

Permit



STATE OF NEW MEXICO  
ENVIRONMENT DEPARTMENT

IN THE MATTER OF )  
THE UNITED STATES DEPARTMENT )  
OF ENERGY AND THE REGENTS OF )  
THE UNIVERSITY OF CALIFORNIA )  
)  
(OWNER AND OPERATORS OF )  
LOS ALAMOS NATIONAL LABORATORY )  
LOS ALAMOS COUNTY, NEW MEXICO )  
I.D. NO. NM0890010515) )  
)  
RESPONDENTS. )

No. HWB 03-02 (CO)

ADMINISTRATIVE COMPLIANCE ORDER AND CIVIL PENALTY

This Administrative Compliance Order (“Order”) is issued to the United States Department of Energy (“DOE”) and the Regents of the University of California (“UC”) (collectively referred to as “Respondents”) pursuant to NMSA 1978, § 74-4-10 to enforce conditions of Respondent’s permit and to assess civil penalties. The authority to issue this Order has been delegated by the Secretary (“Secretary”) of the New Mexico Environment Department (“NMED”), to the Deputy Secretary of NMED.

FINDINGS OF FACT

1. NMED is the executive agency within the government of the State of New Mexico charged with administration and enforcement of the New Mexico Hazardous Waste Act, NMSA 1978, § 74-4-1, *et. seq.* (“HWA”) and the New Mexico Hazardous Waste Management Regulations (“HWMR”), 20.4.1 NMAC.



16138

2. Respondent, DOE, is an agency of the federal government, and is the owner and co-operator of Los Alamos National Laboratory ("LANL" or "Facility").

3. Respondent, UC, is a public educational institution of the State of California and is a co-operator of the Facility pursuant to a contract with DOE.

4. LANL is a Federal Facility currently comprising approximately forty-three (43) square miles (27,500 acres) located on the Pajarito Plateau in Los Alamos County in north central New Mexico, approximately 60 miles north-northeast of Albuquerque and 25 miles northwest of Santa Fe. During its history, the Facility has comprised up to roughly 71 square miles (45,666 acres). The Facility is surrounded by the Pueblo of San Ildefonso, Los Alamos County, Bandelier National Monument, Santa Fe National Forest, Santa Fe County and Bureau of Land Management lands. The Rio Grande River, Los Alamos County, Sandoval County and the tribal lands of the Pueblo of San Ildefonso border the Facility downgradient to the east.

5. The Facility began operations in 1943 when the United States Army Manhattan Engineer District was established for the research and development of atomic weapons. Current and historic operations have included nuclear weapons research, design and testing; high explosives research, development, fabrication, and testing; chemical and material science research; electrical research and development; laser design and development; photographic processing, and other activities.

6. In association with the activities identified above, the Facility generates, treats,

and stores hazardous waste and mixed hazardous and radioactive wastes. The Facility operates under interim status or permits for the storage and treatment of hazardous wastes and mixed hazardous and radioactive wastes.

7. On or about November 8, 1989, the predecessor to the New Mexico Environment Department, the Environmental Improvement Division of the New Mexico Department of Health and Environment, issued a permit to DOE and UC for the operation of the Facility, Permit No. NM0890010515.

8. On March 8, 1990, DOE and UC were issued a Hazardous and Solid Waste Amendments of 1984 Module ("HSWA Module"), which was incorporated into the hazardous waste Facility Permit No. NM0890010515, effective May 23, 1990. (The HSWA Module has been modified several times and subsequent references to the "HSWA Module" are to the current module.)

9. The HSWA Module, Section D requires corrective action for continuing releases of hazardous waste constituents at and from the Facility pursuant to 40 C.F.R. 264, Subpart F and 42 U.S.C. § 6924(u) and (v).

10. The HSWA Module, Section I requires Respondents to perform a RCRA Facility Investigation ("RFI") to address known or suspected releases from specified solid waste management units ("SWMU") to affected media.

11. As part of the corrective action requirements, the HSWA Module, Section J requires Respondents to take interim measures when NMED determines there has been a release or potential release of hazardous constituents from a solid waste management unit that poses a threat to human health and the environment, including submission of an interim measures workplan for approval by NMED.

12. The HSWA Module requires NMED to notify the Respondents in writing of the requirement to perform such interim measures, including submission of an interim measures workplan for NMED approval.

13. Between the years of 1943 and 1965, DOE operated a solid waste dump located on the Facility in Technical Area 73 ("TA-73"), and known as the Airport Landfill or SWMU 73-001(a). DOE systematically and routinely disposed of solid waste at SWMU 73-001(a) during operation of SWMU 73-001(a).

