



GARY E. JOHNSON
Governor

State of New Mexico
ENVIRONMENT DEPARTMENT
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Santa Fe, New Mexico 87502-6110



PETER MAGGIORE
Secretary

OFFICE OF GENERAL COUNSEL
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Date: 4-23-99

To: John Tymkowsch

FAX: 7-1833

Pages: 9

From: Nicholas Pecsampieri

NMED, Office of General Counsel
Fax: (505) 827-1628

Phone: 7-1031

Comments:

*I would like to meet with you over here
at our law library @
10:00am Monday morning. Please let me know.*

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UNCLASSIFIED

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FAX TRANSMISSION COVER SHEET

Date: *April 22, 1999*
To: *Nicholas Persampieri, Esq.*
Fax: *827-1628*
Re: *98-03 documents*
Sender: *Catherine Thayer*

**YOU SHOULD RECEIVE (8) PAGE(S), INCLUDING THIS COVER SHEET.
IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL (505) 667-3766.**

Comments:

Mr. Persampieri:
Per Sheila Brown's request attached are a letter from her and Lisa Cummings and a draft Stipulated Final Order in CO 98-03. I will transmit an electronic copy of the draft order as an attachment to an email message shortly.

Catherine Thayer

cy: *M. Edgett, CRM-4, MS A150*
File

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Los Alamos

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Laboratory Counsel & General Law Offices

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(505) 667-3766 - FAX: (505) 665-4424

Date: April 23, 1999

Symbol: 10520-9812/9913

Nicholas F. Persampieri, Esq.
New Mexico Environment Department
Office of General Counsel
Harold Runnels Building
1190 St. Francis Drive
Santa Fe, New Mexico 87502

Dear Mr. Persampieri:

We appreciated the opportunity to meet with you on March 31, 1999 concerning Compliance Order 98-03. By this letter, on behalf of our clients the United States Department of Energy and the Regents of the University of California (collectively "the Respondents"), We set forth a proposal to resolve this compliance order with a settlement agreement. Although our clients do not believe that they violated the law, they are desirous of seeking a resolution of this matter to avoid the time and expense that would be associated with a hearing and to put this matter behind them with the belief that an early resolution will be beneficial both to our clients and to NMED.

We believe NMED also faces substantial litigation risks, as well as the expense and time of a hearing. As we discussed, the information that we have provided you and the testimony that we would submit if this matter proceeds to hearing demonstrates that the second, third and fourth items of violations listed in CO 98-03 would be nullified.

In the interest of seeking resolution, we propose that NMED and Respondents enter a settlement agreement to provide the following:

1. That there be no findings of fact or conclusions of law.

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April 23, 1999

2. That NMED require no corrective action at the compactor dome and Pit 37 and that the asphalt material used as fill at the compactor dome and Pit 37 may remain where it is and need not be managed as hazardous waste.
3. That NMED will pursue the Los Alamos County Landfill corrective action issues with the County and with the Department of Energy in a document separate from this settlement agreement and thereby resolve that portion of CO 98-03.
4. That Respondents will pay an appropriate modest penalty to resolve this matter without specifying any violation.

At our meeting in March you asked for information concerning the economic benefit of not having disposed of the asphalt material from the swale in Area L as hazardous waste. Although the Respondents do not believe that they have violated any law, again in the interest of resolution of this Compliance Order, we state that material could have been disposed, if it were hazardous, at an authorized landfill, such as the Chemical Waste Management landfill in Kettleman Hills, California. There were approximately 30-40 cubic yards of asphalt transported from Area L to Area G, and at the price set by Chemical Waste Management, the cost of disposal including taxes and transportation to Kettleman Hills would have been in the range of approximately \$18,000-20,000.¹ The material was not required to be incinerated and would have qualified for land disposal were it hazardous material.

Considering our discussion of items two, three and four of the violations alleged in the Compliance Order, as noted earlier in this letter, one allegation remains. Although Respondents would vigorously contest and defend against this allegation, we do seek resolution and so offer to settle this matter for the remaining calculated amount of \$15,000, payable within 10 days of a settlement agreement being executed.

