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STATE OF NEW MEXICO  
ENVIRONMENT DEPARTMENT



NEW MEXICO ENVIRONMENT )  
DEPARTMENT, )

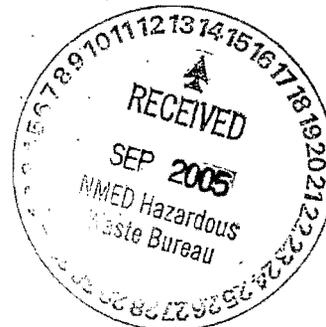
Complainant, )

v. )

UNITED STATES DEPARTMENT )  
OF ENERGY and )  
THE REGENTS OF THE UNIVERSITY )  
OF CALIFORNIA, )

Respondents. )

NO. HWB-05-30



SETTLEMENT AGREEMENT AND STIPULATED FINAL ORDER

This Settlement Agreement and Stipulated Final Order ("Stipulated Order") is made by and among 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 Order to resolve statutory, regulatory, and permit violations by DOE and the University at the Los Alamos National Laboratory in Los Alamos County, New Mexico (the "Laboratory"), 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, 20.4.1 NMAC, issued thereunder; and the Hazardous Waste Facility Permit for the Laboratory.



## 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) (1991). The Department is authorized to administer and enforce the HWA and the Hazardous Waste Management Regulations, 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 the Laboratory.

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

### B. BACKGROUND

4. The Laboratory is a facility that treats and stores hazardous waste within the meaning of section 74-4-3 (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 the Laboratory, 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. On March 22, 2004, inspectors from the Department's Hazardous Waste Bureau conducted a compliance evaluation inspection of the Laboratory. The inspection included Technical Areas ("TA's") 3, 16, 54, 55, and 60. During the inspection, the inspectors observed several violations of the HWA, the Hazardous Waste Management Regulations, and the Facility

Permit.

7. On February 28, 2005, inspectors from the Department's Hazardous Waste Bureau conducted a compliance evaluation inspection of the Laboratory. The inspection included TA's 3, 15, 50, 54, and 55. During the inspection, the inspectors observed several violations of the HWA, the Hazardous Waste Management Regulations, and the Facility Permit.

8. On April 20, 2005, the Department sent to DOE and the University a Notice of Violation letter ("NOV") alleging several violations of the HWA, the Hazardous Waste Management Regulations, and the Facility Permit as noted during the March 22, 2004 and February 28, 2005 inspections. The NOV included a proposed civil penalty for the alleged violations.

9. On May 5, 2005, DOE and UC sent a Response to the NOV to the Department, admitting some of the alleged violations and disputing others.

10. On June 8, 2005, the Parties met to attempt to reach a settlement of the Department's claims for civil penalties and a resolution of the alleged violations.

### **C. ALLEGED VIOLATIONS**

11. The Department has alleged the following violations of the HWA, the Hazardous Waste Management Regulations, and the Facility Permit.

a. The Hazardous Waste Management Regulations provide that the owner or operator of a hazardous waste facility that stores "restricted" hazardous waste<sup>1</sup> in containers for the purpose of accumulating such quantities of waste as is necessary to facilitate proper recovery, treatment, or disposal must clearly mark each container to identify the date accumulation begins.

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<sup>1</sup> Hazardous waste restricted from land disposal under 40 C.F.R. pt. 268, subpt. C.

20.4.1.800 NMAC (incorporating 40 C.F.R. § 268.50(a)(2)(i)). Condition III.B.3.b of the Facility Permit references this regulation. During the March 22, 2004 inspection, the label on a 30-gallon drum containing nitric acid waste (D002 corrosive waste), stored at Area L of TA-54 of the Laboratory, showed an accumulation start date of “3/20/03.” The actual accumulation start date, which DOE and the University assert was hand-written on the top of the drum, was May 9, 2003. DOE and the University deny the alleged violation.

b. The Hazardous Waste Management Regulations provide that the owner or operator of a hazardous waste facility must keep a written operating record at the facility. For an on-site hazardous waste storage facility storing restricted hazardous waste, the operating record must include the written notice providing information on the land disposal restrictions given to the treatment, storage, or disposal facility that receives the waste. 20.4.1.500 NMAC (incorporating 40 C.F.R. § 264.73(a) and (b)(16)); 20.4.1.800 NMAC (incorporating 40 C.F.R. § 268.7(a)(8)). Condition II.K.1 of the Facility Permit references these regulations. During the March 22, 2004 inspection, a copy of the written notice providing information on the land disposal restrictions, for a shipment of restricted hazardous waste shipped off-site from TA-54 Area L on April 29, 2003, was not at the Laboratory facility. DOE and the University deny the alleged violation.

c. The Hazardous Waste Management Regulations provide that restricted hazardous waste may be stored at a treatment, storage, or disposal facility for more than one year only if the owner or operator can demonstrate that storage for more than one year is necessary to facilitate proper recovery, treatment, or disposal. 20.4.1.800 NMAC (incorporating 40 C.F.R. § 268.50(c)). Condition III.B.3.a of the Facility Permit references this regulation. During the

March 22, 2004 inspection, the inspectors discovered from facility records that a gas cylinder containing nitrous oxide waste (D001 reactive waste) had been stored at TA-54 Area L for more than one year, from December 19, 2002 until January 28, 2004. DOE and the University did not make any demonstration that storage of this waste for more than one year was necessary to facilitate proper recovery, treatment, or disposal.

