

 ENTERED

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STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT

IN THE MATTER OF
U.S. DEPARTMENT OF ENERGY and
THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA,
LOS ALAMOS, NEW MEXICO,
EPA ID NO. NMD0890010515,

COMPLIANCE ORDERS
NOS. HWB 04-01 and
HWB 04-02

Respondents.

SETTLEMENT AGREEMENT AND STIPULATED FINAL ORDER

This Settlement Agreement and Stipulated Final Order is entered into between the New Mexico Environment Department (the "Department") and the Respondents, the United States Department of Energy ("DOE") and the Regents of the University of California (the "University")(collectively, the "Parties"). The Parties enter into this Stipulated Final Order to resolve two Compliance Orders that alleged statutory, regulatory, and permit violations by DOE and the University at the Los Alamos National Laboratory in Los Alamos County, New Mexico ("LANL"), EPA identification No. NM0890010515. The Department alleges violations of the New Mexico Hazardous Waste Act ("HWA"), NMSA 1978, §§ 74-4-1 to 74-4-14, the Hazardous Waste Management Regulations ("HWMR") and the Hazardous Waste Facility Permit for LANL.

I. BACKGROUND

A. PARTIES

1. The Department is an agency of the executive branch of the State of New Mexico, created pursuant to NMSA 1978, § 9-7A-6(B)(3). The Department is authorized to administer and enforce the HWA and the HWMR, 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 LANL.

3. The Respondent University is a co-operator of LANL pursuant to a contract with DOE.

B. FACILITY BACKGROUND

4. LANL is a facility that generates, treats and stores hazardous waste within the meaning of section 74-4-3(H), (K), (P), and (T) of the HWA.

5. On November 8, 1989, the Department issued to DOE and the University a Hazardous Waste Facility Permit, No. NM0890010515-1 (the "Facility Permit") for the treatment and storage of hazardous wastes at LANL, pursuant to section 74-4-4(A)(6) of the HWA. The Facility Permit has been modified several times since it was issued. As amended, the Facility Permit is still in effect.

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

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

C. 2001 INSPECTION AND COMPLIANCE ORDER HWB 04-01

8. Between April and May 23, 2001, the Department performed a compliance evaluation inspection of LANL ("2001 Inspection"). The 2001 Inspection included inspection of Technical Areas ("TAs") 35, 39, 50, 53 and 54. As a result of this inspection, the Department

identified alleged violations of the HWA and HWMR.

9. On October 9, 2001, the Department sent a Notice of Violation ("NOV") to Respondents that alleged violations of the HWA and HWMR based on the 2001 Inspection.

10. On February 4, 2002, Respondents submitted a response to the NOV to the Department, admitting some of the alleged violations and denying the remainder.

11. On February 3, 2004, the Department issued Compliance Order HWB 04-01 to Respondents alleging seven (7) violations of the HWA and HWMR and assessing a civil penalty of \$854,087 based on the 2001 Inspection.

12. Respondents filed a timely request for hearing and answer to Compliance Order HWB 04-01. This matter was noticed and docketed by the Hearing Clerk as "No. HWB 04-02 (CO)."

D. 2003 INSPECTION AND COMPLIANCE ORDER HWB 04-02

13. Between March 31 and April 29, 2003, the Department performed a compliance evaluation inspection of LANL ("2003 Inspection"). The 2003 Inspection included inspection of TAs 22, 43, 46, 48, 50, 54, 55, and 60. As a result of this inspection, the Department identified alleged violations of the HWA, HWMR, and the Facility Permit.

14. On February 13, 2004, the Department issued Compliance Order HWB 04-02 to Respondents alleging twenty-one (21) violations of the HWA, the HWMR and the Facility Permit, and assessing a civil penalty of \$1,413,931 based on the 2003 Inspection.

15. Respondents filed a timely request for hearing and answer to Compliance Order HWB 04-02. This matter was noticed and docketed by the Hearing Clerk as "No. HWB 04-03 (CO)."

16. Since the Department issued Compliance Orders HWB 04-01 and HWB 04-02, the Parties have met and reached a settlement of the Department's claims for civil penalties and the alleged violations.