14. SWMU 73-001(a) is listed on the HSWA Module, Table A.

15. As a result of operation of SWMU 73-001(a), solid waste has accumulated in four adjacent drainages including; metal drums, used tires, automobile bodies, automobile parts, used medical equipment, galvanized steel trash cans, metal scrap, concrete, asphalt, and other solid waste.

16. Limited sampling of sediment in the drainages has identified the release of

hazardous constituents including; PCBs, pesticides, inorganic, and organic hazardous constituents.

17. The four drainages adjacent to SWMU 73-001(a) in which solid waste has accumulated are ephemeral tributaries of Pueblo Canyon. Pueblo Canyon is a tributary to the Rio Grande River.

18. The solid waste that has accumulated in four drainages adjacent to SWMU 73-001(a) constitutes a release or potential release of hazardous constituents from SWMU 73-001(a) and poses a threat to human health and the environment.

19. In a letter dated December 20, 2000, NMED notified the Respondents in writing of the requirement to submit a formal interim measures workplan for removal of solid waste in the drainages adjacent to SWMU 73-001(a).

20. In a letter dated May 8, 2002, NMED notified the Respondents in writing of the requirement to submit an interim measures workplan for removal of solid waste in the drainages adjacent to SWMU 73-001(a) to NMED for review and approval on or before June 3, 2002. In the same letter dated May 8, 2002, NMED required Respondents to implement the interim measure recommendations outlined in a letter dated October 3, 2001, including removal of solid waste from the drainages adjacent to SWMU 73-001(a).

21. The Respondents failed to submit the required interim measures workplan for

SWMU 73-001(a) to NMED for review and approval on or before June 3, 2002.

22. In a letter dated June 26, 2002, NMED denied a sixty (60) day extension request but granted Respondents a forty-five (45) day extension from the original due date, requiring the interim measures workplan for SWMU 73-001(a) to be submitted for approval no later than July 18, 2002.

23. The Respondents submitted an incomplete interim measures workplan for SWMU 73-001(a) dated on July 18, 2002.

24. In a letter dated on July 24, 2002, NMED notified the Respondents that the interim measures workplan submitted to NMED was rejected due to technical incompleteness. NMED notified the Respondents of the required elements for inclusion in a revised interim measures workplan and required the revised interim measures workplan for SWMU 73-001(a) to be submitted to NMED for approval no later than August 7, 2002.

25. In a letter dated August 7, 2002, Respondents submitted an incomplete revised interim measures workplan for SWMU 73-001(a).

26. In a letter dated November 6, 2002, NMED notified the Respondents in writing that the revised interim measures workplan submitted to NMED was incomplete and required the Respondents to submit a detailed addendum to the revised interim measures workplan for SWMU 73-001(a) to NMED for approval on or before December 31, 2002.

27. The Respondents failed to submit the required addendum to the revised interim measures workplan for SWMU 73-001(a) on or before December 31, 2002.

28. In a letter dated January 29, 2003, NMED required Respondents to notify NMED in writing on or before January 31, 2003 of the selected remedy and submit a complete and detailed addendum outlining the methods selected for implementing the remedy by February 14, 2003. NMED also required Respondents to remove the solid waste from the watercourse by August 30, 2003.

29. In a letter dated on January 31, 2003, Respondents stated that DOE would contract for removal of the debris using a combination of methods and technologies.

30. In a letter dated on February 11, 2003, NMED again notified the Respondents in writing of the regulatory deliverable deadline of February 14, 2003 and the deadline of August 30, 2003 for removal of debris from the watercourse. In addition, NMED required an interim measures report detailing removal and confirmatory sampling to be submitted on or before October 30, 2003.

31. In a facsimile dated on February 13, 2003, the Respondents submitted an addendum to the revised interim measures workplan to NMED. The Respondents failed to include the required elements in the addendum.

32. Respondents have failed to conduct the required interim measures at SWMU 73-001(a).

### CONCLUSIONS OF LAW

33. Paragraphs 1 through 32 are incorporated herein by reference.

34. Respondents are each a "person" as defined at NMSA 1978, § 74-4-3(M) and 20.4.1.100 NMAC, which incorporates 40 C.F.R. § 260.10.

35. LANL is a hazardous waste management "facility", as defined at 20.4.1.100 NMAC, which incorporates 40 CFR § 260.10, and as defined in the HSWA Module

36. Respondents manage "hazardous waste" at LANL as defined at NMSA 1978, § 74-4-3(K) and 20.4.1.100 NMAC, which incorporates 40 C.F.R. § 260.10.