Finally, as Sheila Brown explained when we met, we look forward to an opportunity to convey our desire to work well with NMED. Our clients very much regret the situation at hand, in which NMED issued its directive in a letter and later through voluntary self-disclosure came to realize that its directive had not been followed. We are committed to forging a positive, solid, respectful relationship with NMED and to that end would appreciate the opportunity for a senior manager to meet with Mr. Benito Garcia, Bureau Chief, to assure him of our commitment.

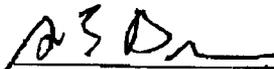
¹ Operations personnel at LANL calculate asphalt disposal amounts by converting a cubic yard to 1.5 tons, given the unconsolidated nature of broken asphalt. Additionally, our response to you in meetings represented only disposal costs, but the amount set forth in this letter also accounts for tax and transportation.

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April 23, 1999

This letter is submitted for settlement discussions only and as such is confidential and not to be construed as any admission. Please contact either of us if you have any questions. We look forward to your response.

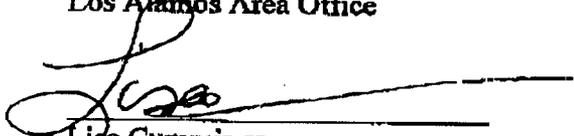
Yours very truly,

University of California
Los Alamos National Laboratory



Shcila E Brown
Deputy Laboratory Counsel

U. S. Department of Energy
Los Alamos Area Office



Lisa Cummings
Attorney

Cys: Records Room
File, (2)

**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.

STIPULATED FINAL ORDER

Pursuant to 20 NMAC 1.5.601, the Secretary of Environment ("Secretary"), the United States Department of Energy ("DOE"), and the Regents of the University of California ("UC") ("collectively the Respondents"), hereby stipulate and agree and the Secretary of Environment hereby orders that the violations alleged in Administrative Compliance Order 98-03 issued by the Secretary, through his designee, the Director of the Water and Waste Management Division of the New Mexico Environment Department on or about June 25, 1998 ("Compliance Order"), are settled as follows:

1. There are no findings of fact or conclusions of law in connection with this agreement.
2. NMED requires no corrective action at the compactor dome and Pit 37 at Los Alamos National Laboratory TA 54 Area G, and the asphalt material used as fill at the compactor dome and Pit 37 may remain where it is and need not be managed as hazardous waste.
3. NMED will pursue the Los Alamos County Landfill corrective action issues with the County and with the DOE in a document separate from this settlement agreement and thereby resolve that portion of CO 98-03 outside of this agreement.

4. Respondents will pay a civil penalty in the amount of \$15,000 solely for the purpose of avoiding the expense and litigation risk of further proceedings. Respondents shall not be required to take further action in order to satisfy the Compliance Order.

5. NMED covenants not to take further administrative or judicial action against DOE and UC with respect to the violations alleged in the Compliance Order.

6. The Stipulated Final Order shall not be construed as an admission by Respondents of any of the allegations of the Compliance Order. Respondents deny the allegations of the Compliance Order, except to the extent that they have admitted certain allegations of the Compliance Order in their Answers to the Compliance Order.

7. The Compliance Order is hereby dismissed.

ORDERED, STIPULATED AND AGREED TO BY:

PETER MAGGIORE
SECRETARY OF ENVIRONMENT
NEW MEXICO ENVIRONMENT DEPARTMENT

1190 St. Francis Drive
P. O. Box 26110
Santa Fe, NM 87502-6110
(505)827-2855

APPROVAL RECOMMENDED BY:

**WELDON L. MERRITT
HEARING OFFICER
P. O. Box 26110
Santa Fe, NM 87502-6110
(505)827-1603**

STIPULATED AND AGREED TO BY:

**GREG LEWIS
DIRECTOR
WATER AND WASTE MANAGEMENT DIVISION
NEW MEXICO ENVIRONMENT DEPARTMENT**

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**NEW MEXICO ENVIRONMENT DEPARTMENT
OFFICE OF GENERAL COUNSEL**

By:

