



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

File: 2390



RON CURRY  
SECRETARY

CHARLES LUNDSTROM  
WATER & WASTE MANAGEMENT  
DIVISION DIRECTOR

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

February 13, 2004

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  
LOS ALAMOS NATIONAL LABORATORY, EPA ID# NM0890010515

Dear Mr. Erickson and Mr. Nanos:

The New Mexico Environment Department ("NMED") issues the enclosed Compliance Order to the 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, § 74-4-1 *et seq.* The Compliance Order is issued because LANL failed to comply with the New Mexico Hazardous Waste Management Regulations, 20.4.1 NMAC and its hazardous waste permit. The Compliance Order sets out the specific violations and includes a civil penalty and a schedule of compliance. LANL may be subject to additional civil penalties of up to \$25,000 for each day of continued non-compliance 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



16788

Ralph Erickson and George P. Nanos

February 13, 2004

Page 2

CL:av

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

File: Library #2390  
hwbsoc05/enforcement/vollmer

**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,  
NMD0890010515,**

**COMPLIANCE ORDER  
HWB 04-02<sup>3</sup>  
(2003 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 Section 74-4-10 of the New Mexico Hazardous Waste Act ("HWA").

**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, HWA Permit No. NM0890010515-1 ("LANL Permit"). In addition, LANL manages hazardous and mixed wastes at various locations in a manner that is regulated under interim status or for which a permit is not required.

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 March 31 and April 29, 2003, NMED performed a compliance evaluation inspection of LANL to determine Respondent's compliance status with the HWA and the HWMR. The inspection involved all technical areas ("TA") at LANL with hazardous waste activities. The violations of the HWA and HWMR discovered during the inspection are set forth below.

11. NMED issued a Notice of Violation ("NOV") to Respondents on December 16, 2003, setting forth the violations discovered.

## **Hazardous Waste Determination and Characterization Findings**

12. Section II.C.1 of the LANL Permit requires Respondents to follow the procedures described in Permit Attachment A, LANL's Waste Analysis Plan.
13. Section A.4.1.2 of LANL's Waste Analysis Plan requires Respondents to test drummed organic process waste for pH, ash content, viscosity, heat value, TCLP metals, total organic chlorine, sulfur, and chemical composition.
14. Respondents managed hazardous waste streams associated with waste profiles 21652, 27607, 25381, 31883, 32578, 33500, 33993, 34577, 34876, 31254, 34746, 34775, and 34823 at TA-54 in calendar year 2002.
15. Respondents failed to test routine organic process wastes associated with waste profiles 21652 and 27607 in accordance with LANL's Waste Analysis Plan.
16. Section A.4.2.2 of LANL's Waste Analysis Plan requires Respondents to annually reevaluate routine corrosive acid waste for pH, all TCLP metals, nickel, and thallium.
17. Respondents failed to annually reevaluate routine corrosive acid wastes associated with waste profile 25381 in accordance with LANL's Waste Analysis Plan.
18. Section A.4.2.2, A.4.3.2 and A.4.6.2 of LANL's Waste Analysis Plan requires Respondents to sample every unique drum or batch of non-routine waste in accordance with LANL's Waste Analysis Plan.
19. Respondents failed to sample every unique drum or batch of non-routine corrosive acid process waste associated with waste profiles 31883, 32578, 33500, 33993, 34577, and 34876 and failed to sample every unique drum or batch of non-routine inorganic process waste associated with waste profiles 31254, 34746, 34775, and 34823 in accordance with LANL's Waste Analysis Plan.

20. Section A.5 of LANL's Waste Analysis Plan requires Respondents to verify hazardous constituents in waste streams using specified analytical procedures at specified intervals.

21. Section A.5.1 of LANL's Waste Analysis Plan requires Respondents to verify by quantitative chemical analysis one in each one hundred knowledge of process determinations based on a list compiled by the generator as wastes are accumulated in a compositing container.

22. Respondents failed to verify by quantitative chemical analysis one in each one hundred knowledge of process determinations based on a list compiled by the generator as wastes are accumulated in a compositing container.

23. Section A.5.2 of LANL's Waste Analysis Plan requires Respondents to analyze on an annual basis all routinely generated waste streams that have documented waste profiles to verify that the waste streams and waste profiles have not changed. All such analyses must be recorded in the facility record.

24. Respondents failed to analyze on an annual basis routinely generated wastes streams associated with waste profiles 21652, 25381, and 27607 to verify that the waste streams and waste profiles had not changed.

