

Generator

ENTERED

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT

12-15-1999

IN THE MATTER OF
U.S. DEPARTMENT OF ENERGY
AND THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA
LOS ALAMOS, NEW MEXICO
NM0890010515

COMPLIANCE ORDER
HRM -99-03(CO)
(1997 Inspection)

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), issues this Administrative Compliance Order (Order) to the United States Department of Energy (DOE) and the Regents of the University of California (UC)(collectively referred to as Respondents), pursuant to the New Mexico Hazardous Waste Act (HWA), NMSA 1978 § 74-4-10 (Repl.Pamp. 1993).

FINDINGS OF FACT

1. NMED is the agency within the executive branch of the government of the State of New Mexico charged with the administration and enforcement of the HWA and New Mexico Hazardous Waste Management Regulations (HWMR), 20 NMAC 4.1.101 through .1109.
2. Respondents are DOE and 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).



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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 miles northeast of Albuquerque and twenty-five miles northwest of Santa Fe. The LANL site encompasses approximately forty-three 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. In association with the activities identified above, LANL generates, treats and stores hazardous wastes and mixed hazardous and radioactive wastes. LANL has also applied for and received a HWA permit from NMED for the storage and management of hazardous wastes and mixed hazardous and radioactive wastes.

8. Over the past seven years, NMED has issued numerous compliance orders seeking compliance and civil penalties. In 1992 through 1994, NMED inspected LANL, discovered violations of HWMR-7, and issued Respondents compliance orders (93-01, 93-02, 93-03, 93-04, 94-09, 94-12), which sought compliance and assessed civil penalties. In 1995, NMED inspected LANL, discovered violations of HRMW, 20 NMAC 4.1, and issued LANL and DOE compliance orders (95-03, 95-08), which sought compliance and assessed civil penalties. In 1996, NMED inspected LANL, discovered violations of the HRMW, 20 NMAC 4.1, and issued a letter of violation.

9. The violations cited in the enforcement actions described above in paragraph 8, included, but were not limited to the following: failure to perform hazardous waste determinations (94-09), failure to keep a hazardous waste container closed (93-04, 94-09), failure to label hazardous waste containers (93-04, 94-09), failure to provide decontamination equipment at a less than ninety day storage area (93-04, 94-09), exceeding storage time limits for hazardous waste (93-04, 94-09), manifesting violations (93-04, 94-09), LDR violations (1993 EPA multi-media), training violations (93-04, 94-09) and accumulation of waste not under control of the generator (94-09).

10. As a result of the compliance orders described above in paragraph 9, Respondents entered into an administrative order on consent (1992 - 1994) and stipulated final order (SFO) (1995) and agreed to a schedule of compliance and the payment of civil penalties.

11. Between July 8, 1997 and December 8, 1997, NMED performed a compliance evaluation inspection (FY 97 Inspection) of LANL to determine Respondents' compliance status with the HWA and HWMR, 20 NMAC 4.1. The FY 97 inspection involved all technical areas (TA) at LANL. The following violations were discovered at TA-3, TA-18, TA-21, TA-33, TA-46, TA-54, TA-55 and TA-60.

TA-3. Ion Beam Facility

12. TA-3 generates hazardous waste.

13. 20 NMAC 4.1.300 (incorporating 40 CFR § 262.34(c)(1)) sets forth the requirements for generators to accumulate as much as 55 gallons of hazardous waste or 1 quart of acutely listed hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status.

14. At the time of the FY97 inspection, a 2 liter container of hydrochloric acid was found discarded and not under the control of the generator at TA-3, Ion Beam Facility, Basement Laboratory.

15. In a written memorandum dated December 18, 1997, LANL stated that the 2 liter container contained hydrochloric acid, a corrosive characteristic waste (D-002). ✓

16. Upon information and belief, the two liter container had not been under Respondents' control for at least thirty-two days.

17. 20 NMAC 4.1.300 (incorporating 40 CFR § 262.34(a)(2)) requires a generator to mark the date upon which each period of accumulation begins, clearly and visibly, for inspection on each container.

18. At the time of the FY97 inspection, NMED discovered that 4 containers of hazardous waste were not marked with the date upon which each accumulation period started. The containers that were not labeled correctly were: 2 bottles of Red X TV Corona Dope, 1 container of Handy Flux and one 2 liter gas cylinder.