II. ALLEGED VIOLATIONS AND SETTLEMENT

A. COMPLIANCE ORDER HWB 04-01

17. Respondents admit the following violations alleged in HWB 04-01:

- A. Violation 2 (failure to retain on-site land disposal restriction notices)
- B. Violation 3 (failure to enter required information on land disposal restriction notices)

18. Respondents deny the following violation alleged in HWB 04-01:

- A. Violation 5 (failure to mark start accumulation date)

19. The Department agrees to dismiss the following violations alleged in HWB 04-01:

- A. Violation 1 (failure to perform hazardous waste determination)
- B. Violation 4 (failure to adequately track waste)
- C. Violation 6 (failure to maintain operable decontamination equipment)
- D. Violation 7 (failure to manage waste piles)

20. The Parties enter into this Stipulated Final Order to settle and completely resolve the Department's claims for the violations alleged in Paragraphs 9 and 11 above, and to avoid further expense and litigation. This Stipulated Final Order and payment of civil penalties shall not be construed as an admission by Respondents of any of the allegations that Respondents deny under Paragraph 18 above.

B. COMPLIANCE ORDER HWB 04-02

21. Respondents admit the following violations alleged in HWB 04-02:

- A. Violation 7 (failure to mark start accumulation date)
- B. Violation 8 (failure to comply with 90-day time restriction on storage of hazardous waste)

- C. Violation 9 (failure to comply with 90-day time restriction on storage of hazardous waste)
- D. Violation 10 (failure to comply with 90-day time restriction on storage of hazardous waste)
- E. Violation 11 (failure to comply with 90-day time restriction) on storage of hazardous waste)
- F. Violation 14 (failure to inspect container storage area on a weekly basis)
- G. Violation 21 (failure to identify evacuation routes)

22. Respondents deny the following violations alleged in HWB 04-02:

- A. Violation 13 (failure to locate satellite accumulation area at or near point of generation)
- B. Violation 15 (failure to maintain operating record)
- C. Violation 16 (failure to maintain operational emergency equipment)
- D. Violation 17 (failure to maintain operational emergency equipment)

23. The Department agrees to dismiss the following violations alleged in HWB 04-02:

- A. Violation 1 (failure to test and reevaluate routine wastes)
- B. Violation 2 (failure to sample non-routine wastes)
- C. Violation 3 (failure to verify knowledge of process determinations)
- D. Violation 4 (failure to perform annual verification of routine waste)
- E. Violation 5 (failure to perform waste verification after a change in process)
- F. Violation 6 (failure to perform hazardous waste determination)
- G. Violation 12 (failure to control satellite accumulation area)
- H. Violation 18 (failure to maintain operational emergency equipment)
- I. Violation 19 (failure to maintain operational emergency equipment)
- J. Violation 20 (failure to maintain required aisle space)

24. The Parties enter into this Stipulated Final Order to settle and completely resolve the Department's claims for the violations alleged in Paragraph 14 above, and to avoid further expense and litigation. This Stipulated Final Order and payment of civil penalties shall not be construed as an admission by Respondents of any of the allegations that Respondents deny under Paragraph 22 above.

III. CIVIL PENALTIES

25. DOE and the University shall pay to the State of New Mexico the following civil penalties:

- A. A total sum of twenty-six thousand and one-hundred and eighty-seven dollars (\$26,187) to resolve the violations of HWB 04-01 as alleged in Paragraphs 17 and 18 above; and
- B. A total sum of sixty-eight thousand and seven hundred and thirty-six dollars (\$68,736) to resolve the violations of HWB 04-02 alleged in Paragraphs 21 and 22 above.

DOE and the University shall pay these civil penalties to the State of New Mexico within 30 days after the effective date of this Stipulated Final Order. Payment shall be made to the *State of New Mexico Hazardous Waste Emergency Fund* by certified check or other guaranteed negotiable instrument, and shall be sent to the Department at the following address:

New Mexico Environment Department
Hazardous Waste Bureau
c/o Mr. James Bearzi, Bureau Chief
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-2567

A copy of the transmittal letter shall be sent to counsel for the Department.

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

27. DOE and the University shall be jointly and severally liable for their obligations under this Stipulated Final Order.