d. The Hazardous Waste Management Regulations provide that containers of used oil must be labeled or marked clearly with the words "Used Oil." 20.4.1.1002 NMAC (incorporating 40 C.F.R. § 279.22(c)(1)). During the March 22, 2004 inspection, a 55-gallon drum of used oil stored in Building 38 at TA-3 was not labeled or marked with the words "Used Oil."

e. The Hazardous Waste Management Regulations provide that generators of hazardous waste that store such waste for more than ninety days are subject to the permit requirements of the regulations. 20.4.1.300 NMAC (incorporating 40 C.F.R. § 262.34(b)). During the February 28, 2005 inspection, containers of hazardous waste were stored outdoors in a "Flammable Storage Cabinet" at TA-15, along R Site Road. The wastes had been stored at that location since sometime in 2002. DOE and the University did not have a permit to store hazardous waste at this location. DOE and the University deny the alleged violation.

f. The Hazardous Waste Management Regulations provide that generators of hazardous waste that store such waste for more than ninety days are subject to the permit requirements of the regulations. 20.4.1.300 NMAC (incorporating 40 C.F.R. § 262.34(b)). During the February 28, 2005 inspection, containers of hazardous waste were stored in a glovebox in the basement of Building 29 at TA-3. The wastes had been stored at that location

since sometime in 1998. DOE and the University did not have a permit to store hazardous waste at this location.

g. The Hazardous Waste Management Regulations provide that a container used to store hazardous waste must always be closed during storage, except when necessary to add or remove waste. 20.4.1.600 NMAC (incorporating 40 C.F.R. § 265.173(a)). This requirement applies to generators of hazardous waste. 20.4.1.300 NMAC (incorporating 40 C.F.R. § 262.34(c)(1)(i)). During the February 28, 2005 inspection, containers at two sites, Site #1900 at TA-55 and Site #122 at TA-3, were not closed, although wastes were not being added to or removed from the containers.

h. The Hazardous Waste Management Regulations provide that the owner or operator of a hazardous waste treatment, storage, or disposal facility must inspect the facility, and must record the inspections in an inspection log or summary. These records must indicate the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial action taken. 20.4.1.500 NMAC (incorporating 40 C.F.R. § 264.15(a) and (d)). Condition B.9.4 of Attachment B of the Facility Permit references these regulations. During the February 28, 2005 inspection, the Department's inspectors noted that the inspection records for Building 38 at TA-54 did not list the name of the inspector for the inspection of storage unit #1579 conducted on December 25, 2004; did not list the name of the inspector for the inspections of storage units #1580 and #1581 conducted on January 24, 2005; and did not include any notation of observations for the inspection of storage unit # 1581 conducted on June 14, 2004.

12. DOE and the University have admitted the violations described in Paragraphs

11.c, 11.d, 11.f, 11.g, and 11.h. DOE and the University have not admitted the remaining alleged violations. The Department alleged two additional violations in the NOV, which, after review of additional information, the Department has decided not to pursue.

13. The Parties enter into this Stipulated Order to settle and completely resolve the Department's claims for the violations alleged in Paragraph 11 above, and to avoid further expense and litigation. This Stipulated Order shall not be construed as an admission by Respondents of any of the allegations that apply to the violations Respondents denied in the Response to the NOV.

## II. CIVIL PENALTY

14. DOE and the University shall pay to the State of New Mexico a civil penalty of sixty thousand, three hundred, and twenty-eight dollars (\$60,328.00) to resolve its liability for the violations alleged in Paragraph 11 above. DOE and the University shall pay the civil penalty to the State of New Mexico within thirty (30) days after the effective date of this Stipulated Order. Payment shall be 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.

15. 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.

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

### **III. OTHER TERMS AND CONDITIONS**

#### **A. ENFORCEMENT**

17. Except as expressly provided in Paragraph 18 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 Hazardous Waste Management Regulations, the 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**

18. The Department covenants not to sue or take any administrative action against DOE or the University under the HWA, the Hazardous Waste Management Regulations, and the Facility Permit for any of the facts or violations alleged in Paragraph 11 above, or in the April 20, 2005 NOV. Such covenant applies only to civil liability.

19. DOE and the University covenant not to sue the State of New Mexico for any claims arising from the April 20, 2005 NOV.

#### **C. EFFECTIVE DATE**

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

#### **D. INTEGRATION**

21. 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. BINDING EFFECT**

22. This Stipulated 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 the Laboratory.

**F. AUTHORITY OF SIGNATORIES**

23. 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:  Date: 9/8/05  
CINDY PADILLA  
DIRECTOR  
WATER AND WASTE MANAGEMENT DIVISION

**For the UNITED STATES DEPARTMENT OF ENERGY:**

By:  FOR John Ordez Date: 2/2/05  
JOHN ORDAZ  
ASSISTANT MANAGER  
ENVIRONMENTAL STEWARDSHIP  
LOS ALAMOS SITE OFFICE  
NATIONAL NUCLEAR SECURITY ADMINISTRATION

For the REGENTS OF THE UNIVERSITY OF CALIFORNIA:

By: Carolyn A. Mangeng  
CAROLYN A. MANGENG  
ASSOCIATE DIRECTOR for  
TECHNICAL SERVICES  
LOS ALAMOS NATIONAL LABORATORY

Date: 9/2/05

Frank P. Dickson, Jr.  
FRANK P. DICKSON, JR.  
LABORATORY COUNSEL  
LOS ALAMOS NATIONAL LABORATORY

Date: 09.02.05

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  
RON CURRY  
SECRETARY OF ENVIRONMENT

Date: 9/12/05