37. Respondents are each an "operator" of LANL, a hazardous waste management facility, as defined at 20.4.1.100 NMAC, which incorporates 40 CFR § 260.10.

38. Respondent DOE is an "owner" of LANL, a hazardous waste management facility, as defined at 20.4.1.100 NMAC, which incorporates 40 CFR § 260.10.

39. Respondents engage in “storage” and “treatment” of hazardous waste at the Facility, as defined at NMSA 1978, § 74-4-3(P), and (T) and 20.4.1.100 NMAC, which incorporates 40 CFR § 260.10.

40. Respondents have historically engaged in “disposal” of solid waste and hazardous waste at the Facility, including mixed waste, as defined at NMSA 1978, § 74-4-3(E) and 20.4.1.100 NMAC, which incorporates 40 CFR § 260.10.

41. SWMU 73-001(a) is a “solid waste management unit” as defined in the HSWA Module and is subject to corrective action requirements under the HSWA Module and 20.4.1.500 NMAC, which incorporates 40 CFR § 264.101.

42. The Respondents are required, by the HSWA Module, Section J and by written notice from NMED, to perform interim measures at SWMU 73-001(a), including removal of solid waste in the four drainages adjacent to SWMU 73-001(a).

43. The Respondents have violated the HSWA Module, Section J by failing to perform interim measures at SWMU 73-001(a).

44. The Respondents are required by the HSWA Module, Section J and by written notice from NMED, to submit an interim measures workplan detailing the interim measures to be implemented at SWMU 73-001(a).

45. The Respondents have violated the HSWA Module, Section J by failing to submit a complete interim measures workplan to NMED.

46. Pursuant to NMSA 1978, § 74-4-10, the Secretary may issue a compliance order requiring immediate compliance or compliance within a specified time period and may assess a civil penalty for any past or current violation of the HWA, any regulation issued under the HWA, or any condition of a permit.

47. Pursuant to NMSA 1978, § 74-4-10, the Secretary may assess a civil penalty in the compliance order, which shall not exceed ten thousand dollars (\$10,000.00) per day of noncompliance for each violation.

#### **SCHEDULE OF COMPLIANCE**

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

A. On or before June 13, 2003, Respondents shall submit a complete interim measures workplan to NMED. The Respondents shall address the deficiencies identified in the letter from NMED to Respondents dated April 24, 2003 and attached to this Order as Attachment A. The Respondents shall include the elements identified in Attachment A in the interim measures workplan. Contents of the interim measures workplan must be approved by NMED prior to submittal. Respondents shall submit a draft interim measures workplan to NMED for comment on or before May 30, 2003.

B. On or before August 30, 2003, Respondents shall remove the solid waste from the four drainages adjacent to SWMU 73-001(a), in accordance with an NMED approved interim measures workplan.

C. On or before October 30, 2003, Respondents shall submit a complete interim measures report in accordance with an NMED approved interim measures workplan, describing removal activities, confirmatory sampling, and recommendations for additional corrective action, as necessary.

D. Within thirty (30) days of receipt of this Order, Respondents shall pay the civil penalty specified below.

The Department reserves the right to seek further relief authorized by the HWA, HWMR, or permit conditions.

#### **CIVIL PENALTY**

49. NMED hereby assesses a civil penalty of One Hundred Sixty Seven Thousand Four Hundred Seventy Five dollars (\$167,475.00), against the Respondents for the violations set forth above. The penalty amounts are calculated pursuant to the NMED's Hazardous Waste Penalty Policy. Each penalty calculation for each violation is based on the seriousness of the violations, and the lack of good faith efforts on the part of the Respondents to comply with the applicable requirements, any economic benefit resulting from noncompliance accruing to the Respondents, and such other matters as justice may require. The penalty calculations are

attached to the Order as Attachment B. The Secretary reserves the right to recalculate this civil penalty based on new evidence, including evidence of continued noncompliance with the HWA, HWMR or permit conditions. The penalty for each violation is:

<u>VIOLATION</u>	<u>AMOUNT</u>
HSWA Module, Section J, failure to conduct interim measures.	\$147,180.00
HSWA Module, Section J, failure to submit an interim measures workplan.	\$20,295.00

Respondents shall pay the civil penalty by certified or cashier's check made payable to the State of New Mexico and mailed or hand-delivered to:

New Mexico Environment Department  
Office of General Counsel  
Attn: Steve Hattenbach, Esq.  
P.O. Box 26110  
Santa Fe, NM 87502-6110

#### NOTICE

50. 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 NMSA 1978, § 74-4-10 (C).