IV. OTHER TERMS AND CONDITIONS

A. ENFORCEMENT

28. Except as expressly provided in Paragraph 29 of Section III.B (Covenants Not to Sue), the Department reserves the right to take any action, administrative or judicial, civil or criminal, to enforce the requirements of the HWA, the HWMR, LANL's Hazardous Waste Facility Permit, or this Stipulated Order. In any such action, DOE and the University reserve the right to assert any defenses that they may have.

B. COVENANTS NOT TO SUE

29. The Department covenants not to sue or take any administrative or civil action against DOE or the University under the HWA and the HWMR for any of the facts or violations arising from and alleged in the October 9, 2001 NOV and Compliance Orders HWB 04-01 and HWB 04-02. Such covenant applies only to civil liability. Notwithstanding the foregoing, the Department reserves its right to take appropriate action pursuant to the Federal Facility Compliance Order against DOE or the University based on the facts alleged in Violation 4 in HWB 04-01.

30. DOE and the University covenant not to sue the State of New Mexico for any claims arising from the October 9, 2001 NOV and Compliance Orders HWB 04-01 or HWB 04-02.

C. EFFECTIVE DATE

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

D. INTEGRATION

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

E. COUNTERPARTS

33. This Stipulated Final Order may be signed in counterparts.

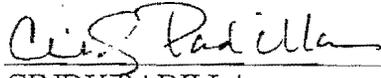
F. BINDING EFFECT

34. This Stipulated Final Order shall be binding on the Department and its successor agencies, on DOE and its successor agencies, and on the University and its successors as operators of LANL.

G. AUTHORITY OF SIGNATORIES

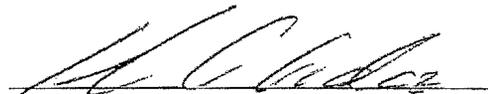
35. Each person executing this Stipulated Final Order represents that he or she has the authority to bind the Party he or she represents to this Stipulated Final Order, and such representation shall be legally sufficient evidence of actual or apparent authority to bind such Party to this Stipulated Final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

NEW MEXICO ENVIRONMENT DEPARTMENT:


CINDY PADILLA
DIRECTOR
WATER AND WASTE MANAGEMENT DIVISION

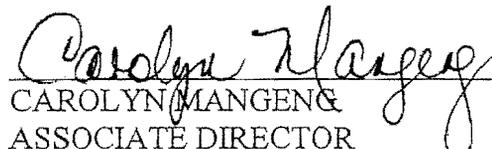
Date Sept. 21, 2005

UNITED STATES DEPARTMENT OF ENERGY:

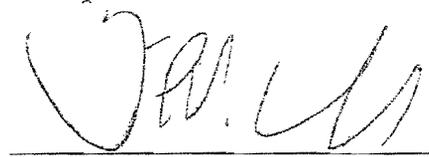

JOHN ORDAZ
ASSISTANT MANAGER
ENVIRONMENTAL STEWARDSHIP
LOS ALAMOS SITE OFFICE
NATIONAL NUCLEAR SECURITY ADMINISTRATION

Date Sept 20, 2005

REGENTS OF THE UNIVERSITY OF CALIFORNIA:


CAROLYN MANGENC
ASSOCIATE DIRECTOR
TECHNICAL SERVICES
LOS ALAMOS NATIONAL LABORATORY

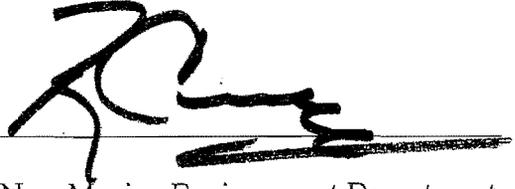
Date Sept 21, 2005


FRANK P. DICKSON, JR.
LABORATORY COUNSEL
LOS ALAMOS NATIONAL LABORATORY

Date 09.14.05

ORDER

Pursuant to 20.1.5.601.B NMAC, this Settlement Agreement and Stipulated Final Order, agreed to by the Department and the Respondents DOE and the University, is hereby APPROVED as a FINAL ORDER.



Ron Curry
Secretary, New Mexico Environment Department

Date _____

9/22/05