25. Section A.5.2 of LANL's Waste Analysis Plan requires that, when any information indicates a change in a process that generates a waste that may affect the waste, Respondents analyze the waste no later than the next time the waste is generated. All such analyses must be recorded in the facility record.

26. Respondents failed to analyze waste streams associated with waste profile 27607 when information contained in waste disposal request forms indicated that the waste profile had changed.

27. Section 20.4.1.300 NMAC incorporating 40 CFR § 262.11 requires that a person who generates a solid waste determine if that waste is a hazardous waste.

28. A hazardous waste determination was not performed on five drums with unknown contents abandoned at an uncontrolled TA-60 storage area on Sigma Mesa.

### **Treatment, Storage and Disposal Findings**

29. Section 20.4.1.300 NMAC incorporating 40 CFR § 262.34(a)(2) requires that a person who accumulates hazardous waste without a permit mark each container with an accumulation start date.

30. Five hazardous waste containers at TA-48, Building 1, Container Storage Area 1808 were not marked with accumulation start dates.

31. Section 20.4.1.300 NMAC incorporates 40 CFR § 262.34. 40 CFR § 262.34(a) requires that a person, who accumulates hazardous waste without a permit or interim status, limit accumulation time to 90 days or less; 40 CFR § 262.34(b) requires that a person who accumulates hazardous waste for more than 90 days be subject to the requirements of 40 CFR Parts 264 and 265 and the permit requirements of 40 CFR Part 270 unless an extension has been granted to the 90-day period.

32. From February 4 to February 15, 2002, two hazardous waste containers were stored at TA-55, Container Storage Area 1160 for more than 90 days without applying for interim status, obtaining a permit, or obtaining an extension to the 90-day storage limit.

33. From February 4 to February 6, 2002, one hazardous waste container was stored at TA-55, Container Storage Area 2000 for more than 90 days without applying for interim status, obtaining a permit, or obtaining an extension to the 90-day storage limit.

34. From November 5 to November 14, 2002, twenty-one hazardous waste containers

were stored at TA-55, Container Storage Area 1160 for more than 90 days without applying for interim status, obtaining a permit, or obtaining an extension to the 90-day storage limit.

35. From December 4, 2002, to January 5, 2003, one hazardous waste container was stored at TA-48, Container Storage Area 2338 for more than 90 days without applying for interim status, obtaining a permit, or obtaining an extension to the 90-day storage limit.

36. Section 20.4.1.300 NMAC incorporating 40 CFR § 262.34(c)(1) requires that a person, who accumulates hazardous waste without a permit or interim status and without complying with 40 CFR § 262.34(a), have the accumulation area at or near the point of generation and under the control of the operator of the process.

37. Four gas cylinders at TA-46 outside Building 840 were stored at an unlocked satellite accumulation area that was not under the control of the operator of the process.

38. Paint-related waste was stored at a satellite accumulation area located at TA-55, Building 191, which was approximately 470 feet from the TA-55 paint shop where the waste was generated.

39. Section 20.4.1.300 NMAC incorporating 40 CFR § 262.34(a)(1)(i), which refers to 40 CFR § 265.174, requires that a person who accumulates hazardous waste without a permit or interim status perform weekly inspections of container storage areas.

40. Container Storage Area 2134 at TA-43, Building 1 was not inspected during the week of December 16, 2001.

#### **Record Keeping Findings**

41. Section 20.4.1.500 NMAC incorporating 40 CFR § 264.73(b)(1) and Section 20.4.1.600 NMAC incorporating 40 CFR § 265.73(b)(1) require a person who operates permitted and interim status storage facilities to keep a written operating record that includes information

on each hazardous waste received as specified by 40 CFR Part 264, Appendix I and 40 CFR Part 265, Appendix I, respectively. Section II.K.1.b of the LANL Permit requires Respondents to maintain a written operating record pursuant to 40 CFR § 264.73(b).

42. Handling codes were not provided in the operating record for TA-54 permitted and interim status container storage areas.

**Preparedness, Prevention and Contingency Plan Findings**

43. Section 20.4.1.300 NMAC incorporating 40 CFR § 262.34(a)(4) which refers to 40 CFR §§ 265.32 and 265.33 requires a person equip 90-day accumulation facilities with appropriate communications and decontamination equipment and maintain such equipment to assure its proper operation in time of emergency. Section 20.4.1.600 NMAC incorporating 40 CFR §§ 265.32 and 265.33 imposes the same requirements on a person operating interim status storage facilities.