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

51. Respondents have a right to request a hearing pursuant to NMSA 1978, § 74-4-10(H) and 20.1.5.200 NMAC by filing a written Request for Hearing with the Hearing Clerk within thirty (30) calendar days after receipt of the Order. The Request for Hearing shall include an Answer. The Answer shall:

A. Admit or deny each of the findings of fact and conclusions of law contained in the Order. Where the Respondents assert they have no knowledge of a particular allegation, the allegation is deemed denied. Failure of Respondents to admit or deny an allegation of the Order constitutes an admission of the allegation.

B. Allege any affirmative defenses upon which the Respondents intend to rely. The Answer shall state the circumstances or arguments which are alleged to constitute the grounds of defense and the facts which Respondents intend to place at issue. Any affirmative defense not asserted in the Request for Hearing, except a defense asserting lack of subject matter jurisdiction, is 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.

A hearing upon the issues raised by the Order and answer shall be held upon the request of the Respondents. NMED's Adjudicatory Procedures (20.1.5 NMAC) 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: Carolyn Vigil, Hearing Clerk, New Mexico Environment Department, P.O. Box 26110, 1190 St. Francis Drive, Harold Runnels Building, N4075, Santa Fe, New Mexico 87502-6110, (505) 827-2002.

### **FINALITY OF ORDER**

52. 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 Respondents right to a hearing under NMSA 1978, § 74-4-10.

### **SETTLEMENT CONFERENCE**

53. Whether or not Respondents file an Answer and Request for Hearing, Respondents may confer with NMED concerning a 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 *pro se* or be represented by counsel.

54. 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 a Stipulated Final Order shall serve to resolve all issues raised in this Order, shall be final and binding on all parties, and shall not be appealable.

55. To explore the possibility of settlement in this matter, contact Mr. Steven Hattenbach, Assistant General Counsel, New Mexico Environment Department, 1190 St. Francis Dr., P.O. Box 26110, Santa Fe, NM 87502, telephone number (505) 827-2824.

**TERMINATION**

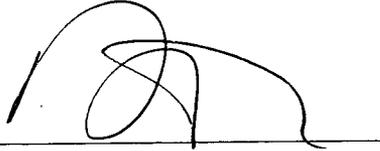
56. Compliance with the requirements of this Order does not relieve Respondents of the obligation to comply with all applicable laws and regulations. This Order shall terminate when Respondents certify that all requirements of the Order have been completed and NMED has approved such certification, or when the Secretary approves a Stipulated Final Order.

RON CURRY, SECRETARY

04.24.03

DATE

By:



Derrith Watchman-Moore, Deputy Secretary

New Mexico Environment Department

STATE OF NEW MEXICO  
ENVIRONMENT DEPARTMENT



IN THE MATTER OF )  
THE UNITED STATES DEPARTMENT )  
OF ENERGY AND THE REGENTS OF )  
THE UNIVERSITY OF CALIFORNIA )  
)  
(OWNER AND OPERATORS OF )  
LOS ALAMOS NATIONAL LABORATORY )  
LOS ALAMOS COUNTY, NEW MEXICO )  
I.D. NO. NM0890010515) )  
)  
RESPONDENTS. )

No. HWB 03-02 (CO)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Compliance Order in case number HWB 03-02 was mailed by certified mail, return receipt requested, on this 25<sup>th</sup> day of April, 2003 to the following:

Mr. G. Pete Nanos, Interim Director  
Los Alamos National Laboratory  
P.O. Box 1663, Mail Stop A100  
Los Alamos, New Mexico 87545

AND

Mr. Ralph Erickson, Area Manager  
Office of Los Alamos Site Operations  
Department of Energy  
528 35<sup>th</sup> Street, Mail Stop A316  
Los Alamos, New Mexico 87544

Steve Fox

Steve Hattenbach, Esq.  
Assistant General Counsel, NMED  
P.O. Box 26110  
Santa Fe, New Mexico 87502-6110  
Telephone (505) 827-2824



**BILL RICHARDSON**  
GOVERNOR

**State of New Mexico**  
**ENVIRONMENT DEPARTMENT**

**Hazardous Waste Bureau**  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, New Mexico 87505-6303  
Telephone (505) 428-2500  
Fax (505) 428-2567  
[www.nmenv.state.nm.us](http://www.nmenv.state.nm.us)