TA-18

19. TA-18 generates hazardous waste.

20. 20 NMAC 4.1.300 (incorporating 40 CFR §§ 264.34(a)(4)) requires Respondents to have operable decontamination equipment and water at adequate volume and pressure, unless a demonstration to the Secretary is made that no hazard is posed.

21. At the time of the FY97 inspection, there was no operable eyewash or water of adequate volume available at the less than ninety day storage area in TA-18. LANL personnel admitted to these facts in writing. Further, LANL personnel stated that there is no policy on the operation of the eyewash for the less than ninety day storage area.

TA-21

22. TA-21 generates hazardous waste.
23. 20 NMAC 4.1.300 (incorporating 40 CFR § 262.11) requires any person who generates a solid waste to determine if that waste is a hazardous waste using methods specified in 20 CFR § 262.11(a)(b) and (c).
24. At the time of the FY97 inspection, NMED found a 2 gallon container with unknown contents discarded at TA-21, Bldg. 1, east side dock.
25. LANL personnel stated that the container was filled with oily dirt and sludge and contained no hazardous waste.
26. Upon request by NMED, LANL provided documentation to support its hazardous waste determination. Upon review, the documentation inadequately demonstrated that the container contains no hazardous waste.
27. 20 NMAC 4.1.300 (incorporating 40 CFR § 262.34(c)) sets forth the requirements for generators to accumulate as much as 55 gallons of hazardous waste or 1 quart of acutely listed hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste without a permit or interim status.
28. At the time of the FY97 inspection, NMED found two 1 gallon containers discarded and not under the control of the generator for an unknown period of time at TA-21, Bldg. 59.
29. The two 1 gallon containers contained a listed hazardous waste, 111 Trichloroethylene.

30. At the time of the FY97 inspection, a 55 gallon container, half full of Titanium crystals was found discarded and not under the control of the generator at TA-21, JCI-ESA/TSC, basement.

31. Titanium crystals are reactive and characteristic hazardous waste (D003). *D003 admitted*

32. 20 NMAC 4.1.300 (incorporating 40 CFR § 262.11) requires any person who generates a solid waste to determine if that waste is a hazardous waste using methods specified in 20 CFR § 262.11(a)(b) and (c).

33. At the time of the FY97 inspection, NMED found a 5 gallon container, 2/3 full of unknown contents, discarded at TA-21, Shed 402. *DOE: (a) motor oil - (b) determined it to be non-haz.*

34. At the time of the FY97 inspection, Respondents provided NMED no documentation demonstrating that the 5 gallon container contained no hazardous waste. *DOE answer "correctly determined"*

TA-33 - Mobile Laser Staging Area

35. TA-33 generates hazardous waste.

36. 20 NMAC 4.1.300 (incorporating 40 CFR § 262.11) requires any person who generates a solid waste to determine if that waste is a hazardous waste using methods specified in 20 CFR § 262.11(a)(b) and (c).

37. At the time of the FY97 inspection, NMED found "waste lead solder" discarded for an unknown period of time at TA-33, Bldg. 39.

38. At the time of the FY97 inspection, Respondents provided NMED no documentation demonstrating that the "waste lead solder" contains no hazardous waste.

39. Upon information and belief, the "waste lead solder" contained lead and is a characteristic hazardous waste. Further, LANL stated in a written memorandum, that after the NMED inspector noted the violation, it corrected the violation.

40. At the time of the FY97 inspection, at least 16 containers of photo processing chemicals were discarded for at least ten months at TA-33, Bldg. 114, Room 125.

41. Respondents' hazardous waste determination regarding these containers was inadequate and did not demonstrate to NMED that the photo processing chemicals contained no hazardous waste.

TA-41

42. TA-41 generates hazardous waste.

43. 20 NMAC 4.1.300 (incorporating 40 CFR § 262.34(c)(1)) sets forth the requirements for generators to accumulate as much as 55 gallons of hazardous waste or 1 quart of acutely listed hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste without a permit or interim status.

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44. Based on information and belief, at the time of the FY97 inspection, four 5 gallon carboys containing naphtha and mineral spirits were found abandoned at TA-41, Bldg. 30, Room 264.

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TA-46

A 45. TA-46 has a hazardous waste satellite storage area.

A 46. 20 NMAC 4.1.300 (incorporating 40 CFR § 262.34.(c)(1)(i)) which incorporates 40 CFR § 265.173(a) requires containers holding hazardous waste to be closed during storage, except when necessary to add or remove waste.