44. The phone at TA-55, Container Storage Area 1160, a 90-day accumulation facility, was not in operating condition from October 24 through October 30, 2001.

45. The eyewash at TA-55, Container Storage Area 1439, a 90-day accumulation facility, was not in operating condition from December 3 through December 4, 2001.

46. The eyewash/shower at the TA-54, Container Storage Area 653, an interim status storage facility, was not in operating condition from February 16 through April 2, 2003.

47. The safety shower at TA-55, Container Storage Area 480, an interim status storage facility, was not in operating condition from March 11 through March 18, 2002.

48. Section 20.4.1.500 NMAC incorporating 40 CFR § 264.35 requires a person to maintain adequate aisle space in permitted container storage areas to allow unobstructed movement. Section II.H.4 of the LANL Permit requires Respondents to maintain a minimum

aisle space of 24 inches.

49. The required aisle space of 24 inches was not maintained for an array of 24 drums stored at TA-50, Building 69, permitted Container Storage Area 462.

50. Section 20.4.1.300 NMAC incorporating 40 CFR § 262.34(a)(4) which refers to 40 CFR § 265.52(f) requires a person to have a personnel evacuation plan that includes routes to be used.

51. The contingency plans at TA-22, Container Storage Areas 548 and 829 did not contain facility-specific evacuation routes.

### **CONCLUSIONS OF LAW**

52. Paragraphs 1 through 51 are incorporated by reference herein.

53. Respondents are “persons” as defined in Section 74-4-3.K of the HWA and are “generators” as defined in 20.4.1.101 NMAC, incorporating 40 CFR § 260.10.

54. Respondents generate and manage “hazardous waste” as defined in Section 74-4-3.I of the HWA, and 20.4.1.101 NMAC, incorporating 40 CFR § 260.10.

55. Respondents are “owners” and “operators” of an “existing hazardous waste management facility” as defined in 20.4.1.101 NMAC, incorporating 40 CFR § 260.10.

56. Respondents engage in “storage” and “treatment” of hazardous waste as defined in Section 74-4-3.C, N, and Q of the HWA and 20.4.1.101 NMAC, incorporating 40 CFR § 260.10.

### **Hazardous Waste Characterization and Determination Violations**

#### **Violation No. 1**

#### **Failure to Test and Reevaluate Routine Wastes (TA-54)**

57. Respondents violated Section II.C.1 of the LANL Permit, incorporating Sections

A.4.1.2 and A.4.2.2 of LANL Waste Analysis Plan, by failing to test routine organic process wastes associated with waste profiles 21652 and 27607 and by failing to annually reevaluate routine corrosive acid wastes associated with waste profile 25381.

**Violation No. 2**  
**Failure to Sample Non-Routine Wastes (TA-54)**

58. Respondents violated Section II.C.1 of the LANL Permit, incorporating Sections A.4.2.2 and A.4.6.2 of LANL Waste Analysis Plan, by failing to sample every unique drum or batch of non-routine corrosive acid process waste associated with waste profiles 31883, 32578, 33500, 33993, 34577, and 34876 and by failing to sample every unique drum or batch of non-routine inorganic process waste associated with waste profiles 31254, 34746, 34775, and 34823 in accordance with LANL's Waste Analysis Plan.

**Violation No. 3**  
**Failure to Verify Knowledge of Process Determinations (TA-54)**

59. Respondents violated Section II.C.1 of the LANL Permit, incorporating Section A.5.1 of LANL Waste Analysis Plan, by failing to verify by quantitative chemical analysis one in each one hundred knowledge of process determinations based on a list compiled by the generator as wastes are accumulated in a compositing container.

**Violation No. 4**  
**Failure to Perform Annual Verification of Routine Waste (TA-54)**

60. Respondents violated Section II.C.1 of the LANL Permit, incorporating Section A.5.2 of LANL Waste Analysis Plan, by failing to analyze on an annual basis routinely generated wastes streams associated with waste profiles 21652, 25381, and 27607 to verify that the waste streams and waste profiles have not changed.

**Violation No. 5**  
**Failure to Perform Waste Verification After a Change in Process (TA-54)**

61. Respondents violated Section II.C.1 of the LANL Permit, incorporating Section A.5.2 of LANL Waste Analysis Plan, by failing to analyze waste streams associated with waste profile 27607 when information contained in Waste Disposal Request forms indicated that the waste profile had changed.

