: Please identify and describe in detail each and every area within or in the immediate vicinity of Buildings 3 and 4 North, and Building 5 South, which was ever identified, labeled or designated as a satellite accumulation area or a less than 90 day accumulation or storage area, and in which any of the containers and or their contents described in Exhibit A were ever placed, stored, accumulated or maintained.

Interrogatory No. 7: For each area identified in your Answer to Interrogatory No. 6, please identify each container and/or its contents, including but not limited to the cylinders and their contents identified in Exhibit A, which was placed, stored, accumulated or maintained in the area, the contents of such container, the volume allowed to accumulate in such container and the dates of such storage, accumulation or maintenance in the container.

Interrogatory No. 8: For each container identified in Exhibit A please state the date you contend the container and/or its contents was discarded, and your reason(s) for contending that the container and/or its contents was discarded on such date.

Interrogatory No. 9: For each container identified in Exhibit A, please state the date you contend the container and/or its contents was intended to be discarded, and your reason(s) for contending that the container and/or its contents was intended to be discarded on such date.

Interrogatory No. 10: For each container and its contents identified in Exhibit A, please identify who you contend was the “operator of the process generating the waste” as that term is used at 40 C.F.R. Section 262.34(c)(1). To the extent the information has not been provided in your Answers to other Interrogatories, please state the name, current or last known business and home address and telephone number, and job title of the operator(s) identified.

Interrogatory No. 11: For each container and its contents identified in Exhibit A, please identify what you contend is “the point of generation where wastes initially accumulate” as that phrase is used in 40 C.F.R Section 262.34(c)(1).

Interrogatory No. 12: Please state the name, current or last known business and home address and telephone number, and job title of all waste management coordinators and members of facility management teams referred to in UC's Answer to Paragraph 32 of the Compliance Order (Paragraphs 32), and describe the role of each such person with respect to the maintenance, placement, accumulation and/or storage of the cylinders identified in Exhibit A and/or their contents.

Interrogatory No. 13: Please state the name, business and home addresses and telephone number, and job title of each person whom you expect to call as a lay witness at the hearing of this matter and summarize the substance of their expected testimony.

Interrogatory No. 14: Please state the name, business and home address and telephone number, and job title of each person whom you expect to call as an expert witness at the hearing of this matter, the subject matter on which each such expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify and a **summary** of the grounds for each opinion.

Interrogatory No. 15: To the extent not described in your Answers to other Interrogatories, please describe each and every further contemplated use of the gas cylinders referred to in UC's Answer to Paragraph 32 of the Compliance Order, and for each such further contemplated use, please state the name, current or last known business and home address and telephone number, and job title of the person or persons who contemplated such use, the date such use was contemplated and whether the cylinder in question and/or its contents was ever ultimately put to such use.

Interrogatory No. 16: Please describe in detail the alleged August 1996 decision to discard some of the gas cylinders referred to in UC's Answer to Paragraph 35 of the

Compliance Order and state the name, current or last known business and home address and telephone number, and job title of each and every person who participated in the decision and such person's role in making the decision.

Interrogatory No. 17: Please state which of the gas cylinders identified in Exhibit A you admit (UC's Answer to Paragraph 35 of Compliance Order) were hazardous wastes after the 1996 decision to discard some of the cylinders, and state the Environmental Protection Agency Hazardous Waste Codes for each such hazardous waste.

Interrogatory No. 18: Please identify each cylinder you claim was placed in the overpack in August 1996 (which placement in the overpack is referred to in UC's Answer to Paragraph 42 of the Compliance Order), and state the dates that characterization of the contents of each such cylinder began and was completed.

Interrogatory No. 19: Please identify the cylinders referred to in UC's Answer to Paragraph 49 of the Compliance Order for which the contents of the cylinders were known based on location within the rack, and for each such cylinder state how the contents were known based on location within the rack and state the name, current or last known home and business address and telephone number, and job titles of the person(s) to whom the contents were known based on location within the rack.

Interrogatory No. 20: Please identify each of the cylinders referred to in UC's Answer to Paragraph 49 of the Compliance Order for which information about the contents of the cylinders was lost due to the absence of locational information.

Interrogatory No. 21: With respect to each container identified in Exhibit A which you contend was stored or accumulated in a less than 90 day storage area please describe the history of the marking of the container with accumulation start date(s). Please include in

your answer the date each such marking occurred and the date marked on the container at such time.