ATTACHMENT A



**RON CURRY**  
SECRETARY

**DERRITH WATCHMAN-MOORE**  
DEPUTY SECRETARY

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

April 24, 2003

Mr. G. Pete Nanos, Interim Director  
Los Alamos National Laboratory  
P.O. Box 1663, Mail Stop A100  
Los Alamos, New Mexico 87545

Mr. Ralph Erickson, Area Manager  
Office of Los Alamos Site Operations  
Department of Energy  
528 35<sup>th</sup> Street, Mail Stop A316  
Los Alamos, New Mexico 87544

**SUBJECT: REJECTION OF INTERIM MEASURES PLAN AND ADDENDUM FOR  
SOLID WASTE MANAGEMENT UNIT (SWMU) 73-001(a), AIRPORT  
LANDFILL DRAINAGES  
LOS ALAMOS NATIONAL LABORATORY EPA ID# NM 0890010515  
HWB-FACILITY-02-020**

Dear Messrs. Nanos and Erickson:

The New Mexico Environment Department (NMED) is in receipt of your February 14, 2003 document entitled "Addendum to Interim Measures Plan for Potential Release Site 73-001(a)." NMED hereby rejects the aforementioned document. NMED also reaffirms the rejection of the revised interim measures (IM) plan dated August 7, 2002 titled, "Interim Measures Plan for Potential Release Site 73-001(a) Debris Removal," and referenced by LA-UR-01-2923 (ER2002-0538). NMED is providing the following explanation of the IM Plan and Addendum rejection:

NMED granted the Department of Energy and the University of California (the Permittees) until January 31, 2003 to provide a remedy for debris removal. In response, the Department of Energy (DOE) submitted the following remedy for debris removal: debris removal will be accomplished using a combination of methods and technologies including; manual collection and transport to staging areas, skyline rigging commonly used in logging and trucks and trailers for transport to disposal areas. In a letter to the Permittees dated January 29, 2003, NMED required the Permittees to submit a complete and detailed addendum to the IM Plan outlining the methods for implementing the remedy on or before February 14, 2003.

Messrs. Nanos and Erickson  
April 24, 2003  
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NMED staff discussed deficiencies of the IM plan during a telephone conversation with DOE on January 6, 2003 and met with Mr. Gregory of the DOE during the week of January 6, 2003 to further discuss the deficiencies of the IM plan. At the meeting NMED conveyed the expectation that the IM Plan Addendum must include a level of detail equivalent to that which would be included in the bid specifications for a request for proposal and that which would be expected in a contractor's bid package to complete the proposed work.

NMED again met with the DOE staff on Tuesday, March 4, 2003 to further discuss deficiencies in the addendum. During the meeting, NMED staff outlined in detail the deficiencies of the IM Plan Addendum. The deficiencies discussed include, but are not limited to:

- The removal method proposed by DOE is not explained in detail;
- It is unclear if the proposed removal methods will be able to achieve the desired result of debris removal;
- It is unclear whether an engineered system including "baskets, carts, or carriages" will be designed and installed for debris removal, and how debris that cannot be removed "conveniently or efficiently" will be "picked up" at the bottom of Pueblo Canyon,
- "Conveniently or efficiently" are not defined;
- It is unclear if the road into Pueblo Canyon must be improved to allow trucks or other heavy equipment into the canyon bottom for debris removal;
- Details, including capacity, design and construction of the proposed "Skyline cableway and carriage system" are not provided;
- Detailed engineering drawings for the Skyline cableway and carriage system are not provided;
- Load capacity for the system proposed is not provided;
- Environmental impacts associated with the installation of the cableway and carriage system are not described (e.g. will trees be removed from the hillside for system installation in turn causing contaminated sediment to be mobilized and potentially move into Pueblo Canyon);
- Erosion controls to prevent sediment dislodged during debris removal from entering Pueblo Canyon are not proposed;
- What actions will be taken to ensure that contaminated sediments in Pueblo Canyon are not mobilized;
- How will potentially contaminated dust generated during debris removal be suppressed;
- What is the final disposition of the generated debris; and
- Information provided in the IM plan and subsequent addendum is inadequate for NMED to determine if the remedy selected is implementable and will not cause adverse effects to Pueblo Canyon, the Airport Landfill, or debris in place at the landfill.

