

Bob



BILL RICHARDSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT

Water & Waste Management Division
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502-6110
Telephone (505) 827-1758
Fax (505) 827-0310
www.nmenv.state.nm.us



RON CURRY
SECRETARY

CHARLES LUNDSTROM
WATER & WASTE MANAGEMENT
DIVISION DIRECTOR

2/3/2004

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Ralph Erickson
Director, US Department Of Energy
Office of Los Alamos Site Operations
528 35th Street
Los Alamos, NM 87544

George P. Nanos
Director, University of California
Los Alamos National Laboratory
P.O. Box 1663
Los Alamos, NM 87545

**RE: ADMINISTRATIVE COMPLIANCE ORDER
EPA ID# NM0890010515**

Dear Mr. Erickson and Mr. Nanos:

The New Mexico Environment Department (NMED) issues the enclosed Compliance Order to U.S. Department of Energy and the Regents of the University of California (collectively referred to as the Los Alamos National Laboratory, "LANL"), pursuant to the New Mexico Hazardous Waste Act, NMSA 1978 § 74-4. The Compliance Order is issued because LANL has failed to comply with the New Mexico Hazardous Waste Management Regulations (20.4.1 et. Seq. NMAC). The violations are specifically set out in the Compliance Order and include a schedule of compliance. LANL may be subject to civil penalties of up to \$25,000 for each day of noncompliance with the Compliance Order, as set forth in NMSA 1978 § 74-4-10.

Any inquiries concerning this Compliance Order should be directed to Barry S. Birch (Acting) Manager, Compliance and Technical Assistance Program, Hazardous Waste Bureau, New Mexico Environment Department at (505) 428-2528.

Sincerely,

Charles Lundstrom
Director
Water and Waste Management Division



Ralph Erickson and George P. Nanos

February 3, 2004

Page 2

CL:bb

CC: S. Martin, NMED HWB
B. Birch, NMED HWB
T. Fox, NMED OGC
C. Williams, NMED District II
L. King, EPA Region 6 (6PD-N)

File: Library
Hwb/soc05/enforcement/Atencio

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

**IN THE MATTER OF
U.S. DEPARTMENT OF ENERGY
and THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA
LOS ALAMOS, NEW MEXICO,
EPA ID# NMD0890010515**

**COMPLIANCE ORDER
HWB 04-012
(2001 Inspection)**

Respondents.

COMPLIANCE ORDER

The Secretary of the New Mexico Environment Department ("NMED"), acting through the Director of the Water and Waste Management Division of NMED, issues this Compliance Order ("Order") to the United States Department of Energy ("DOE") and the Regents of the University of California ("UC") (collectively, "Respondents"), pursuant to the New Mexico Hazardous Waste Act ("HWA"), NMSA 1978, § 74-4.

FINDINGS OF FACT

1. NMED is the executive agency within the government of the State of New Mexico charged with the administration and enforcement of the HWA, NMSA 1978, §§ 74-4-1 to 74-4-14, and the New Mexico Hazardous Waste Management Regulations ("HWMR"), 20.4.1 NMAC.
2. Respondents DOE and UC notified the Environmental Protection Agency of their hazardous waste generation activities on November 19, 1980.
3. DOE is an agency of the federal government and is the owner and operator of the Los Alamos National Laboratory ("LANL").
4. UC is a public educational institution of the State of California and is the co-

operator of LANL.

5. LANL is located in Los Alamos County, New Mexico, and encompasses approximately 43 square miles.

6. LANL was established as a military reservation and began operations in 1943. A primary mission of LANL is nuclear weapons research and development. The facility also conducts work in magnetic and internal fusion, nuclear fission, nuclear safeguards and security, laser isotope separation, and medical isotope development.

7. Respondents generate, treat and store hazardous wastes. Respondents possess a permit from NMED for the generation, treatment and storage of hazardous waste.

8. As a result of violations of the HWA discovered during inspections conducted from 1992 to 1998, a number of compliance orders have been issued by NMED to Respondents. These orders sought compliance with the HWA and assessed civil penalties.

9. As a result of the compliance orders described above, Respondents entered into various consent orders with NMED and have agreed to payment of civil penalties.

10. Between April 23, 2001 and October 9, 2001, NMED performed a compliance evaluation inspection ("Inspection") of LANL. Violations of the HWA and HWMR were discovered at TA-35, TA-39, TA-50, TA-53, and TA-54.

11. NMED issued a Notice of Violation ("NOV") to Respondents on February 4, 2002 setting forth the violations discovered.