47. At the time of the FY97 inspection, NMED found a 5 gallon container of hazardous waste open at TA-46, Bldg. 24, Room B-6.

48. The 5 gallon container was marked with words stating that it contained 3% HCL with a trace of mercury.

49. 20 NMAC 4.1.300 (incorporating 40 CFR § 262.34(b)) provides that a generator who accumulates hazardous waste for more than ninety days is an operator of a storage facility and is subject to the requirements of 40 CFR Part 264 and 40 CFR Part 265 and permit requirements under 40 CFR Part 270.

50. At the time of the FY97 inspection, NMED found at least 21 containers of hazardous materials discarded and stored without a permit at TA-46, Bldg. 31, Room 103. The following containers were as follows: one 2 gallon of acetic acid (D002), one ¾ gallon hydrochloric acid (D002), one 500 ml of hydrofluoric acid (D002), one ¼ gallon nitric acid (D002), one ½ gallon sulfuric acid (D002), one 1/3 gallon nitric acid (D002), four 500 ml bottles of outdated Eastman Kodak White Reflectance Coating (D001 containing Barium Sulfate and ethanol with a flash point of 72° F), one 500 ml bottle of Kodak White Reflectance Paint, one 200 ml bottle of trifluoroacetic acid (D002), one tube of Iodo acetylene or CH₃I (D003), 1 jar of distilled mercury (D009), one 200 ml bottle of acetone (F003), one 1 gallon liquid Versatec (xerox toner premix Type M) (D001 with a flash point of 102° F), one 1/3 full can of Methly Alcohol (D001), one 1 gallon container Ancamine T-1, 1 gas cylinder of borazine (B₃N₃H₆), 1 small tube of HBNH₃ (D003), and 1 container of H₃B.N(CH₃)₃.

51. At the time of the FY97 inspection, Respondents had abandoned these 21 containers since possibly 1991 and the storage area did not meet the requirements of a less than ninety day storage area and was not permitted to store hazardous waste for long term.

52. 20 NMAC 4.1.300 (incorporating 40 CFR 262.11) requires any person who generates a solid waste to determine if that waste is a hazardous waste using methods specified in 20 CFR 262.11 (a)(b) and (c).

53. At the time of the FY97 inspection, Respondents had failed to make a hazardous waste determination on 21 containers, as described in paragraph 50, discarded since possibly 1991.

54. At the time of the FY97 inspection, Respondents provided NMED no documentation demonstrating that the 21 containers contained no hazardous waste.

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55. At the time of the FY 97 inspection, Respondents failed to determine if a container of Dippit 646 was hazardous waste when discarded at TA-46, Bldg. 208, under the tube canopy.

56. Respondents failed to determine if Dippit 646 was a hazardous waste when it was abandoned. Respondents have since stated that Dippit 646 is a hazardous waste and it is indicated as such in the MSDS.

57. At the time of the FY97 inspection, NMED found a 55 gallon container with unknown contents abandoned at TA-46, Bldg. 31, south side.

58. At the time of the FY97 inspection, Respondents provided NMED no documentation demonstrating that the abandoned 55 gallon container contained no hazardous waste.

59. At the time of the FY97 inspection, NMED found two 1 liter abandoned containers with unknown contents at TA-46, Bldg. 30, Room 106.

60. At the time of the FY97 inspection, Respondents provided NMED no documentation demonstrating that the two 1 liter containers contained no hazardous waste.

61. 20 NMAC 4.1.300 (incorporating 40 CFR § 262.34(c)(1)) sets forth the requirements for generators to accumulate as much as 55 gallons of hazardous waste or 1 quart of acutely listed hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status.

62. At the time of the FY97 inspection, at least 5 containers with regulated hazardous wastes, methyl ethyl ketone (D035, F005) and toluene (F006), were found abandoned and not under the control of the operator in the laboratory hood at TA-46, Bldg. 41, Room 105.

TA- 50

63. TA- 50 generates hazardous waste.

64. Respondents' Permit Module II F. and 20 NMAC 4.1.500 (incorporating 40 CFR § 264.16(c)) requires RCRA facility personnel to take part in an annual review of initial training as required under §264.16(a).

65. At the time of the FY97 inspection, a review of facility training records revealed that the following individuals had not received the annual refresher training required for facility personnel at TA-50: Paul Abercrombie, Rick Alexander, Julie Meadows and Robert Gonzales.