Messrs. Nanos and Erickson  
April 24, 2003  
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The Airport Landfill High Performing team (HPT) evaluated various removal methods, including a cable pull system, between December 1999 and May 2001. The HPT members consist of DOE, LANL Risk Reduction and Environmental Stewardship (RRES) and NMED Surface Water Quality Bureau and Hazardous Waste Bureau representatives. Based on the evaluation of the debris removal methods, the HPT determined: a cable pull system would not be capable of removing debris from remote areas; access would be limited to debris within a certain distance on either side of the primary cable; moving the cable to facilitate debris pickup throughout the drainage would not be cost effective; construction of a cable system may require use of a bulldozer for construction of anchor points causing sediment to be mobilized by tree removal and construction activities; and, any cable system presents unique operational and health and safety concerns and must be designed and certified by a New Mexico registered professional engineer. In addition, the initial cost to design and construct a cable system would be high.

During the meeting between NMED and DOE on March 4, 2003, NMED outlined concerns with the proposed removal method, the IM Plan and Addendum to the plan, and provided specific examples of investigation plans submitted by the Permittees for NMED review containing all required elements by NMED. Specifically, NMED directed DOE to use the following plans as examples when preparing a revised Plan for the Airport Landfill: "Voluntary Corrective Measures Plan for Solid Waste Management Unit 21-011(k) at Technical Area 21, Revision 1" (LA-UR-02-3807) and "Interim Action Plan for the South Fork of Acid Canyon" (LA-UR-01-4538). The Permittees subsequently withdrew SWMU 21-011(k); however, NMED conducted a thorough review and found the plan to contain all necessary information for NMED to make a determination on the plan. The Acid Canyon plan was approved by NMED on June 25, 2002.

In summary, NMED has met with the DOE on several occasions to discuss the content of the IM Plan Addendum and provided DOE with examples of plans submitted to NMED to use as a template for revising the IM Plan Addendum. NMED has provided guidance on IM Plan Addendum content to DOE by e-mail communication on August 5, 2002, September 16, 2002, and January 6, 2003. In addition, NMED has met with DOE during the week on January 6, 2003 and again on March 4, 2003 to discuss details of a revised IM Plan Addendum. To date, DOE has not submitted detailed information regarding debris removal at SWMU 73-001(a) as required by NMED.

The following documents are required to be submitted to NMED for review and approval: a revised draft IM Plan for debris removal on or before May 30, 2003, a revised final IM Plan for debris removal by June 13, 2003, and an IM Completion Report on or before October 30, 2003. In addition, NMED requires the debris to be removed from the drainages in accordance with an approved IM Plan on or before August 30, 2003.

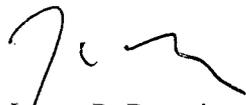
Messrs. Nanos and Erickson  
April 24, 2003  
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The content of the revised IM Plan should follow the "RCRA Corrective Action Plan (Final), OSWER Directive 99023-2-A, May 1994" and contain the following elements:

- Method required to access debris located in each of the drainages identified for cleanup must be outlined in detail and include diagrams of equipment and design specifications for any engineered system designed to remove the debris;
- Method of removal must be outlined and include all actions necessary to remove the debris from the watercourse;
- Information regarding staging, segregation and disposal of debris once removed from the drainage must be explained in detail;
- Actions proposed to control sediment migration during removal must be detailed;
- Actions proposed for dust suppression during debris removal must be explained in detail;
- Proposed confirmatory sampling program must be detailed and include proposed analyses. A map detailing proposed sampling locations should be included to demonstrate proposed confirmatory sampling locations;
- The process used for waste disposal profiling, including debris and soil generated, must be explained in detail; and
- A contingency plan containing alternate methods for debris removal (if proposed method should fail) and sampling of stained or visibly contaminated material must also be included.

Please be advised that this case has been referred to the NMED Office of General Counsel for possible enforcement actions. If you have any questions regarding this letter or future enforcement activities, please contact me at 827-2512.

Sincerely,



James P. Bearzi  
Chief  
Hazardous Waste Bureau

Messrs. Nanos and Erickson

April 24, 2003

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cc: S. Hattenbach, NMED OGC  
D. Cobrain, NMED HWB  
J. Kieling, NMED HWB  
V. Maranville, NMED HWB  
J. Davis, NMED SWQB  
B. Lucas, NMED SWQB  
J. Parker, NMED DOE OB  
S. Yanicak, NMED DOE OB, MS J993  
L. King, EPA Region 6 (6PD-N)  
D. McInroy, LANL RRES/ER, MS M992  
B. Ramsey, LANL RRES/ER, MS M992  
N. Quintana, LANL RRES/ER, MS M992  
T. Rust, LANL RRES/ER, MS M992  
H. LeDoux, DOE OLASO-OPM, MS A316  
D. Gregory, DOE OLASO, MS A316  
J. Vozella, DOE OLASO, MS A316  
File: Reading and LANL TA-73 [Airport Landfill Drainages SWMU 73-001(a)]