**Nicholas F. Persampieri
Assistant General Counsel
P. O. Box 26110
Santa Fe, NM 87502-6110
(505)827-1031**

**THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA**

By: _____
Richard Burick
Director of Operations
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Post Office Box 1663, MS A-100
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Sheila E. Brown, Esq.
Of Counsel

UNITED STATES DEPARTMENT OF ENERGY

By: _____
David A. Gurulé, P.E.
Area Manager
U.S. Department of Energy
528 35th Street
Los Alamos, New Mexico 87544
(505) 667-5105

Lisa Cummings, Esq.
Of Counsel

VEHCR/D2:138249.1



GARY E. JOHNSON
Governor

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PETER MAGGIORE
Secretary

OFFICE OF GENERAL COUNSEL
PHONE: 505-827-2990
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April 27, 1999

BY FACSIMILE

(505) 665-4424

Sheila E. Brown
Deputy Laboratory Counsel
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BY FACSIMILE

(505) 665-4873

Lisa Cummings
Attorney
U.S. Department of Energy
Los Alamos Area Office
Los Alamos, New Mexico 87544

Re: Compliance Order 98-03

Dear Sheila and Lisa:

Thank you for your April 23, 1999 letter and accompanying, proposed Stipulated Final Order, which set forth a proposal to resolve the Compliance Order. Please be advised that your proposal is not acceptable to NMED. While NMED believes it can prove that your clients unlawfully disposed of and failed to characterize asphalt and soil containing listed hazardous waste, NMED is also desirous of reaching a resolution of this matter. NMED hopes that your clients will find the counteroffer set forth in this letter acceptable.

NMED very much appreciates your clients' expression of regret and commitment to forging a positive and respectful relationship with us. However, NMED believes that the failure to follow its directive poses a major potential for harm to the integrity of its regulatory system. For this reason, NMED will not settle the Compliance Order unless LANL/DOE agree to pay a substantial penalty.

Evidence of LANL's and DOE's disregard of NMED's directive includes a written statement of the Group Leader of the Chemical and Mixed Waste Science Group (CST-5) who had responsibility for TA-54, Area L in 1994. The statement demonstrates that the Group Leader was aware of NMED's July 22, 1994 letter directing DOE and LANL to manage as hazardous waste asphalt removed from the pad at the mixed waste storage dome in Area L at the time the Group leader authorized transport of the asphalt and soil to the site of the Area G compactor building.

The asphalt and soil remained at the site of disposal for years before the incident was self reported and corrective action undertaken. Under these circumstances, NMED would ordinarily insist on a multi-day penalty for the maximum 60 days allowed by NMED policy, which would be a very substantial amount in this case. Furthermore, it is NMED policy to add the realized economic benefit of noncompliance to the gravity based portion of the penalty.

In the penalty calculations we produced to you, we estimated that it would have cost \$ 75,000.00 to incinerate the asphalt and soil. You now state that the asphalt and soil could have been landfilled for approximately \$ 18,000 to \$ 20,000.

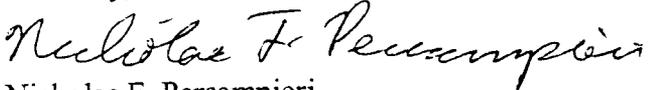
The evidence does not establish that the debris could have been landfilled rather than incinerated. Your clients previously sent debris from the same area for incineration. NMED presumes your clients had a reason for doing so. The debris was sampled for a limited list of constituents and not for all constituents identified in the underlying vapor plume. Thus, the sampling performed does not demonstrate that landfilling would have complied with land disposal restrictions.

Nevertheless, in light of the litigation risks facing NMED, LANL's self-reporting of the incident, and the lack of evidence of substantial actual or threatened harm to the environment, NMED is willing to compromise the penalty assessed by the Compliance Order. NMED hereby proposes that the Compliance Order be settled in accordance with the enclosed, red-line, strike out, revision of the proposed Stipulated Final Order, which provides for a civil penalty of \$ 90,000. Please let me know whether this counteroffer is acceptable to your clients.