**Violation No. 6**  
**Failure to Perform Hazardous Waste Determination (TA-60)**

62. Respondents violated Section 20.4.1.300 NMAC incorporating 40 CFR § 262.11 by failing to perform a hazardous waste determination on five drums with unknown contents abandoned at an uncontrolled TA-60 storage area on Sigma Mesa.

**Treatment, Storage And Disposal Violations**

**Violation No. 7**  
**Failure to Mark Start Accumulation Date (TA-48)**

63. Respondents violated Section 20.4.1.300 NMAC incorporating 40 CFR § 262.34(a)(2) by failing to mark five hazardous waste containers at TA-48, Building 1, Container Storage Area 1808 with accumulation start dates.

**Violation No. 8**  
**Failure to Comply with 90-day Time Restriction (TA-55)**

64. Respondents violated Section 20.4.1.300 NMAC incorporating 40 CFR § 262.34(a) and (b) by storing two hazardous waste containers at TA-55, Container Storage Area 1160 for more than 90 days from February 4 to February 15, 2002 without applying for interim status, obtaining a permit, or obtaining an extension to the 90-day storage limit.

**Violation No. 9**  
**Failure to Comply with 90-day Time Restriction (TA-55)**

65. Respondents violated Section 20.4.1.300 NMAC incorporating 40 CFR § 262.34(a) and (b) by storing one hazardous waste container at TA-55, Container Storage Area 2000 for more than 90 days from February 4 to February 6, 2002, without applying for interim status, obtaining a permit, or obtaining an extension to the 90-day storage limit.

**Violation No. 10**  
**Failure to Comply with 90-day Time Restriction (TA-55)**

66. Respondents violated Section 20.4.1.300 NMAC incorporating 40 CFR § 262.34(a) and (b) by storing twenty-one hazardous waste containers at TA-55, Container Storage Area 1160 for more than 90 days from November 5 to November 14, 2002, without applying for interim status, obtaining a permit, or obtaining an extension to the 90-day storage limit.

**Violation No. 11**  
**Failure to Comply with 90-day Time Restriction (TA-48)**

67. Respondents violated Section 20.4.1.300 NMAC incorporating 40 CFR § 262.34(a) and (b) by storing one hazardous waste container at TA-48, Container Storage Area 2338 for more than 90 days from December 4, 2002 to January 5, 2003, without applying for interim status, obtaining a permit, or obtaining an extension to the 90-day storage limit.

**Violation No. 12**  
**Failure to Control Satellite Accumulation Area (TA-46)**

68. Respondents violated Section 20.4.1.300 NMAC incorporating 40 CFR § 262.34(c)(1) by failing to have four hazardous waste containers stored at a satellite accumulation area located outside TA-46, Building 840 under the control of the operator of the process.

**Violation No. 13**

**Failure to Locate Satellite Accumulation Area At or Near Point of Generation (TA-55)**

69. Respondents violated Section 20.4.1.300 NMAC incorporating 40 CFR § 262.34(c)(1) by failing to have satellite accumulation area 2064 located at TA-55, Building 191 at or near the point of generation.

**Violation No. 14**

**Failure to Inspect Container Storage Area on a Weekly Basis (TA-43)**

70. Respondents violated Section 20.4.1.300 NMAC incorporating 40 CFR § 262.34(a)(1)(i) which refers to 40 CFR § 265.174 by failing to inspect TA-43, Building 1, Container Storage Area 2134 during the week of December 16, 2001.

**Record Keeping Violations**

**Violation No. 15**

**Failure to Maintain Operating Record (TA-54)**

71. Respondents violated Section 20.4.1.500 NMAC incorporating 40 CFR § 264.73(b)(1), Section 20.4.1.600 NMAC incorporating 40 CFR § 265.73(b)(1), and Section II.K.1.b of the LANL Permit by failing to provide handling codes in the operating record for TA-54 permitted and interim status container storage areas.

**Preparedness, Prevention, and Contingency Plan Violations**

**Violation No. 16**

**Failure to Maintain Operational Emergency Equipment (TA-55)**

72. Respondents violated Section 20.4.1.300 NMAC incorporating 40 CFR § 262.34(a)(4) which refers to 40 CFR § 265.33 by failing to maintain the phone at TA-55, Container Storage Area 1160 in operating condition from October 24 through October 30, 2001.

**Violation No. 17**  
**Failure to Maintain Operational Emergency Equipment (TA-55)**

73. Respondents violated Section 20.4.1.300 NMAC incorporating 40 CFR § 262.34(a)(4) which refers to 40 CFR § 265.33 by failing to maintain the eyewash at TA-55 container storage area 1439 in operating condition from December 3 through December 4, 2001.