**PENALTY CALCULATION WORKSHEET**Facility: Los Alamos National LaboratoryCitation/Violation: LANL HSWA Module, Section J, Failure to conduct interim measuresLocation: Solid Waste Management Unit 73-001(a), Airport Landfill Drainage  
Debris Disposal Areas.**PENALTY AMOUNT:**

1.	Gravity based penalty from matrix .....	<u>\$4,000</u>
(a).	Potential for harm .....	Moderate
(b).	Extent of deviation .....	Major
2.	Amount selected from multiday matrix cell .....	<u>\$2,200</u>
3.	Multiply line 2 by number of days of noncompliance (or other appropriate number) minus 1 Number of days: <u>59</u> .....	<u>\$129,800</u>
4.	Add line 1 and line 3 .....	<u>\$133,800</u>
5.	Percent increase for lack of good faith .....	<u>10 %</u>
6.	Percent increase/decrease for willfulness/negligence .....	<u>0 %</u>
7.	Percent increase for history of noncompliance .....	<u>0 %</u>
8.	Total percentage from lines 5 thru 7 .....	<u>10 %</u>
9.	Multiply line 4 by 8 .....	<u>\$13,380</u>
10.	Calculate economic benefit .....	<u>0%</u>
11.	Add lines 4, 9, and 10 for penalty amount for this violation .....	<u>\$147,180</u>

**NARRATIVE EXPLANATION OF FIGURES SELECTED**

## Gravity Based Penalty

(a). Potential for Harm: Based on information provided to NMED by the Respondents, the debris in the watercourse consists of tires, car bodies, pieces of concrete and asphalt, drums, galvanized steel trash cans, wooden spools, and other miscellaneous debris in at least four drainages leading from the Airport Landfill into Pueblo Canyon. Previous sampling of sediment in the drainages indicates the presence of hazardous constituents including PCBs, pesticides, inorganics, and organic constituents. The drainages and debris are accessible to the public and are not under the control of the Respondents. The solid waste is situated so that it is likely to release hazardous constituents into surface water in a watercourse and into sediments that have the potential to migrate downstream in a watercourse. This situation poses a high risk of contamination to sediments, surface water and shallow groundwater. This situation also poses a high risk of exposure to members of the public and to wildlife at the release site and downstream. Based on observed levels of contaminants, the waste does not present an acute health hazard, but because of the lack of site control and likelihood of release to environmental media and exposure to receptors the overall potential for harm is significant and is therefore considered to be moderate.

(b). Extent of Deviation: The Respondents failed to comply with the Facility HSWA permit RCRA 3004(u), and 40 C.F.R. 264.101. The NMED notified the Respondents that corrective action was required for SWMU 73-001(a) as early as December 20, 2000. The Respondents failed to conduct any corrective action at SWMU 73-001(a) to reduce the potential threat to human health and the environment. Respondents have deviated from the requirement so significantly as to result in substantial noncompliance and therefore the extent of deviation is considered major.

## Multiday Penalty:

A multi-day penalty is mandatory for a moderate/major category. NMED notified the Respondents that corrective action was required at SWMU 73-001(a) as early as December 20, 2000. The penalty policy imposes a sixty (60) day maximum for multiday penalties. The first day of violation is included in the gravity portion of the penalty calculation.

## Good Faith:

Through observations and information, there appears to have been no effort to comply with written requests from NMED to conduct interim measures. Therefore no downward adjustment will be made. The Respondents have been notified in writing by NMED that corrective action is required at SWMU 73-001(a) as early as December 20, 2000. The Respondents have failed to initiate corrective action despite repeated requests from NMED. Despite extensive collaboration by NMED to identify adequate interim measures, Respondents have failed to implement interim measures. Therefore a 10% increase has been assessed to the penalty calculation because Respondents have not acted in good faith to come into compliance.

4. Negligence/willfulness:

No increase has been assessed.

5. History of Noncompliance:

Respondents have not been cited for this violation previously. No increase has been assessed.

6. Economic Benefit:

Respondents gained no significant economic benefit from failure to implement corrective action.  
The Respondents will be required to implement corrective action.