TA-53

66. TA-53 generates hazardous waste.

67. 20 NMAC 4.1.300 (incorporating 40 CFR § 262.11) requires any person who generates a solid waste to determine if that waste is a hazardous waste using methods specified in 20 CFR § 262.11(a)(b) and (c).

68. At the time of the FY97 inspection, NMED found three 500ml containers with unknown contents, labeled pending analysis and dated 9-11-96 at TA-53, Bldg. 1, Room D-126 with containers labeled hazardous waste.

69. At the time of the FY97 inspection, Respondents provided NMED no documentation demonstrating that the container contained no hazardous waste.

TA- 54 - Permitted Hazardous Waste Storage Area

70. TA-54 is a permitted hazardous waste storage area at LANL.

71. 20 NMAC 4.1.300 (incorporating 40 CFR § 262.11) requires any person who generates a solid waste to determine if that waste is a hazardous waste using methods specified in 20 CFR § 262.11(a)(b) and (c).

72. At the time of the FY97 inspection, a container of Cyanuric Fluoride, was not adequately determined to be a hazardous waste and was inaccurately labeled as "non-regulated" at TA-54, Area L, Bldg. 69, LP6.

73. 20 NMAC 4.1.300 (incorporating 40 CFR 262.34.(c)(1)(ii)) requires containers holding hazardous waste to be marked with the words "hazardous waste" or other words that identify the contents of the container.

74. At the time of the FY97 inspection, a container of Cyanuric Fluoride, was characterized improperly and inaccurately labeled as "non-regulated" at TA-54, Area L, Bldg. 69, LP6.

75. In a written memorandum dated July 10, 1997, the Material Safety Data Sheet (MSDS) stated that the material is a "hazardous waste for it's characteristic of reactivity." A LANL employee also informed NMED that the container was "misabeled" and "should have been labeled D003 for cyanide."

76. Respondents' hazardous waste storage permit for TA-54 prohibits the storage of waste which is restricted from land disposal unless such container is clearly marked to identify its contents and the date each period of accumulation begins in Permit Module III.B.3.b, which incorporates the requirements of 40 CFR § 268.50 (a)(2)(i).

77. At the time of the FY97 inspection, a review of the facility inspection logs indicate that numerous mixed waste containers within the permitted storage area had faded, illegible, and incomplete labels at TA-54, Area L.

78. At the time of the FY97 inspection, mixed waste storage shafts #36 and #37 were not marked or labeled in a manner which clearly identifies the contents of containers in the storage shafts as mixed waste at TA-54, Area L.

79. 20 NMAC 4.1.800 (incorporating 40 CFR § 268.7(a)(1)(ii)) requires the generator to notify the treatment or storage facility in writing that the waste being shipped does not meet the applicable treatment standards set forth in subpart D and therefore must include the following information on the notification; the waste constituents that the treater must monitor and whether the waste is a nonwastewater or wastewater treatability group.

80. At the time of the FY97 inspection, a review of facility manifest numbers 95940157, 95940159, 95940158, 95940145 and 95940141 and their associated Land Disposal Restriction (LDR) notices revealed that the appropriate waste constituents were not marked on the LDR notices at TA-54.

81. At the time of the FY97 inspection, a review of facility manifest numbers 97013 and 97016 and their associated LDR revealed that the proper treatability group was not marked on the LDR notices at TA-54.

TA-55

82. TA-55 generates hazardous waste.

83. Respondents' hazardous waste storage permit requires that facility personnel obtain annual refresher training , incorporating 20 NMAC 4.1.500 (40 CFR § 264.16(c)).

84. At the time of the FY97 inspection, a review of facility training records revealed that the following four individuals had not received the annual refresher training required for facility personnel at TA-55: Basil J. Lewis, Chester A. Smith Jr., Susan Ramsey and Willard E. Williams.

85. 20 NMAC 4.1.300 (incorporating 40 CFR § 262.11) requires any person who generates a solid waste to determine if that waste is a hazardous waste using methods specified in 20 CFR § 262.11(a)(b) and (c).

86. At the time of the FY97 inspection, a 5 gallon container of "Viro-Duc" Component B was incorrectly determined to be non-regulated and was found labeled as non-regulated at the interim storage area at TA-55, Bldg. 0, outside of Bldg. 4.

87. The 5 gallon container of "Viro-Duc" is an ignitable hazardous waste which has a flash point of 137° F and was identified in the MSDS sheet.