TA-35

12. Hazardous waste is generated at TA-35

13. The Inspection documents that the Respondents failed to perform an adequate hazardous waste determination on chemicals discarded in the two chemical storage cabinets at

TA-35 under the stairs on the east end of Building 421.

14. The Inspection documents that the Respondents failed to retain on-site copies of Land Disposal Restriction (LDR) notices for the following manifests: No. 21090, dated 11/13/00; No. 21091, dated 11/15/00; and No. 21092, dated 10/27/00.

15. In their response to the NOV, Respondents stated that copies of the LDR notices in question were subsequently requested and received from off-site disposal facilities.

TA-54

16. TA-54 is a hazardous waste storage facility.

17. The Inspection documents that the Respondents failed to include a manifest number on the LDR notice associated with manifest No. 99631.

18. The Inspection documents that the Respondents entered an incorrect manifest number on the LDR notice associated with manifest No. 99281.

TA-50

19. Hazardous waste is generated at TA-50.

20. The Inspection documents that Respondents did not adequately track waste contained in six 55 gallon drums, one 30 gallon drum and one 5 gallon drum at TA-50 as evidenced by Respondents' failure to notify the Site Treatment Plan (STP) Manager of the volumes stored in these drums within the time period specified in the Federal Facility Compliance Order, Part VII (1997).

21. In their response to the NOV, Respondents stated that the procedure typically used to track waste in the STP database includes notification provided to the STP manager and that this did not occur for the waste identified at TA-50 within the required time frame.

22. The Inspection documents that the Respondents failed to place the correct

accumulation start date on one 55 gallon drum at TA-50.

TA-53

23. Hazardous waste is generated at TA-53.

24. The Inspection documents that Respondents failed to maintain an operable eyewash unit at the less than 90 day storage area at TA-53.

TA-39

25. TA-39 is an area for the open air-testing site of high explosives.

26. Waste piles are located at TA-39.

27. The Inspection documents that Respondents failed to properly manage the waste piles at TA-39 (i.e., failed to provide protection from wind, waste analysis, and containment).

CONCLUSIONS OF LAW

25. Paragraphs 1 through 27, inclusive, are incorporated by reference herein.

26. Respondents are "persons" pursuant to NMSA 1978, § 74-4-3(K).

27. Respondents manage "hazardous waste" as defined by NMSA 1978, § 74-4-3(I) and 20.4.1.100 NMAC.

28. Respondent DOE is the owner and operator of an existing hazardous waste management facility as defined at 20.4.1.100 NMAC (incorporating 40 C.F.R. § 260.10).

29. Respondent UC is the co-operator of an existing hazardous waste management facility as defined at 20.4.1.100 NMAC (incorporating 40 C.F.R. § 260.10).

30. Respondents engage in the treatment, storage and disposal of hazardous waste as defined at NMSA 1978, § 74-4-3(C), (N) and (Q), and 20.4.1.100 NMAC (incorporating 40 C.F.R. § 260.10).

Violation No. 1
Failure to Perform Hazardous Waste Determination (TA-35)

31. Respondents violated 20.4.1.300 NMAC (incorporating 40 C.F.R. § 262.11)) by failing to perform an adequate hazardous waste determination on chemicals discarded in the TA-35 chemical storage cabinets, under the stairs on the east end of Bldg.421.

Violation No. 2
Failure to Retain On-Site Land Disposal Restriction Notices (TA-35)

32. Respondents failed to retain on-site copies of LDR notices for Manifest Nos. 21090, 21091, and 21092 in violation of 20.4.1.800 NMAC (incorporating 40 C.F.R. § 268.7(a)(8)).

Violation No. 3
Failure to Enter Required Information on Land Disposal Notices (TA-54)

33. Respondents failed to include required or correct information on the LDR notices associated with manifest Nos. 99281 and 99631 in violation of 20.4.1.800 NMAC (incorporating 40 C.F.R. § 268.7(a)(2)).

Violation No. 4
Failure to Adequately Track Waste (TA-50)

34. Respondents failed to track and enter background volumes of mixed waste into the STP data base and failed to provide NMED written information for deletion of mixed waste at TA-50 in violation of the Federal Facility Compliance Order, Part VII (1997).

Violation No. 5
Failure to Mark Start Accumulation Date (TA-50)

35. Respondents failed to place the correct accumulation start date on one container of mixed waste at TA-50 in violation of 20.4.1.801 NMAC (incorporating 40 CFR § 268.50(a)(2)(i)).

Violation No. 6
Failure to Maintain Operable Decontamination Equipment (TA-53)

36. Respondents failed to maintain in operable condition an eyewash unit at TA-53 in violation of 20.4.1.600 NMAC (incorporating 40 C.F.R. §§ 262.34(a)(4), -265.33).