**Violation No. 18**  
**Failure to Maintain Operational Emergency Equipment (TA-54)**

74. Respondents violated Section 20.4.1.600 NMAC incorporating 40 CFR § 265.33 by failing to maintain the eyewash/shower at TA-54, Container Storage Area 653 in operating condition from February 16 through April 2, 2003.

**Violation No. 19**  
**Failure to Maintain Operational Emergency Equipment (TA-55)**

75. Respondents violated Section 20.4.1.600 NMAC incorporating 40 CFR § 265.33 by failing to maintain the safety shower at TA-55, Container Storage Area 480 in operating condition from March 11 through March 18, 2002.

**Violation No. 20**  
**Failure to Maintain Required Aisle Space (TA-50)**

76. Respondents violated Section 20.4.1.500 NMAC incorporating 40 CFR § 264.35 and Section II.H.4 of the LANL Permit by failing to maintain the required aisle space for an array of 24 drums stored at TA-50, Building 69, permitted Container Storage Area 462.

**Violation No. 21**  
**Failure to Identify Evacuation Routes (TA-22)**

77. Respondents violated Section 20.4.1.300 NMAC incorporating 40 CFR § 262.34(a)(4) which refers to 40 CFR § 265.52(f) by failing to have facility-specific evacuation routes identified in the contingency plans at TA-22, Container Storage Areas 548 and 829.

**CIVIL PENALTY**

78. 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 there under. NMED hereby assesses a civil penalty of one million, four hundred and thirteen thousand, nine hundred and thirty one dollars (\$1,413,931) against Respondents. The penalty amounts are calculated pursuant to NMED's Hazardous Waste Penalty Policy. The penalty for each violation is:

<b><u>Violation</u></b>	<b><u>Nature of Violation</u></b>	<b><u>Amount</u></b>
Violation 1	Failure to test and reevaluate routine wastes	\$ 455,000
Violation 2	Failure to sample nonroutine wastes	\$ 553,000
Violation 3	Failure to verify knowledge of process determinations	\$ 825
Violation 4	Failure to perform annual verification of routine waste	\$ TBD1
Violation 5	Failure to perform waste verification after change in process	\$ TBD2
Violation 6	Failure to perform hazardous waste determination	\$ 209,720
Violation 7	Failure to mark start accumulation date	\$ 10,335
Violation 8	Failure to comply with 90-day time restriction	\$ 2,205
Violation 9	Failure to comply with 90-day time restriction	\$ 630
Violation 10	Failure to comply with 90-day time restriction	\$ 53,993
Violation 11	Failure to comply with 90-day time restriction	\$ 7,313
Violation 12	Failure to have control of satellite accumulation area	\$ 5,750
Violation 13	Failure to locate satellite accumulation area at or near point of generation	\$ 12,285

---

1 To be determined.

2 To be determined.

Violation 14	Failure to inspect container storage area weekly	\$	625
Violation 15	Failure to maintain operating record	\$	8,320
Violation 16	Failure to maintain operational emergency equipment	\$	1,155
Violation 17	Failure to maintain operational emergency equipment	\$	630
Violation 18	Failure to maintain operational emergency equipment	\$	75,600
Violation 19	Failure to maintain operational emergency equipment	\$	1,155
Violation 20	Failure to maintain required aisle space	\$	7,800
Violation 21	Failure to identify evacuation routes in contingency plan	\$	7,590

79. Respondents shall make payment 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, New Mexico Environment Department, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.

#### SCHEDULE OF COMPLIANCE

80. Based on the foregoing Findings of Fact and Conclusions of Law, Respondents are ordered to comply with the following Schedule of Compliance:

a. Within forty-five (45) calendar days from receipt of this Order, Respondents shall provide documentation of the corrective actions taken to ensure compliance with the procedures identified in LANL's Waste Analysis Plan.

b. Within sixty (60) calendar days from receipt of this Order, Respondents shall provide documentation of the analyses performed on the specific wastes identified in Paragraphs 57, 58, 59, 60, and 61.

c. Within forty-five (45) calendar days from receipt of this Order, Respondents shall provide documentation of the corrective actions taken to ensure proper hazardous waste determinations are made on abandoned wastes such as those identified in Paragraph 62.

d. Within forty-five (45) calendar days from receipt of this Order, Respondents shall provide documentation of the corrective actions taken to ensure proper labeling of accumulation start dates on hazardous waste containers in container storage areas such as those identified in Paragraph 63.

