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1/24/08

ENTERED



STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT

NEW MEXICO ENVIRONMENT)
DEPARTMENT,)
Complainant,)
v.)
UNITED STATES DEPARTMENT)
OF ENERGY and)
LOS ALAMOS NATIONAL)
SECURITY, LLC,)
Respondents.)

NO. HWB 08-02(CO)

SETTLEMENT AGREEMENT AND STIPULATED FINAL ORDER

The New Mexico Environment Department (the "Department") and the United States Department of Energy ("DOE") and Los Alamos National Security, LLC ("LANS") (collectively, the "Respondents") pursuant to 20.1.5.600.B(2) NMAC, stipulate to resolve the Notice of Violation issued by the Department to Respondents on August 31, 2007 (the "NOV") on the terms and conditions specified in this Settlement Agreement and Stipulated Final Order ("Stipulated Order").

I. BACKGROUND

A. PARTIES

1. The Department is an agency of the executive branch of the State of New Mexico. The Department is authorized to administer and enforce the New Mexico Hazardous Waste Act, ("HWA"), NMSA 1978, §§ 74-4-1 to 74-4-14, and the Hazardous Waste Management Regulations ("HWMR"), 20.4.1 NMAC, including assessing civil penalties for violations thereof.



2. The Respondent DOE is a department of the United States government. It is the owner and a co-operator of Los Alamos National Laboratory (the "Laboratory").

3. The Respondent Los Alamos National Security, LLC is a limited liability company organized under the laws of the State of Delaware. It is a co-operator of the Laboratory pursuant to a contract with DOE that became effective on June 1, 2006. It is the successor to the Regents of the University of California, the previous co-operator of the Laboratory.

B. HISTORY

4. The Laboratory is a national research laboratory in Los Alamos County, New Mexico.

5. The Laboratory is a facility that generates a variety of hazardous wastes and also treats and stores hazardous waste within the meaning of NMSA 1978, Section 74-4-3(H), (K), (P), and (T) of the HWA.

6. On November 8, 1989, the New Mexico Department of Health and Environment (the predecessor agency to the Department) issued a Hazardous Waste Facility Permit, No. NM0890010515-1, (the "Permit") to DOE and the University of California for the Laboratory pursuant to NMSA 1978, Section 74-4-10 of the HWA. On March 8, 1990, the United States Environmental Protection Agency issued to DOE and the University of California the portion of the Permit covering those requirements added by the Hazardous and Solid Waste Amendments of 1984. The Permit requires corrective action for releases of hazardous waste and hazardous constituents into the environment by the Laboratory.

7. On April 3, 2006 through April 12, 2006, while the University of California was the co-operator, inspectors from the Department conducted a compliance evaluation inspection of

the Laboratory. During the inspection, the inspectors observed violations of the HWA, the HWMR, and the Facility Permit.

C. ALLEGED VIOLATIONS

8. As a result of that inspection, on August 31, 2007, the Department issued the NOV to DOE and LANS alleging two violations of the HWA, the HWMR, and the Facility Permit.

9. The Department alleged the following violations in the NOV:

a. Violation of Permit Condition II.K.1 referring to 40 CFR 264.73(b) by failing to have a complete operating record for the TA-54-38 RANT permitted unit, including hazardous waste codes, waste descriptions, storage locations and dates shipped off-site or back to TA-54 Area G, or provide such information in a timely manner; and

b. Violation of Permit Condition II.I.2 referring to 40 CFR 264.54(d) and Permit Condition II.I.3 referring to 40 CFR 270.42 by failing to make the necessary amendments to their contingency plan to update the list of emergency coordinators and designate a primary emergency coordinator.

10. The NOV directed DOE and LANS to respond in writing within 15 days, describing the actions instituted at the Laboratory to address the alleged violations. DOE and LANS responded within the specified time, identifying the corrective actions that had been implemented. DOE and LANS do not admit the violations alleged in paragraph 9.

II. SETTLEMENT

11. The parties enter into this Stipulated Order to settle and completely resolve the Department's claims for the violations alleged in paragraph 9, and to avoid further expense and litigation.

12. Respondents agree to pay a civil penalty of \$26,613.00 to resolve all the violations alleged in Paragraph 9 above. Respondents shall pay the civil penalty to the State of New Mexico within 30 days after the effective date of this Stipulated Order. Payment shall be by certified check or other guaranteed negotiable instrument, payable to the New Mexico Hazardous Waste Emergency Fund, and shall be sent to the Department at the following address:

James P. Bearzi
Chief, Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303

A copy of the transmittal letter shall be sent to Tracy Hughes, General Counsel for the Department.

13. If Respondents fail to make timely and complete payment, Respondents shall pay interest on the outstanding balance at the rate established for judgments and decrees under NMSA 1978, § 56-8-4.

III. OTHER TERMS AND CONDITIONS

A. ENFORCEMENT

14. Except as expressly provided in Paragraph 15 of this Stipulated Order, the Department reserves the right to take any action, administrative or judicial, civil or criminal, to enforce the requirements of the HWA, the HWMR, the Permit, or this Stipulated Order. In any

such action, DOE and LANS reserve the right to assert any defenses they may have.

B. COVENANTS NOT TO SUE

15. The Department covenants not to sue or take any administrative or civil action against DOE or LANS for violations of the HWA, the HWMR, and the Permit alleged in paragraph 9 or the NOV.

16. DOE and LANS covenant not to sue the State of New Mexico for any claims arising from the NOV.

C. EFFECTIVE DATE

17. This Stipulated Order shall become effective on the date it is approved and signed by the Department Secretary.

D. INTEGRATION

18. This Stipulated Order merges all prior written and oral communications between or among the parties concerning the subject matter of this Stipulated Order, contains the entire agreement among the parties, and shall not be modified without the express written agreement of the parties.

E. COUNTERPARTS

19. The Stipulated Order may be signed in counterparts.

F. BINDING EFFECT

20. This Stipulated Order shall be binding on the Department and its successor agencies, on DOE and its successor agencies, and on LANS and its successors as operators of the Laboratory.

G. AUTHORITY OF SIGNATORIES

21. Each person executing this Stipulated Order represents that he or she has the authority to bind the party he or she represents to this Stipulated Order, and such representation shall be legally sufficient evidence of actual or apparent authority to bind such party to this Stipulated Order.

For the NEW MEXICO ENVIRONMENT DEPARTMENT:

By: 
JON GOLDSTEIN
DEPUTY SECRETARY
NEW MEXICO ENVIRONMENT DEPARTMENT

Date: 1.24.08

For the UNITED STATES DEPARTMENT OF ENERGY:

By: Matthew P. Johnson

Date: 1-18-08

GEORGE RAEL
ASSISTANT MANAGER, ENVIRONMENTAL OPERATIONS
LOS ALAMOS SITE OFFICE
NATIONAL NUCLEAR SECURITY ADMINISTRATION

For the LOS ALAMOS NATIONAL SECURITY, LLC:

By: Richard S. Watkins

Date: 1/9/08

RICHARD S. WATKINS
ASSOCIATE DIRECTOR FOR ENVIRONMENT, SAFETY,
HEALTH & QUALITY
LOS ALAMOS NATIONAL SECURITY, LLC
LOS ALAMOS NATIONAL LABORATORY

ORDER

Pursuant to 20.1.5.600.B(2) NMAC, this Settlement Agreement and Stipulated Final Order, agreed to by the Department and by Respondents the DOE and LANS, is hereby **APPROVED** as a **FINAL ORDER**.



RON CUREY
SECRETARY OF ENVIRONMENT

Date: 1/25/08