TA- 60

88. TA-60 generates hazardous waste.

89. 20 NMAC 4.1.300 (incorporating 40 CFR § 262.11) requires any person who generates a solid waste to determine if that waste is a hazardous waste using methods specified in 20 CFR § 262.11(a)(b) and (c).

90. At the time of the FY97 inspection, a 55 gallon container of yellow paint waste was found open and not stored correctly for possible hazardous waste at TA-60, Bldg. 131, outside storage building.

91. Based on the history of noncompliance noted in Paragraphs 8 through 10 above, and the violations noted in Paragraphs 12 through 90 above, Respondents are high priority violators of 20 NMAC. 4.1

CONCLUSIONS OF LAW

1. Respondents are each a "person" as defined at §74-4-3.K. of HWA and §101 of the New Mexico Hazardous Waste Management Regulations at 20 NMAC 4.1.101 through .1109, which incorporates, with a few exceptions, federal regulation at 40 CFR Parts 260 through 270.
2. Respondents manage "hazardous waste" as defined at §74-4-3.I. of HWA, and 20 NMAC 4.1.101, which incorporates, with few exceptions, federal regulation 40 CFR §260.10.
3. Respondent DOE is an "owner" and a "co-operator" of an "existing hazardous waste management facility" as defined at 20 NMAC 4.1.101 which incorporates with a few exceptions, federal regulation 40 CFR §260.10.
4. Respondent UC is an "operator" of an "existing hazardous waste management facility" as defined at 20 NMAC 4.1.101, which incorporates with a few exceptions, federal regulation 40 CFR §260.10.
5. Respondents engage in the "treatment", "storage" and "disposal" of hazardous waste as defined at §74-4-3.N. and Q., respectively, of the HWA, and 20 NMAC 4.1.100, which incorporates, with a few exceptions, federal regulation 40 CFR § 260.10.

COUNTS 1 THROUGH 6: ACCUMULATION OF HAZARDOUS WASTE NOT UNDER CONTROL OF GENERATOR [TA-3, TA-21, TA-41, TA-46, TA-53]

6. Paragraphs 1 through 16 (TA-3), 27 through 31 (TA-21), 42 through 44 (TA-41), 61 through 62 (TA-46), and 64 through 67 (TA-53) are hereby incorporated by reference.

7. Respondents violated 20 NMAC 4.1.300 (incorporating 40 CFR §262.34(c)(1)) by discarding a 2 liter container of hazardous waste by storage in lieu of disposal, which was not under the control of the generator, at TA-3, Ion Beam Facility, Basement Laboratory.

8. Respondents violated of 20 NMAC 4.1.300 (incorporating 40 CFR § 262.34(c)(1)) by discarding two 1 gallon containers of characteristic hazardous waste by storage in lieu of disposal, which was not under the control of the generator at TA-21, Bldg. 59.

9. Respondents violated of 20 NMAC 4.1.300 (incorporating 40 CFR §262.34(c)(1)) by discarding a 55 gallon container of reactive hazardous waste by storage in lieu of disposal, which was not under the control of the generator at TA-21, JCI-ESA/TSC, basement.

10. Respondents violated 20 NMAC 4.1.300 (incorporating 40 CFR § 262.34(c)(1)) by discarding four 5 gallon containers of characteristic hazardous waste by storage in lieu of disposal, which was not under the control of the generator at TA-41, Bldg. 30, Room 264.

11. Respondents have violated 20 NMAC 4.1.300 (incorporating 40 CFR §262.34(c)(1)) by discarding at least 5 containers of listed and characteristic hazardous waste by storage in lieu of disposal, which was not under the control of the generator at TA-46, Bldg. 41, Room 105.

12. Respondents have violated 20 NMAC 4.1.300 (incorporating 40 CFR §262.34 (c) (1)) by discarding three 500 ml containers of possible mixed waste which was not under the

control of the operator at TA-53, Bldg. 1, Room D-126.

COUNT 7: FAILURE TO MARK ACCUMULATION DATE [TA-3]

13. Paragraphs 1 through 18 are hereby incorporated by reference.

14. Respondents violated 20 NMAC 4.1.300 (incorporating 40 CFR §262.34 (a)(2)) by failing to place the accumulation start date on four containers of hazardous waste in the less than ninety day storage area located at TA-3, Ion Beam Facility.