This letter is an attempt to compromise disputed claims and is not admissible in a judicial or administrative proceeding to prove liability for or invalidity of the claims or their amount.

Thank you for your attention to this matter.

Sincerely,


Nicholas F. Persampieri

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.

STIPULATED FINAL ORDER

Pursuant to 20 NMAC 1.5.601, the Secretary of Environment ("Secretary"), the United States Department of Energy ("DOE"), and the Regents of the University of California ("UC") ("collectively the Respondents"), hereby stipulate and agree and the Secretary of Environment hereby orders that the violations alleged in Administrative Compliance Order 98-03 issued by the Secretary, through his designee, the Director of the Water and Waste Management Division of the New Mexico Environment Department on or about June 25, 1998 ("Compliance Order"), are settled as follows:

1. There are no findings of fact or conclusions of law in connection with this agreement.
2. NMED requires no corrective action at the compactor dome and Pit 37 at Los Alamos National Laboratory TA 54 Area G for the alleged placement or disposal of hazardous waste contaminated asphalt and soil transported to the compactor dome and Pit 37 from the site of the mixed waste storage dome in TA-54 Area L that is the subject of the Compliance Order. ~~asphalt material used as fill at the compactor dome and Pit 37 may remain where it is and need not be managed as hazardous waste.~~
3. The asphalt and soil referred to in Paragraph, 2, above, may remain where it is and need not be managed as hazardous waste.

34. NMED will attempt to settle ~~pursue~~ the Los Alamos County Landfill corrective action issues with the County of Los Alamos and other parties ~~with the DOE in a document~~ separately from this settlement agreement, ~~and thereby resolve that portion of CO 98-03 outside of this agreement.~~

45. Respondents will pay a civil penalty in the amount of \$ ~~9015,000~~ by delivering a check which references "Compliance Order HRM- 98-03," payable to the Hazardous Waste Emergency Fund to Linda Romero, Office of General Counsel, New Mexico Environment Department, P.O. Box 26110, Santa Fe, NM 87502-6110 within ten (10) days of execution of this Order by the Secretary. ~~solely for the purpose of avoiding the expense and litigation risk of further proceedings.~~ Respondents shall not be required to take further action in order to satisfy the Compliance Order.

56. Subject to the reservation of rights set forth in Paragraph 7 below, NMED covenants not to take further administrative or judicial action against DOE and UC with respect to the violations alleged in the Compliance Order.

7. NMED reserves the right to take any and all administrative or judicial actions which NMED determines are appropriate, including the assessment of penalties or imposition of corrective action requirements with respect to the Rubble Pile at the Los Alamos County Landfill if the outstanding issues regarding the Rubble Pile are not settled to NMED's satisfaction.

68. The Stipulated Final Order shall not be construed as an admission by Respondents of any of the allegations of the Compliance Order. Respondents deny the allegations of the Compliance Order, except to the extent that they have admitted certain allegations of the Compliance Order in their Answers to the Compliance Order.

9. DOE and UC reserve the right to assert any and all defenses they may have to any administrative or judicial action that may be asserted by NMED in accordance with Paragraph 7, above.

10. Nothing contained in this Stipulated Final Order shall be deemed to affect the parties' respective rights and obligations, if any, concerning remediation of Pit 37 and the area of the Compactor Building in Area G, arising from incidents other than the alleged incidents described in Paragraph 2, above.

711. The Compliance Order is hereby dismissed.

ORDERED, STIPULATED AND AGREED TO BY:

PETER MAGGIORE
SECRETARY OF ENVIRONMENT
NEW MEXICO ENVIRONMENT DEPARTMENT

1190 St. Francis Drive
P. O. Box 26110
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STIPULATED AND AGREED TO BY:

GREG LEWIS
DIRECTOR
WATER AND WASTE MANAGEMENT DIVISION
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THE REGENTS OF THE UNIVERSITY
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Sheila E. Brown, Esq.
Of Counsel

UNITED STATES DEPARTMENT OF ENERGY

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Of Counsel

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