Interrogatory No. 22: Please identify all gas cylinders referred to in UC's Answer to Paragraph 71 of the Compliance Order as having been placed in a separate overpack for retention as a useful product, and for each such cylinder state the future uses of the cylinder contemplated at the time of placement in the overpack and the name, current or last known business and home address and telephone number of each person who contemplated such future uses.

Interrogatory No. 23: Please identify each research group referred to in UC's Fourth Affirmative Defense to the Compliance Order, and for each such research group state the cylinders which such research group considered to be a valuable group asset, identify the name, current or last known business and home address and telephone number, and job title of each person who was a member of the research group, and state where at Los Alamos National Laboratory each such person maintained his or her office and/or laboratory during the period January 1, 1994 through March 16, 1997.

Interrogatory No. 24: Please describe the complete and specific basis for your contention (UC's Fifth Affirmative Defense to Compliance Order) that Complainant lacks jurisdiction over the subject matter contained in the Order.

Interrogatory No. 25: Please identify all oral communications between DOE and UC personnel regarding the cylinders and contents of the cylinders identified in Exhibit A, including but not limited to the "dialogue with UC personnel regarding the material-containing cylinders," the conversations in which DOE personnel were "informed by UC personnel that the contents of the cylinders would be used in scientific research and

experiments,” the “numerous verbal encounters . . . between DOE and UC personnel regarding the cylinders, the contents over which UC refused to relinquish control or declare unusable,” and DOE demands for movement of any cylinders which UC determined to be hazardous waste referred to in DOE’s Answer to Paragraph 32 of the Compliance Order; and the informing of DOE on February 12, 1997 that material remaining in the cylinders was not useful referred to in DOE’s Fifth Affirmative defense to the Compliance Order. Please include in your description of each such communication, the date of the communication, the name, current or last known business and home address and telephone number and job title of each person participating in the communication and a description of the contents of the communication.

Interrogatory No. 26: Please describe the complete and specific basis for the contention (DOE Answer to Paragraph 38 of the Compliance Order) that TA-21/61 was an interim status storage facility.

Interrogatory No. 27: Please describe the complete and specific basis for the contention (DOE’s Third Affirmative Defense to Compliance Order) that no declaration was made that cylinders were hazardous waste until February 12, 1997.

Interrogatory No. 28: Please identify all materials referred to in your March 6, 1997 letter to Benito Garcia as “abandoned hazardous materials not previously associated with known activities, or specific research projects, and in spaces not previously inspected or, in some instances, known to exist,” which were discovered by the LANL facility Management Group in late 1995, and for each such material describe the “space” or location in which it was found.

Respectfully submitted,

NEW MEXICO ENVIRONMENT
DEPARTMENT
OFFICE OF GENERAL COUNSEL

Nicholas F. Persampieri
Assistant General Counsel
P.O. Box 26110
Santa Fe, NM 87502
(505) 827-1031

Certificate of Service

The undersigned hereby certifies that on this ____ day of _____, 1998,
the original of the foregoing NMED's First Set of Interrogatories to Respondent Regents
of the University of California was mailed to:

Mr. Joseph B. Rochelle
Los Alamos National Laboratory
P.O. Box 1663, MS A187
Los Alamos, NM 87545
(505) 667-3766

and a copy thereof was mailed to:

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

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT

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

COMPLIANCE ORDER
HRM-98-02 (CO)

**NMED'S FIRST SET OF INTERROGATORIES TO RESPONDENT
UNITED STATES DEPARTMENT OF ENERGY**

Complainant, The Secretary of Environment, acting through the Director of the Water and Waste Management Division of the New Mexico Environment Department ("NMED"), hereby requests Respondent United States Department of Energy to answer the following Interrogatories in writing, under oath on or before January 29, 1999.

Definitions

1. "DOE" means the United States Department of Energy and the Regents of the University of California ("UC"), and all employees, agents, consultants, contractors, representatives and attorneys of DOE and/or UC.
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NEW MEXICO ENVIRONMENT
DEPARTMENT
OFFICE OF GENERAL COUNSEL

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Assistant General Counsel
P.O. Box 26110
Santa Fe, NM 87502
(505) 827-1031

Certificate of Service

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Department of Energy
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