COUNT 8: NO OPERABLE DECONTAMINATION EQUIPMENT [TA-18]

15. Paragraphs 1 through 11 and 19 through 21 are hereby incorporated by reference.

16. Respondents violated 20 NMAC 4.1.300 (incorporating 40 CFR §§ 262.34 (a)(4)) by failing to have operable decontamination equipment or water of sufficient pressure and volume available at the less than ninety day storage area at TA-18.

COUNT 9: INADEQUATE HAZARDOUS WASTE DETERMINATION [TA-21]

17. Paragraphs 1 through 11 and 22 through 26 are hereby incorporated by reference.

18. Respondents violated 20 NMAC 4.1.300 (incorporating 40 CFR § 262.11) by failing to perform an adequate hazardous waste determination on the unknown contents of a discarded 2 gallon container at TA-21, Bldg.1, east side dock.

COUNTS 10 THROUGH 20: FAILURE TO PERFORM HAZARDOUS WASTE DETERMINATION [TA-21, TA-33, TA-46, TA-53, TA-54, TA-55, TA-60]

19. Paragraphs 1 through 11, 32 through 34 (TA-21), 35 through 41 (TA-33), 52 through 60 (TA-46), 64 through 67 (TA-53), 68 through 70 (TA-54), 83 through 85 (TA-55), and 87 through 88 (TA-60) are hereby incorporated by reference.

20. Respondents violated 20 NMAC 4.1.300 (incorporating 40 CFR §262.11) by failing to perform a hazardous waste determination on the unknown contents of an abandoned 5

gallon container at TA-21, Shed 402.

21. Respondents violated 20 NMAC 4.1.300 (incorporating 40 CFR §262.11) by failing to perform a hazardous waste determination on waste lead solder at TA-33, Bldg.39.

22. Respondents violated 20 NMAC 4.1.300 (incorporating 40 CFR §262.11) by failing to perform a hazardous determination on discarded photo processing chemicals in TA-33, Bldg. 114, Room 125.

23. Respondents violated 20 NMAC 4.1.300 (incorporating 40 CFR §262.11) by failing to perform a hazardous determination on 21 various containers discarded since 1991 in TA-46, Bldg. 31, Room 103.

24. Respondents violated 20 NMAC 4.1.300 (incorporating 40 CFR §262.11) by failing to perform a hazardous determination on a container of Dippit 646 discarded at TA-46, Bldg. 208, under the tube canopy.

25. Respondents violated 20 NMAC 4.1.300 (incorporating 40 CFR §262.11) by failing to perform a hazardous determination on a discarded 55 gallon container with unknown contents at TA-46, Bldg. 31, south side.

26. Respondents violated 20 NMAC 4.1.300 (incorporating 40 CFR §262.11) by failing to perform a hazardous determination on two 1 liter abandoned containers with unknown contents at TA-46, Bldg. 30, Room 106.

27. Respondents violated 20 NMAC 4.1.300 (incorporating 40 CFR §262.11) by failing to perform a hazardous determination on three 500 ml containers with unknown contents, at TA-53, Bldg. 1, Room D-126.

28. Respondents violated 20 NMAC 4.1.300 (incorporating 40 CFR §262.11) by failing to perform an adequate hazardous determination on a container of Cyanuric Fluoride at

TA-54, Area L, Bldg. 69, LP6.

29. Respondents violated 20 NMAC 4.1.300 (incorporating 40 CFR §262.11) by failing to perform a hazardous determination on a 5 gallon container of "Viro-Duc" Component B at TA-55, Bldg. 0, outside of Bldg. 4.

30. Respondents violated 20 NMAC 4.1.300 (incorporating 40 CFR §262.11) by failing to perform a hazardous determination on a 55 gallon container of yellow paint waste at TA-60, Bldg. 131, outside storage building.

COUNT 21: OPEN CONTAINER [TA-46]

31. Paragraphs 1 through 11 and 45 through 48 are hereby incorporated by reference.

32. Respondents violated of 20 NMAC 4.1.300 (incorporating 40 CFR 262.34(c)(1)(i)) by failing to keep a hazardous waste container closed in the satellite accumulation area at TA-46, Bldg. 24, Room B-6.

COUNT 22: WASTES STORED IN EXCESS OF 90 DAY STORAGE LIMIT [TA-46]

33. Paragraphs 1 through 11 and 49 through 51 are hereby incorporated by reference.

34. Respondents violated 20 NMAC 4.1.300 (incorporating 40 CFR § 262.34(b)) by exceeding the ninety day storage time limit on at least 21 containers of discarded hazardous waste without a permit at TA-46, Bldg. 31, Room 103.