Violation 7
Failure to Manage Waste Piles (TA-39)

37. Respondents failed to manage the waste piles at TA-39 so as to provide wind protection, waste analysis and containment in violation of 20.4.1.600 NMAC (incorporating 40 C.F.R. § 265.250, -251, -252, and -253).

CIVIL PENALTY

38. NMSA 1978, § 74-4-10 authorizes assessment of civil penalties of up to ten thousand dollars (\$10,000) per day for each violation of the Hazardous Waste Act or regulations promulgated thereunder. NMED hereby assesses a civil penalty of \$854,087 (eight hundred fifty-four thousand, eighty-seven dollars). The penalty amounts are calculated pursuant to the NMED's Hazardous Waste Penalty Policy. The penalty for each violation is:

| <u>VIOLATION</u> | <u>AMOUNT</u> |
|------------------|---------------|
| Violation 1 | \$187,320 |
| Violation 2 | \$ 1,875 |
| Violation 3 | \$ 1,250 |
| Violation 4 | \$214,080 |
| Violation 5 | \$ 23,062 |
| Violation 6 | \$ 30,000 |
| Violation 7 | \$396,500 |

39. 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 Barry S. Birch, Compliance and Technical Assistance Program Manager, Hazardous Waste Bureau, New Mexico Environment Department, 2905 Rodeo Park Drive East, Bldg. 1, Santa Fe, New Mexico 87505.

NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

40. Respondents may request a hearing pursuant to NMSA 1978, § 74-4-10(H) by filing a written Request for Hearing with the Secretary within 30 calendar days after this Order is served. The Request for Hearing shall include an Answer. The Answer shall:

a. Admit or deny each of the findings of fact and conclusions of law contained in the Order. Any allegation in the Order not specifically denied shall be deemed admitted. Where Respondents state they have no knowledge of a particular allegation, that particular allegation shall be deemed denied;

b. Set forth any affirmative defenses upon which Respondents intend to rely. Any affirmative defense not asserted in the Answer, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived;

c. Be signed under oath or affirmation that the information contained therein is true and correct to the best of the signatory's knowledge; and

d. Attach a copy of the Order.

Section 20.1.5.200 NMAC shall govern all hearing and pre-hearing procedures. Respondents may contact the hearing clerk for a copy of these regulations. The Hearing Clerk's address is: Hearing Clerk, New Mexico Environment Department, P.O. Box 26110, 1190 St. Francis Drive, Harold Runnels Building, N2150, Santa Fe, New Mexico 87502-6110, (505) 827-2002.

FINALITY OF ORDER

41. This Order shall become final unless Respondents file a written Request for Hearing and Answer within 30 calendar days of receipt of the Order. Failure by Respondents to file an answer constitutes an admission of all facts alleged in the Order and a waiver of Respondents' right to a hearing under NMSA 1978, § 74-4-10.

SETTLEMENT CONFERENCE

42. Whether or not Respondents file an Answer and Request for Hearing, Respondents may discuss settlement possibilities with NMED. A request for a settlement conference does not extend the 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, hearing proceedings. Respondents may appear at any settlement conferences or may appear with counsel.

43. Any settlement reached by the parties shall be set forth in a Stipulated Final Order signed by the Secretary of NMED pursuant to the provisions of 20.1.5.601 NMAC. The signing of a Stipulated 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.

44. To explore the possibility of settlement in this matter, contact Barry Birch, Compliance and Technical Assistance Program Manager, Hazardous Waste Bureau, New Mexico Environment Department, 2905 Rodeo Park Drive East, Bldg. 1, Santa Fe, New Mexico 87505, (505) 428-2500.

TERMINATION

45. 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 signs a Stipulated Final Order.

2-3-04

Date



Charles Lundstrom

Director

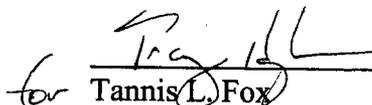
Water and Waste Mangement Division

Certificate of Service

I hereby certify that the foregoing Compliance Order was mailed postage prepaid, return receipt requested, on February 3, 2004 to the following:

Mr. Ralph Erickson
Area Manager
United States Department of Energy
Los Alamos Area Office
528 35th Street, MS A136
Los Alamos, New Mexico 87544

Mr. Peter Nanos
Director
Los Alamos National Laboratory
P.O. Box 1663, MS A100
Los Alamos, New Mexico 87544



for Tannis L. Fox

Deputy General Counsel