**PENALTY CALCULATION WORKSHEET**Facility: Los Alamos National LaboratoryCitation/Violation: LANL HSWA Module, Section J, Failure to submit an interim measures workplanLocation: Solid Waste Management Unit 73-001(a), Airport Landfill Drainage Debris Disposal Areas.**PENALTY AMOUNT:**

1. Gravity based penalty from matrix .....	<u>\$750</u>
(a). Potential for harm .....	Minor
(b). Extent of deviation .....	Moderate
2. Amount selected from multiday matrix cell .....	<u>\$300</u>
3. Multiply line 2 by number of days of noncompliance (or other appropriate number) minus 1	
Number of days: 59 .....	<u>\$17,700</u>
4. Add line 1 and line 3 .....	<u>\$18,450</u>
5. Percent increase for lack of good faith .....	<u>10 %</u>
6. Percent increase/decrease for willfulness/negligence .....	<u>0 %</u>
7. Percent increase for history of noncompliance .....	<u>0 %</u>
8. Total percentage from lines 5 thru 7 .....	<u>10 %</u>
9. Multiply line 4 by 8 .....	<u>\$1,845</u>
10. Calculate economic benefit .....	<u>0%</u>
11. Add lines 4, 9, and 10 for penalty amount for this violation .....	<u>\$20,295</u>

## NARRATIVE EXPLANATION OF FIGURES SELECTED

### 1. Gravity Based Penalty

(a). Potential for Harm: An interim measures workplan must provide an adequate basis for NMED to determine that all applicable requirements will be met, that the risk to human health and the environment will be minimized, and that reasonable contingencies have been addressed. Based on information provided to NMED by the Respondents, the debris in the watercourse consists of tires, car bodies, pieces of concrete and asphalt, drums, galvanized steel trash cans, wooden spools, and other miscellaneous debris in at least four drainages leading from the Airport Landfill. Previous sampling of sediment in the drainages indicate the presence of hazardous constituents including PCBs, pesticides, inorganics, and organic constituents. The solid waste is situated so that it is likely to release hazardous constituents into surface water in a watercourse and into sediments that have the potential to migrate downstream in a watercourse. This situation poses a high risk of contamination to sediments, surface water and shallow groundwater. This situation also poses a risk of exposure to members of the public and to wildlife at the release site and downstream. Unique circumstances at the site increase the importance of a complete workplan (e.g. the probability of soil disturbance on steep slopes and in the watercourse during removal creates a high probability of increased erosion mobilizing hazardous constituents offsite, the need to protect the mesatop landfill from disturbance or further release of hazardous constituents during removal operations, and the inaccessible location which limits the feasibility of many interim measures). Although Respondents did provide some required details in the submittals, many key elements were missing. These missing elements make it impossible for NMED to ensure protection of public health and the environment. The overall potential for harm is considered minor because the refusal to submit an adequate plan creates a potential risk that interim measures will not meet regulatory requirements to protect human health and the environment.

(b). Extent of Deviation: The Respondents failed to comply with the Facility HSWA permit. The NMED notified the Respondents of the requirement to submit an interim measures workplan as early as December 20, 2000 and provided extensive comments and guidance on the required elements of the workplan. The Respondents failed to submit an implementable interim measures plan for debris removal at SWMU 73-001(a) to NMED. Although Respondents did provide some required details in the submittals, many key elements were missing. Overall, the extent of deviation is considered moderate because some of the requirements were met.

### 2. Multiday Penalty:

A multi-day penalty is presumed appropriate for a moderate/moderate category unless case specific facts overcome the presumption. NMED notified the Respondents as early as December 20, 2000 that an interim measures workplan was required for debris removal at SWMU 73-001(a). NMED granted numerous extensions to the interim plan deadlines and provided extensive guidance in a good faith attempt to allow Respondents to meet the requirement. The latest extension expired on February 14, 2003, over sixty (60) days ago. The case specific facts do not overcome the presumption that multiday penalties should be imposed. The penalty policy

imposes a sixty (60) day maximum for multiday penalties. The first day of violation is included in the gravity portion of the penalty calculation.

3. Good Faith:

NMED provided extensive comment and guidance to Respondents on the required contents of an interim measures workplan. Despite extensive collaboration by NMED to aid Respondents in addressing all required elements of the workplan, the Respondents have failed to submit a complete interim measures workplan that includes the required elements. Therefore a 10% increase has been assessed to the penalty calculation because Respondents did not attempt to address all the required elements.

4. Negligence/willfulness:

No increase has been assessed.

5. History of Noncompliance:

Respondents have not been cited for this violation previously. No increase has been assessed.

6. Economic Benefit:

Respondent gained no significant economic benefit from failure to submit a complete interim measures workplan to NMED for review and approval. The Respondents will be required to submit a complete workplan for debris removal according to the schedule outlined in the Order.