

Generation 8/12/08



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- 33 (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 January 18, 2008 (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 Rule ("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 January 22, 2007 through January 31, 2007, 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 January 18, 2008, the Department issued the NOV to DOE and LANS alleging violations of the HWA, the HWMR, and the Facility Permit.

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

a. Violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.34(c)(1), by failing to maintain a satellite accumulation area (SAA) under the control of the generator in TA-60. An SAA in Ta-60 Building 99 was found to have an unlocked gate, which was held open by a snow drift.

b. Violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.34(c)(1)(i) referring to 40 CFR 265.171, by failing to contain a cracked lead-acid battery located in TA-60. The battery was found to have burst and leaked onto the floor of TA-60 Building 99.

c. Violation of 20.4.1.300 NMAC, incorporating of 40 CFR 262.11, by failing to make a hazardous waste determination on a hazardous waste container located in TA-60. A 5-gallon black metal container labeled "Empty" at TA-60 Building was found to contain an unknown liquid that subsequent analytical results showed to be characteristically hazardous for lead.

d. Violation of 20.4.1.1002 NMAC, incorporating 40 CFR 279.22(c)(1), by failing to properly label a used oil container located in TA-60. A 5-gallon black metal container

labeled "Empty" at TA-60 Building 99 was found to contain an unknown liquid that subsequent analytical results showed to be used oil.

e. Violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.34(c)(1), by failing to maintain an SAA in TA-55 at or near the point of generation. A five-gallon container labeled "No Good Used Thinner" was being stored in TA-55 transportainer PF-191, which was several hundred feet from the point of generation in the TA-55 PF-4 Paint Shop.

f. Violation of Permit Condition II.E.1 referring to Attachment B.7.2, Table B-1, referencing 20.4.1.600 NMAC, incorporating 40 CFR 265.15(d), by failing to properly fill out inspection record forms by failing to check off daily items in the inspection log for TA-54-Pad 10 Container Storage Unit on July 30, 2006.

g. Violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.11, by failing to make hazardous waste determinations on two 30-gallon black metal drums located in TA-3 Building SM-39. The drums were labeled "Empty" and were found to contain unknown liquids that subsequent analytical results showed to be characteristically hazardous for selenium.

h. Violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.34(a)(1)(i) referring to 40 CFR 265.174, by failing to perform weekly inspections at a less than 90 day area in TA-00, SI 3582. Two 55 gallon drums containing investigation-derived waste stored at SI 3582, which was located in an unsecured area within the city of Los Alamos at the Boy Scout Ranch parking lot, were not inspected from November 03, 2006 through January 23, 2007. Subsequent analytical results showed to be mixed low-level waste.

10. The NOV directed DOE and LANS to respond within 15 days, describing the actions instituted at the Laboratory to address the alleged violations. DOE and LANS responded

within the specified time and identified the corrective actions that had been implemented. DOE and LANS did not admit the violations alleged in the NOV.

## 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. This Stipulated Order shall not be construed as an admission by Respondents of the violations alleged in the NOV and paragraph 9.

12. Respondents agree to pay a civil penalty of \$49,622.00 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 *State of New Mexico*, 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. BINDING EFFECT**

19. 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.

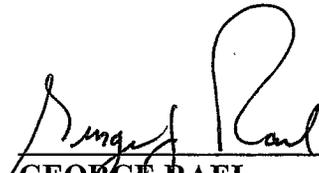
**F. AUTHORITY OF SIGNATORIES**

20. 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: 8/12/08  
MARGY LEAVITT  
DIRECTOR  
WATER AND WASTE MANAGEMENT DIVISION

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

By:  \_\_\_\_\_ Date: August 7, 2008  
GEORGE RAEI  
ASSISTANT MANAGER, ENVIRONMENTAL OPERATIONS  
LOS ALAMOS SITE OFFICE  
NATIONAL NUCLEAR SECURITY ADMINISTRATION

**For the LOS ALAMOS NATIONAL SECURITY, LLC:**

By:  \_\_\_\_\_ Date: 8/12/08  
RICHARD S. WATKINS  
ASSOCIATE DIRECTOR FOR ENVIRONMENT, SAFETY,  
HEALTH & QUALITY  
LOS ALAMOS NATIONAL SECURITY, LLC  
LOS ALAMOS NATIONAL LABORATORY

**FINAL 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 CURRY  
SECRETARY OF ENVIRONMENT

Date: 8/20/08