COUNT 23: LACK OF ANNUAL REFRESHER TRAINING FOR PERSONNEL [TA-50]

35. Paragraphs 1 through 11 and 61 through 63 are hereby incorporated by reference.

36. Respondents violated 20 NMAC 4.1.500 (incorporating 40 CFR § 264.16(c)) or, alternatively, 20 NMAC 4.1.600 (incorporating 40 CFR 265.16 (d)(4)) by failing to ensure annual refresher training is taken by personnel at TA-50 as required in the Hazardous Waste Storage Permit Module II.F.

COUNT 24: IMPROPER LABELING [TA-54]

37. Paragraphs 1 through 11 and 71 through 73 are hereby incorporated by reference.

38. Respondents violated 20 NMAC 4.1.300 (incorporating 40 CFR § 262.34 (c)(1)(ii)) by failing to properly label a container of reactive hazardous waste at TA-54, Area L, Bldg. 69, Row 4, LP6.

COUNT 25: IMPROPER LABELING/LAND DISPOSAL RESTRICTION WASTE

[TA-54]

39. Paragraphs 1 through 11 and 74 through 76 are hereby incorporated by reference.

40. Respondents violated the Hazardous Waste Storage Permit Module III.B.3.b and 20 NMAC 4.1.800 (incorporating 40 CFR §268.50(a)(2)(i)) by failing to maintain adequate labels on numerous containers of mixed waste within the permitted storage area of TA-54, Area L.

41. Respondents violated the Hazardous Waste Storage Permit Module III.B.3.b and 20 NMAC 4.1.800 (incorporating 40 CFR 268.50 CFR §268.50 (a)(2)(i)) by failing to mark or label the contents and the accumulation start date on the storage shafts #36 and #37 at TA-54, Area L.

COUNT 26 AND 27: VIOLATIONS OF LDR NOTICES [TA-54]

42. Paragraphs 1 through 11 and 77 through 79 are hereby incorporated by reference.

43. Respondents violated 20 NMAC 4.1.800 (incorporating 40 CFR §268.7(a)(1)(ii)) by failing to mark the proper waste constituents on LDR notices for five manifests at TA-54.

44. Respondents violated 20 NMAC 4.1.800 (incorporating 40 CFR § 268.7(a)(1)(ii)) by failing to mark the proper treatability group on LDR notices for manifest Numbers 97013 and 97016, dated 2/27/97, at TA-54.

COUNT 28: LACK OF ANNUAL REFRESHER TRAINING FOR PERSONNEL

[TA-55]

45. Paragraphs 1 through 11 and 80 through 82 are hereby incorporated by reference.

46. Respondents violated 20 NMAC 4.1.500 (incorporating 40 CFR § 264.16(c)) or, alternatively, 20 NMAC 4.1.600 (incorporating 40 CFR 265.16 (d)(4)) failing to ensure that annual refresher training is taken by personnel at TA-55 as required in the Hazardous Waste Storage Permit Module II.F.

CIVIL PENALTY

1. 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 One Million One Hundred Sixty Eight Thousand Seven Hundred Sixty Six Dollars (\$1,168,766), 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>
¶ 7	Hazardous waste not under control of generator	\$15,525
¶ 8	Hazardous waste not under control of generator	\$ 9,300

¶ 9	Hazardous waste not under control of generator.....	\$145,000
¶ 10	Hazardous waste not under control of generator	\$27,675
¶ 11	Hazardous waste not under control of generator	\$27,675
¶ 12	Hazardous waste not under control of generator	\$30,983
¶ 14	No accumulation start date on containers	\$15,525
¶ 16	No operable eyewash	\$4,500
¶ 18	Inadequate hazardous waste determination made	\$2,400
¶ 20	Failure to perform a hazardous waste determination	\$2,400
¶ 21	Failure to perform a hazardous waste determination	\$6,000
¶ 22	Failure to perform a hazardous waste determination	\$54,600
¶ 23	Failure to perform a hazardous waste determination	\$200,700
¶ 24	Failure to perform a hazardous waste determination	\$54,600
¶ 25	Failure to perform a hazardous waste determination	\$2,400
¶ 26	Failure to perform a hazardous waste determination	\$2,400
¶ 27	Failure to perform a hazardous waste determination	\$34,425
¶ 28	Failure to perform a hazardous waste determination	\$54,600
¶ 29	Failure to perform a hazardous waste determination	\$6,000
¶ 30	Failure to perform a hazardous waste determination	\$54,600
¶ 32	Failure to keep a container closed	\$1,125
¶ 34	Illegal storage past 90 days	\$200,700
¶ 36	Lack of annual refresher training	\$54,600
¶ 38	Failure to properly label	\$54,600
¶ 40	Failure to properly label	\$27,675