e. Within forty-five (45) calendar days from receipt of this Order, Respondents shall provide documentation of the corrective actions taken to ensure hazardous waste containers in container storage areas such as those identified in Paragraphs 64, 65, 66, 67, and 68 are not stored for more than 90 days.

f. Within forty-five (45) calendar days from receipt of this Order, Respondents shall provide documentation of the corrective actions taken to ensure that hazardous waste at satellite accumulation areas such as identified in Paragraph 68 are under the control of operator of the process.

g. Within forty-five (45) calendar days from receipt of this Order, Respondents shall provide documentation of the corrective actions taken to ensure that satellite accumulation areas such as identified in Paragraph 69 are located at or near the point of generation.

h. Within forty-five (45) calendar days from receipt of this Order, Respondents shall provide documentation of the corrective actions taken to ensure that weekly inspections are performed at container storage areas such as identified in Paragraph 70.

i. Within forty-five (45) calendar days from receipt of this Order, Respondents shall provide documentation of the corrective actions taken to ensure that a proper operating record is kept to eliminate missing handling code information as identified in Paragraph 71.

j. Within forty-five (45) calendar days from receipt of this Order, Respondents shall provide documentation of the corrective actions taken to ensure that maintenance of emergency equipment at container storage areas is performed in a timely manner and that mitigative measures are taken to have operable appropriate emergency equipment such as identified in Paragraphs 72, 73, 74, and 75 is available during waste operations. Within one (1) calendar day from receipt of this Order, Respondents shall have an operable eyewash available during waste operations in the vicinity of the container storage area identified in Paragraph 74 and provide documentation of this action within forty-five (45) days.

k. Within forty-five (45) calendar days from receipt of this Order, Respondents shall provide documentation of the corrective actions taken to ensure that proper aisle space is maintained at container storage area 462 identified in Paragraph 76.

l. Within forty-five (45) calendar days from receipt of this Order, Respondents shall provide documentation of the corrective actions taken to ensure that contingency plans for container storage areas contain proper evacuation information such as identified in Paragraph 77.

#### **NOTICE OF POTENTIAL ADDITIONAL PENALTIES**

81. If Respondents fail to comply in a timely manner with the Schedule of Compliance, the Secretary may assess additional civil penalties of up to \$25,000 for each day of continued noncompliance pursuant to Section 74-4-10.C of the HWA.

**NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING**

82. Respondents have a right to request a hearing pursuant to Section 74-4-10.H of the HWA and 20.1.5.200 NMAC of NMED's Adjudicatory Procedures by filing a written Request for Hearing with the Hearing Clerk within thirty (30) calendar days after receipt of Order. The Request for Hearing shall include an Answer. The Answer shall:

a. Clearly and directly admit or deny each of the Findings of Fact and Conclusions of Law contained in the Order. Where Respondents assert they have no knowledge of a particular allegation, the allegation shall be deemed denied. Any allegation of the Order not specifically denied shall be deemed admitted.

b. Allege any affirmative defenses upon which Respondents intend 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.

c. Be signed under oath 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.

83. A hearing upon the issues raised by the Order and Answer shall be held upon the request of each Respondent. NMED's Adjudicatory Procedures shall govern all hearing and pre-hearing procedures. Respondents may contact the Hearing Clerk for a copy of these regulations, or they can be found at <http://www.nmcpr.state.nm.us/nmac/>. 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

**FINALTY OF ORDER**

84. 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 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 Section 74-4-10 of the HWA.

### **SETTLEMENT CONFERENCE**

85. Whether or not Respondents file an Answer and Request for Hearing, Respondents may confer with NMED 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.

86. 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 20.1.5.601 NMAC. The issuance of such an Order shall serve to resolve all issues rose in the Order, shall be final and binding on all parties to the Order, and shall not be appealable.

87. To explore the possibility of settlement in this manner, contact Barry S. Birch, Compliance and Technical Assistance Program Manager, Hazardous Waste Bureau, New Mexico Environment Department, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505, (505) 428-2528.

### **TERMINATION**

88. 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.

2-13-04

Date



Charles Lundstrom, Director  
Water and Waste Management Division

Certificate of Service

I hereby certify that the foregoing Compliance Order was mailed postage prepaid on February 13, 2004, via certified mail, return receipt requested to the following:

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

Ralph Erickson  
Director  
Office of Los Alamos Site Operations  
United States Department of Energy  
528 35th Street  
Los Alamos, New Mexico 87544



Melissa Mascarenas  
Office of General Counsel  
New Mexico Environment Department