¶ 41	Failure to properly label	\$21,218
¶ 43	Failure to mark the appropriate waste codes on LDRs	\$1,470
¶ 44	Failure to mark the treatability group on LDRs	\$1,470
¶ 45	Lack of annual refresher training	\$54,600

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 Karen Breslin, Office of General Counsel, New Mexico Environment Department, P.O. Box 26110, Santa Fe, New Mexico 87502.

SCHEDULE OF COMPLIANCE

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

- A. Within 30 calendar days from receipt of this Order, Respondents shall perform adequate hazardous waste determinations for all wastes identified in paragraph 12. Respondents shall provide documentation of analyses or proper determination and disposition.
- B. Within 30 calendar days from receipt of this Order, Respondents shall provide documentation of measures taken to gain appropriate control over the hazardous waste stored for an indefinite period of time after a project ends or funding disappears, and in particular the wastes identified in paragraphs 11, 22, 23, 26, 28, and 34.
- C. Within 30 calendar days from receipt of this Order, Respondents shall provide documentation that required annual refresher training has been

provided for facility personnel identified in paragraph 36 and 46 and provide a plan to prevent this violation from happening in the future.

- D. Within 30 calendar days from receipt of this Order, provide a copy of the plan put into effect to correct the eye wash violation in paragraph 16.
- E. Within 10 calendar days from receipt of this Order, ensure that containers described in paragraph 40 are properly labeled and properly label the mixed waste storage shafts with appropriate signs to identify contents of the shafts identified in paragraph 41, and provide documentation of same within 30 calendar days.
- F. Within 30 calendar days from receipt of this Order, provide documentation of proper storage or disposal of all discarded or abandoned materials/wastes identified in paragraphs 23, 24, 25, and 28.
- G. Within 30 calendar days from receipt of this Order, provide documentation of corrections to the deficiencies on all LDR's noted in paragraphs 43 and 44.
- H. Within 30 calendar days from receipt of this Order, provide a plan to adequately address testing and disposal of unknowns. Paragraph 18 was not tested or handled correctly following the inspection.

Compliance with the violations noted in paragraphs 7, 8, 9, 10, 14, 20, 21, 22, 27, 29, 30, 32, and 38 were appropriately addressed by the Respondent at the time of the inspection or within an appropriate timeframe. No further action is required on these violations.

NOTICE

- 3. 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

4. Respondents have a right to request a hearing pursuant to §74-4-10.H. of the HWA and 20 NMAC 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:

A. 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;

B. 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;

C. 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

D. have a copy of the compliance Order/Determination attached.

5. 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:

Tamella Lakes, 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

6. 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

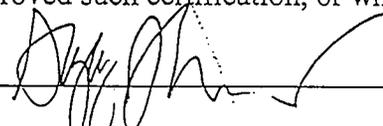
7. Whether or not Respondents file an Answer and Request for Hearing, Respondents may confer with Complainant concerning settlement. A request for a settlement conference does not extend the thirty (30) day period during which the Answer and Request for Hearing must be submitted. The settlement conference 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.

8. 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.

9. To explore the possibility of settlement in this matter, contact Ms. Debby Brinkerhoff of the Environment Department, P.O. Box 26110, 1220 St. Francis Drive, Santa Fe, NM 87501, telephone number (505) 827-1508.

TERMINATION

10. 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.

By: 
Gregory J. Lewis, Director

Date: December 15, 1999

Water and Waste Management Division

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Compliance Order was mailed postage prepaid as follows on this 15th day of December, 1999 to the following:

Via Certified Mail, Return Receipt Requested:

Mr. David A. Gurule, 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

Tari's Fox
Attorney NMED/OGC

Respondents are required to comply with all terms and conditions of its HWA permit. NMSA 1978, Section 74-4-10 of the HWA and 20 NMAC 4.1.900 (incorporating 40 CFR 270.4).